

## **The complaint**

Ms C complains that a car she has been financing through an agreement with STARTLINE MOTOR FINANCE Limited ("Startline") has not been of satisfactory quality.

## **What happened**

Ms C took receipt of a used car in March 2019. She financed the deal through a hire purchase agreement with Startline. At the point of supply the car was about nine years old and had already completed about 75,000 miles.

After a couple of days Ms C complained to the dealership that there was damage to one of the alloys. When the replacement alloy arrived it was a different colour to the others and Ms C told the business she wanted to reject the car.

In the interim period she had taken it to a third party garage and they'd identified several issues. Amongst other things they said:

- there was a noise which they thought was coming from the cam chain;
- the gearbox was leaking;
- there were various fault codes relating to the Electronic Control Unit;
- there was damage to a tyre

The dealership were given an opportunity to repair the car. They repainted the alloy; replaced a tyre and the battery and also completed a repair to the central locking. They did nothing about the noise that had been reported and Ms C noted that the noise was still apparent when she drove the car away. She also noted that there was a slash to the replacement tyre. So the dealership replaced the tyre but they refused to consider the noise as they said they'd already looked at that and there was nothing wrong.

Ms C therefore commissioned a further investigation by the same third party garage. They said there was a noise and they were persuaded it was probably from the gearbox or the rear differential but they could not assess this any further.

So Ms C complained to Startline and an independent inspection of the car was commissioned. The inspector said there was a noise that was probably from the gearbox or differential and that would have been present when the car was supplied to Ms C.

The dealership offered to repair the gearbox but Ms C wanted to reject the car so she referred her complaint to this service and provided further evidence from another third party garage who also confirmed there was a noise and thought it was probably coming from a gearbox bearing.

Our investigator provided his opinion. He thought the dealership had already completed repairs to the car when they were identified in April 2019. He explained that legislation gave

them one opportunity to resolve faults that were present at the point the car was supplied and he thought the business had therefore exhausted that opportunity. He was persuaded that a fault still existed on the car and he didn't think Ms C had to allow a further repair and should now be allowed to reject the car.

So he thought Startline should terminate the agreement; return Ms C's deposit with interest, refund all of her finance instalments except three, that could be retained as she had some use of the car, and pay her £200 compensation in respect of the distress and inconvenience she'd experienced. He thought they should also refund the costs she'd incurred having the third party garages diagnose the problems.

Startline didn't agree with the investigator's suggestion they said the dealership hadn't been given an opportunity to repair the latest fault and that the dealership had covered the cost of the most recent third party assessment. They therefore asked for a final decision by an ombudsman.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with the investigator's view. I know that will disappoint Startline so please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Ms C acquired her car under a hire purchase agreement. The hire purchase agreement is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Startline, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would likely include things like the age, mileage and price at the time the car was supplied to

Ms C. The car here was around nine years old and had travelled about 75,000 miles.

The relevant legislation says that if there's a fault with the car that was present, or developing, at the point the car was supplied then the business should be allowed one opportunity to repair it. I think it's clear the business had that opportunity in April 2019 when they completed several repairs that I've documented above.

But relevant legislation does not give a business one chance to repair each separate fault that may occur. Whether a vehicle is of satisfactory quality when supplied refers to the

vehicle as a whole not each separate component. Indeed, the more separate faults - the more likely it is the vehicle isn't of satisfactory quality.

There's a noise on the car that several sources have now confirmed appears to be coming from the gearbox. I'm persuaded this noise was most probably present from the start as that's what the independent expert has told us. It also seems likely that the noise was the same one that was identified by the third party garage in April 2019 and that they initially thought was a cam chain noise. I say that because there's never been a repair to the cam chain or any attempt made to rectify a cam chain noise. So if there was a noise when the car went back to the dealership to be repaired in April 2019, and if there was still a noise when it left the dealership, as it appears the third party garages and the inspector say there was, then I think the source of that noise has never been repaired.

In those circumstances I think it would now be fair to tell Startline to allow the car to be rejected.

### **Putting things right**

Startline should therefore terminate the agreement and collect the car. The deposit should be refunded and as Ms C has been deprived of that money Startline should add interest to the refund.

It's clear that Ms C has been inconvenienced by matters. She had to return the car to the dealership, and other garages, on several occasions and has had to pursue a complaint that I think should reasonably have been resolved earlier. In those circumstances I think Startline should pay her £200 in compensation for the distress and inconvenience she's experienced.

And because Ms C had so little use of the car I think Startline should refund all of her finance instalments. They can however, retain three instalments in respect of the limited use Ms C has had.

Mrs C had to obtain three third party opinions to support her claim. It seems that the dealership settled the bill for the last opinion but the previous two cost Ms C paid were for £30 and £52.80. As those costs were a consequence of the problems Ms C was experiencing with the car they should be refunded by Startline.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell STARTLINE MOTOR FINANCE Limited to:

- allow Ms C to reject the car and terminate her finance agreement;
- collect the car at no cost to Ms C;
- refund any deposit and add 8% simple interest per annum from the date of payment to the date of settlement;
- refund all finance instalments except for three, that can be retained in respect of the use Ms C has had from the car, and add 8% simple interest per annum from the date of payment to the date of settlement;
- pay Ms C £200 to compensate her for the distress and inconvenience she's experienced;
- refund the costs of the garage investigations she's commissioned at £30 and £47.94.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 22 June 2020.

Phillip McMahon  
**Ombudsman**