

## **The complaint**

Miss W complains that a used car she acquired with a hire purchase agreement (HPA) provided by Startline Motor Finance Limited (Startline) is of unsatisfactory quality and she wants to reject it or receive a replacement vehicle.

## **What happened**

Miss W got this car in September 2019 from a dealer (that I'll refer to as C). In January 2020 she noticed the engine was overheating and took the car to a third party garage (that I'll call W) for checks. W found:-

- the radiator was leaking
- a locking wheel nut was missing
- there was water in the boot due to damage to the rear quarter
- the offside front headlamp had a broken bracket with missing bolt
- the steering was "notchy"
- the front chassis area had been welded in the past; and
- the airbag light on the dash was on meaning the airbag might be inoperative.

Miss W was upset that she hadn't been told the car was involved in a collision in the past and she contacted C because she thought repairs hadn't been carried out properly. C asked for a condition report and Miss W obtained a vehicle health check (VHC) from a main dealer (that I'll call E) in January 2020. The VHC indicated the following needed investigation:-

- air bag light on dashboard
- CAT blowing as it's been previously welded
- an oil leak from the engine
- wheel alignment/geometry as tyres wearing heavily on inner edge
- off side front headlight bracket broken
- handbrake was loose
- a dent in near side front light
- the rear bumper needed a smart repair.

C didn't think everything on the list was a fault/likely to have been present when the car was

supplied but offered to pay for wheel alignment. Miss W didn't think that would resolve everything so she complained to Startline and they arranged for independent expert to inspect the car in February 2020.

The expert road tested the car over three miles at varying speeds and found it drove as expected with no excessive pull to either side, steering alignment was correct and road holding was acceptable. The expert said the current issues were:-

- the left rear quarter panel was distorted causing poor fitting of the lamp unit;
- the left rear bumper corner was insecure with possible damage to fixings;
- the right front headlamp was slightly insecure as the top mount is missing and requires a replacement headlamp;
- left rear corner of the vehicle had not been repaired leaving the left rear quarter panel distorted, with the lamp unit not fitting correctly;
- left rear bumper corner also requires attention as it is insecure; and
- the front tyres did not show any abnormal wear but skipped on manoeuvring which wasn't unusual and would probably rectify itself when a replacement tyre was fitted.

The expert couldn't say if the minor impact to the left rear lamp area was present at the outset. But, if it was, he thought this would have been visible to even a lay person checking the car before purchase. He found signs that some of the bodywork had been filled and painted and, on checking under the car, the left front chassis rail was repaired with a weld to the front section after an impact. The expert didn't think this repair was recent - based on the corrosion to the reassembled components – and he didn't consider the impact damage was an issue if the repairs were satisfactory. He said a visual inspection alone would not reveal if any misalignment is present - so it was impossible for W to have confirmed this with any accuracy. He recommended a four wheel alignment should be carried out to check and, if misalignment was found to be excessive, the car may need placing on a jig for realignment.

Startline accepted the expert's conclusions and acknowledged some of the issues identified would have been present when the car was supplied to Miss W. It was satisfied that the dealer had already offered to carry out the relevant repairs - which it thought was a fair remedy - and offered to review the matter again if those repairs were unsuccessful. Startline didn't think it should have to do more than that but Miss W didn't agree. She wants to reject the car or be provided with a replacement and she referred the matter to our service.

One of our investigators considered the evidence and thought the complaint should be upheld. He was satisfied the car was involved in an accident before it was supplied and likely had faults present at that stage. He didn't think a reasonable person would expect to experience so many issues in a car of this age, cost and mileage. He thought the faults present were probably caused by the previous impact and he was satisfied, on balance, that the car was of unsatisfactory quality when it was supplied.

The investigator didn't think the repairs offered were guaranteed to sort things out. He considered Miss W should be allowed to reject the car and receive a refund. He acknowledged she was able to use the car from September 2019 but he didn't think it was performing as it should have been during that time and recommended Startline should refund 10% of each monthly payment for impaired use. He thought Startline should also pay Miss W £200 compensation for associated upset and inconvenience.

