

The complaint

Mr F complains about the quality of a car he has been financing through an agreement with STARTLINE MOTOR FINANCE LIMITED ("Startline").

What happened

I issued my provisional decision on this complaint in August 2020. I explained that I was expecting to uphold the complaint, but I welcomed further evidence. An extract from that provisional decision is set out below.

Mr F took receipt of a used car in January 2019. He financed the deal through a hire purchase agreement with Startline. At the point of supply the car was about three years old and had already completed about 29,000 miles.

Mr F had some problems with the car, as follows:

<i>Date</i>	<i>Issue</i>	<i>Resolution</i>
<i>January 2019</i>	<i>Tyre blew out</i>	<i>Fixed by dealership</i>
<i>January 2019</i>	<i>Tyre sensor failed</i>	<i>Fixed by dealership</i>
<i>August 2019</i>	<i>Engine replaced</i>	<i>Car returned in October 2019</i>
<i>October 2019</i>	<i>Engine lagging and juddering</i>	<i>Spark plug replaced</i>

He complained to Startline who upheld his complaint but didn't provide any redress.

So, Mr F referred his complaint to this service and our investigator provided an opinion. She thought the car hadn't been of satisfactory quality and she suggested the business should therefore take it back and terminate Mr F's finance agreement. She also noted that they hadn't provided a courtesy car for the whole period when Mr F's car was being repaired. So, she thought they should refund one monthly finance instalment in respect of the lack of use Mr F had experienced.

Startline didn't agree with the investigator. They said they should have been given an opportunity to inspect the vehicle and that they'd therefore not authorised the repairs the dealership had had completed. They said it was therefore unfair to hold them responsible. They explained that as Mr F had had the car for more than six months, when the engine fault occurred, it was for him to demonstrate that fault was present at the point of supply; when they were responsible for the car's quality. They therefore asked for a final decision by an ombudsman.

What I've provisionally 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.

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.

Mr F acquired his 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.

Startline have suggested the repairs Mr F had completed were not authorised by them and that they're therefore not responsible for the faults that have been rectified. They say there is no guarantee the repairs would have been necessary, or completed, if they'd been informed. I'm not persuaded this is fair. I think it's highly likely that if Mr F had informed them they would have discussed the issue with the dealership and the same remedy would have been provided. I think it would be highly unusual for a dealership to supply a new engine/spark plug/tyre sensor, if it wasn't accepted there was something wrong.

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. They also explain that when we consider if the car was of satisfactory quality we should consider whether it has proven to be suitably durable.

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 Mr F. The car here was around three years old and had completed about 29,000 miles. I think there would probably have been some limited wear and tear on a vehicle of this age and mileage.

I don't think a reasonable person would expect the engine to need replacing on a car after only eight months of ownership and when the car was only three years old. I think it's reasonable to suggest this means the car wasn't suitably durable and Mr F should therefore be allowed to reject it.

The dealership have suggested they replaced the engine purely out of goodwill and not because anything had been noted to be wrong with it. I don't think that's likely. Whilst the engine was replaced under warranty I think it's reasonable to suggest that would only be approved if something was wrong with it. I can see the invoice generated at the time stated, "suspect bearing failure" and that therefore seems the most likely reason it was agreed to replace the engine.

I also think it's likely this engine was therefore not of sufficient quality at the point the car was supplied to Mr F. I say that because the engine's premature failure suggests to me that it was likely a fault was developing when it was supplied. In those circumstances the relevant legislation allows a business one opportunity to repair the fault. If that repair is unsuccessful then the business should allow the consumer to reject the car.

I don't think the engine repair was successful as Mr F experienced a further breakdown after the repair was completed. That related to a failed spark plug that was fitted to the new engine. So, for those reasons as well, I think Startline should allow Mr F to reject his car.

They should terminate his agreement and take the car back and I would agree with the investigator that they should refund the monthly finance instalment Mr F paid in September 2019 when it is clear he wasn't provided with a courtesy car but was paying for a vehicle

through his finance agreement. They should add interest to that refund as Mr F has been deprived of that money.

The finance agreement suggests that Mr F paid a deposit of £1076.98. He's been deprived of that money too and it should be refunded to him, with interest, as he'll need it to fund a replacement vehicle.