Startline didn't agree. It said (in summary)

- the expert confirmed that the impact occurred some time before the car was supplied to Miss W and this wasn't an issue, providing the vehicle was repaired to a satisfactory standard;
- Miss W had the car for more than 30 days and less than six months after supply when issues first appeared and the dealer should have the opportunity to repair - in line with the Consumer Rights Act 2015 (CRA);
- Miss W had fair use of the car and she was offered a reasonable resolution to her complaint; and
- if she has more issues after the car is repaired, she would have the option to exercise her final right to reject then, under the CRA.

The investigator wasn't persuaded to change his mind. He thought repairs at this stage would cause significant inconvenience to Miss W and she should be able to exercise the final right to reject. He recommended Startline should end the HPA, collect the car and refund the deposit as well as 10% of each monthly payment (as set out in his view) for loss of/impaired use, pay Miss W £200 for distress and inconvenience and remove any adverse information from her credit file.

Startline didn't agree and asked for an ombudsman to review the matter. Miss W also told us that she had paid to have the radiator replaced and she wanted this taken into consideration.

Having considered the evidence available, I was minded to uphold this complaint but I was inclined to reach a different outcome to the investigator. I issued a provisional decision on 9 February 2022 to let the parties see my provisional findings and respond (if they wanted to) before I made my final decision. What I decided provisionally decided – and why – is set out below and this forms part of my final decision.

### **My provisional decision**

Where evidence is incomplete, inconclusive or contradictory – as some of it is here- I reach my decision on the balance of probabilities. This means I consider what's most likely to have happened based on the available evidence and the wider circumstances.

I want to assure both parties that I've considered everything that's been said and sent to us. If I don't address every point that's been made, it's not because I haven't thought about it but, in this decision, I intend to focus on what I think are the key issues. I'm satisfied that I don't need to comment on every single argument to be able to reach what I think is a fair and reasonable outcome. The rules of the Financial Ombudsman Service allow me to do this – and it reflects the informal nature of our dispute resolution service, which is a free alternative to the courts.

Miss W brings her complaint to our service because Startline supplied this car under a HPA. And I'm considering Startline's obligations arising out of that finance agreement in this decision. I don't apply the law but I must have regard to relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) good industry practice, at the relevant time. I'm satisfied that the CRA is relevant here and, under the CRA, there's an implied term that the car would be of satisfactory quality when it was supplied. The quality of goods includes their general state and condition as well as fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. And what amounts to "satisfactory" quality will vary according to individual circumstances.

I think this car needed to meet the standard that a reasonable person would expect – taking into account its age, price and mileage at the point of supply. The car was six years old, cost just over £4,300 and had 90,350 miles on the clock when Miss W got it. As such, I think a reasonable person would accept that some parts would be worn and likely need to be repaired or replaced sooner or later – which is reflected in the lower price paid for a used car compared to the price of a brand new vehicle. So, whilst Startline is responsible for any *faults* that are likely to have been present at the point of supply, I'm unable to reasonably hold Startline liable for wear and tear or general maintenance issues.

### *What went wrong with the car*

It looks as if Miss W was able to drive the car for some four months or so without any significant issue. Then, in January 2020, she took it to W for checks because the engine was overheating. I understand it was a shock for Miss W to be told by W that the car had a front impact in the past and, amongst other things, the chassis had been welded. I have no doubt this was concerning for Miss W but the fact that this car was involved in some sort of accident in the past doesn't necessarily mean it was of unsatisfactory quality.

The dealer has supplied a HPI check that shows the car was not previously the subject of an insurance write off or considered by any insurer to be beyond economic repair. And I'm satisfied that none of the condition reports I've seen suggest that the earlier impact and repairs rendered the car unsafe to drive or unroadworthy in some other way. I don't mean to suggest that what amounts to satisfactory quality here is simply whether the car was roadworthy and safe - I think Startline's obligations were somewhat higher than that. So, I've gone on to consider carefully the evidence from the checks undertaken in order to try and identify what, if anything, was wrong with the car when Miss W got it.

I'm satisfied the following issues were identified (across paperwork from W, E and the expert) in the early part of 2020:-

1. handbrake was loose;
2. a locking wheel nut was missing;
3. the airbag light on the dash was on meaning the airbag might be inoperative;
4. there was water in the boot due to damage to the rear quarter, rear bumper needs smart repair, left rear quarter panel distorted causing poor fitting of lamp unit;
5. the offside front headlamp had a broken bracket with missing bolt/dent in the nearside front light
6. the radiator was leaking;
7. the front chassis area had been welded in the past and "cat" blowing as it had previously been welded; and
8. the steering was "notchy"/wheel alignment/geometry.

In order to hold Startline responsible for any of these issues, I would need to be satisfied that it's more likely than not a particular issue was present in September 2019 – when Miss W got the car – *and* this amounts to a *fault* in a vehicle of this age, price and mileage. I can see the car passed an MOT in September 2019, just before it was supplied to Miss W, with no advisories. I'm satisfied this test would have checked things like emissions and ensured that the lights were working properly as well as the handbrake - and the airbag management light would not have been illuminated. This is supported by a 128 point used vehicle check the dealer arranged pre-sale that confirms the car was road tested and inspected visually by a third party and the lights and handbrake, amongst other things, were working as they should. So I'm not persuaded, on balance, that items 1-3 are likely to be faults that were present when the car was supplied.

On the current evidence, I can't be certain when the external damage to the vehicle occurred. The independent expert thought the damage to the rear – if it was present on supply - would certainly have been obvious to Miss W. Looking at the photographs in his report, I'm inclined to agree.

I can't see that Miss W raised any concern about any external damage at the point of sale - or over the 3,000 miles or so that she was able to drive the car by January 2020. And this doesn't seem to have caused a significant issue after that – given Miss W was able to cover another 10,000 miles or so up to the last MOT earlier this year. On balance, I am not presently persuaded that I can reasonably conclude that any external damage – if it was present at the point of supply - was significant enough to amount to a fault in a vehicle of this age, price and mileage.

I can see why Miss W thinks the leaking radiator (item 6 above) must have been due to damage from the previous impact - given the apparent location of the impact and the radiator itself. But, I'm satisfied that she was able to drive the car for about four months or so and over 3,000 miles after supply. I think it seems unlikely she would have been able to do so if the radiator was damaged in the earlier impact - which occurred some time before she got the car, based on the expert's observations. And I think it's reasonable to give some weight to the expert's findings in this situation. I'm satisfied he appears to have appropriate qualifications and experience, his report seems fairly thorough and his conclusions make sense.

I don't think it's out of the ordinary for a car of this age and mileage to have radiator issues as the result of general wear and tear. We asked W – who replaced the radiator in August 2020 - if these issues were likely to have resulted from the earlier impact and W couldn't confirm that. Taking all the available evidence into account, I can't fairly find it's likely the radiator leaks were due to a fault that was present at the point of supply. And I can't reasonably hold Startline responsible for this issue.

As I've explained above, I don't think the fact that there's evidence of a previous impact and the chassis was welded must, of itself, mean this car was of unsatisfactory quality. I'm satisfied the expert checked under the car and inspected the chassis. He doesn't seem to have seen any evidence that the work undertaken was not to an appropriate standard. He does acknowledge however that there *might* be an ongoing issue as regards wheel alignment - which would need further investigation and possibly repairs. Startline seems to accept that any misalignment present would probably have been there when the car was supplied to Miss W. And, given the findings of the two third party garages and the expert – I think that seems likely.