It's clear these issues have inconvenienced Mr F. He's had to return the car to the dealership on several occasions and he's had to refer his complaint to this service when I think it could have been resolved earlier; especially as Startline had already upheld his complaint. In those circumstances I think Startline should pay Mr F some compensation. I think £200 is reasonable given the level of distress and inconvenience that's been evidenced.

My provisional decision

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

- *end the finance agreement with nothing further to pay;*
- *collect the car at no cost to Mr F;*
- *refund Mr F's deposit and add 8% simple interest per annum from the date of payment to the date of settlement;*
- *refund the monthly finance instalment Mr F paid in September 2019 and add 8% simple interest per year from the date of payment to the date of settlement;*
- *pay Mr F £200 to compensate him for the distress and inconvenience he's experienced;*
- *remove any adverse reports they may have made to his credit file in relation to this issue.*

Mr F didn't have any further evidence to supply but Startline did.

They reiterated their view that the repairs were unauthorised, and they said this was in contravention of the relevant legislation. They said the car was obviously fit for purpose as Mr F had been able to cover significant mileage in it. They also said:

"...under the terms and conditions of the finance agreement "term 6.1.8" the vehicle must not be used for racing, pace making, rallying or any form of motor sport, however, we have received the attached (a third party company) to confirm the vehicle has been used for criminal activity. As such, Mr F has been in direct breach of his terms and conditions, and it would be unknown what damage his driving of the vehicle has caused".

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 don't think Startline provided any additional evidence when they reiterated their claim that Mr F had the car repaired at an unauthorised dealership. I think I considered that in my provisional decision. I said:

"Startline have suggested the repairs Mr F had completed were not authorised by them and that they're therefore not responsible for the faults that have been rectified. They say there is no guarantee the repairs would have been necessary, or completed, if they'd been informed.

I'm not persuaded this is fair. I think it's highly likely that if Mr F had informed them they would have discussed the issue with the dealership and the same remedy would have been provided".

I don't think I've been provided with any additional evidence that would change my view on that aspect of the complaint.

Startline have also said that Mr F had fair use of the car. I hadn't suggested they should refund any of Mr F's finance instalments apart from one for when the car was in the garage. I understand that Mr F had covered a reasonable mileage when the car wasn't broken. But that doesn't in itself mean that the car was suitably durable or not of acceptable quality when supplied. And, for the reasons I've already given, I don't think it was.

Startline have suggested that Mr F has been in breach of the terms of his contract because of the way he's been driving his car. The third-party information they supplied did not refer to any driving concerns and it was for Startline to provide the information in the timescale I allowed so I could review their comments. I've had a look at the third-party company's website and it says they "...notify lenders if their funded vehicles are seized by the police or the DVLA for being untaxed or uninsured.."

I can't find reference to them providing a service that reports driving misuse and, even if I had that evidence, I would need to be persuaded that it was Mr F's driving style that was the most likely cause of the engine failure and I don't think Startline have provided that evidence either.

Putting things right

For those reasons I've not seen sufficient evidence to change my provisional decision and that now becomes my final decision.

If the car is still impounded then I assume it may be necessary for a release fee to be paid. It would not be fair to ask Startline to pay that release fee as I've not seen evidence the car was impounded because of anything they've done wrong.

So, whilst I'm still intending to tell Startline to carry out the redress I suggested in my provisional decision, and which I've set out below, I understand that they may not be able to collect the car until Mr F has arranged for it to be released back into his custody. It's only at that point that I would expect Startline to comply with the rest of the redress I'm ordering (below) as it's only when Startline can collect the car that they'll be able to sell it to offset the refunds/settlement they need to make under this decision.

My final decision

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

- end the finance agreement with nothing further to pay;
- collect the car at no cost to Mr F;
- refund Mr F's deposit and add 8% simple interest per annum from the date of payment to the date of settlement;
- refund the monthly finance instalment Mr F paid in September 2019 and add 8% simple interest per year from the date of payment to the date of settlement;
- pay Mr F £200 to compensate him for the distress and inconvenience he's experienced;

- remove any adverse reports they may have made to his credit file in relation to this issue.

They may delay compliance with this redress until Mr F has confirmed that the car is in his possession and ready to be collected, or Mr F pays for it to be released from impoundment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 16 November 2020.

Phillip McMahon
Ombudsman