On the current evidence, I can't be certain how significant any mis-alignment is likely to be. I note W found the steering "notchy" and E thought tyres were wearing heavily on the inner edge whereas the expert found no excessive movement on his test drive – although he acknowledged the tyres were "skipping" on manoeuvring. On balance, I think it's more likely than not the car had an alignment issue at the outset and it was of unsatisfactory quality.

### *Putting things right*

The CRA sets out the remedies available in this situation. Broadly speaking, where goods supplied aren't of satisfactory quality, a consumer has a right to reject within the first 30 days. I haven't seen anything to suggest that Miss W sought to reject the car under this "short term" right to reject. And, after the first 30 days, the CRA provides the consumer with a right to repair - provided that can be done in a reasonable time and without significant inconvenience to the consumer – with a final right to reject after that.

The expert recommends that this car should have the wheel alignment checked and repaired, if appropriate. I have no reason to think that these repairs won't be successful. And, as far as I can see, Startline offered to arrange this not long after Miss W first raised her complaint.

I don't think repairs would have caused Miss W too much inconvenience at that stage. I appreciate she has explained that she didn't receive Startline's correspondence (containing the expert's report in March 2020) when it was sent to her. But, I'm satisfied that Miss W did receive the accompanying email from Startline (containing a password to access the expert's report). And I think it would have been reasonable for her to have contacted Startline then if she was unable to access the associated correspondence, which was clearly referred to.

Taking everything I've seen so far into account, I consider it would be fair and reasonable for Startline to have the opportunity to arrange for appropriate repairs here. To be clear, the repairs should be carried out within a reasonable time, at no cost and with as little inconvenience as possible to Miss W. The repairs should also be undertaken in accordance with the expert's recommendations - in that a four wheel alignment should be carried out to check if any misalignment is present and, if misalignment is found to be excessive, then the car should be placed on a jig for realignment. If the repairs required turn out to take too long or be unsuccessful, then I'd expect Startline to review the matter again and allow Miss W to exercise her final right to reject, as appropriate.

I have given some thought to what the investigator says about impaired use. I can't see that Miss W reported any problems with the car before January 2020. And she seems to have continued to drive it after that – the most recent MOT shows the car had over 105,000 miles on the clock. So I'm not presently persuaded that there are reasonable grounds to find Miss W should be entitled to a refund of monthly payments in this situation.

I accept misalignment may have caused premature wear to tyres however. And, if Miss W had to replace tyres early - up to and including March 2020 (when repairs were offered) - I might be minded to find she should have that cost refunded. It is open to Miss W to provide more information about this in response to my provisional decision and I'll take that into account in my final decision.

I am satisfied that Miss W is likely to have experienced some upset and inconvenience as a result of what happened here. I can see she's been worried and had to take the car to several garages for checks, amongst other things. I think it is fair for Startline to pay Miss W £200 compensation to reflect that.

### **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 invited the parties to consider my provisional findings and let me have any further comments or evidence by 23 February 2022. I explained that I would review all the evidence available after that and make my final decision.

Both parties have now responded. They've accepted my provisional decision with nothing more to add. And I see no reasonable grounds to depart from my provisional conclusions, in the circumstances.

For the reasons I've given, I remain of the view it is fair and reasonable for Startline to have the opportunity to arrange for appropriate repairs. These should be carried out within a

reasonable time, at no cost and with as little inconvenience as possible to Miss W in accordance with the expert's recommendations - in that a four wheel alignment should be carried out to check if any misalignment is present and, if misalignment is found to be excessive, the car should be placed on a jig for realignment.

If the repairs required take too long or are unsuccessful, I'd expect Startline to review the matter again and allow Miss W to exercise her final right to reject, as appropriate. I consider Startline should also pay Miss W £200 compensation for associated distress and inconvenience.

### **My final decision**

For the reasons set out, my decision is I uphold this complaint and I require Startline Motor Finance Limited to arrange for the car to be repaired as set out above and pay Miss W £200 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 23 March 2022.

Claire Jackson

**Ombudsman**