

The complaint

Ms T complains about a car she acquired using finance provided by Startline Motor Finance Limited. She says the car was making a noise and had problems since she got it that still continue.

What happened

In September 2020 Ms T acquired a used car funded by a hire purchase agreement provided by Startline. The car cost £8,645.84. It was around four years old and had covered around 51,500 miles when Ms T got it.

Ms T says she immediately had problems with a loud creaking noise. The car was returned to the dealer, who I'll refer to as 'L', shortly after Ms T got it and it was identified it needed the steering rack and steering column replacing. It appears parts for the car were ordered.

In October 2020 Ms T contacted Startline about the car. And later this month also she got in touch with our service about her complaint.

There is some dispute over what happened next. Startline say L was working with Ms T to find a replacement car. But, it said Ms T was refusing to engage with the process with L. It appears it was also discussed between Startline and L that Ms T could reject the car around this time. L appeared to believe it was up to Ms T to decide what to do next.

Ms T says that she was never asked to choose a replacement car and she was never offered one. And she says it was never discussed with her that she could hand the car back at any point.

In February 2021 Ms T says the car began to make a louder noise and she thought it might not be safe to drive. In March 2021 a repair was done and the steering rack was replaced. In May 2021 some further work was carried out and the steering column was also replaced.

In June 2021 Startline issued its final response to Ms T's complaint. It said, in summary, that L had initially agreed to take the car back as Ms T had requested. It said L then told it Ms T was refusing to return the car. Startline then said it failed to maintain contact with L and Ms T and it said it was upholding this part of the complaint. It also said it was upholding the complaint about the car, but it said as it had now been repaired it wasn't allowing Ms T to reject it. Although it upheld parts of the complaint, Startline didn't offer Ms T anything.

Ms T remained unhappy with this. And, in July 2021 she said the repair was unsuccessful and the car was still making the same noise. She spoke to L and was told it would take some time for a repair. In November 2021 the car went back to L who said the offside top mount was creaking and needed replacing. L said this was unrelated to the previous repair. Ms T said it must be related, as the noise the car made never went away. At this point the mileage of the car was recorded as 63,865.

Our investigator issued an opinion and upheld Ms T's complaint. He said he thought it was likely the car had a fault which meant it was not of satisfactory quality when it was supplied.

He said Startline should cover any cost of repairs Ms T had paid out for, it should reimburse her 10% of six monthly repayments and pay her £100 to reflect the trouble and upset it had caused.

Ms T was unhappy with this. She said she never refused any offer from Startline or L. She said it was clear she didn't want the car. And she felt 10% of the repayments wasn't enough. Ms T also explained she hadn't had the most recent repairs carried out.

The case was then passed to me for a decision. I initially thought the complaint should be upheld, but for different reasons to our investigator. And I was considering instructing Startline to do something different to put things right. So, I sent Ms T and Startline a provisional decision on 23 February 2022. My findings from this decision were as follows:

Ms T complains about a car supplied under a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied I can consider Ms T's complaint against Startline.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This explains under a contract to supply goods the supplier – Startline here – has a responsibility to make sure the goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

Relevant factors in a case like this involving a car would seem to me to be things like, but not limited to, the car's age, price, mileage and description. So, here I'll consider that Ms T's car was used, was around four years old and had covered around 51,500 miles. A price of around £8,650 also represents a reasonably significant discount on what the car would've cost new. This means I think a reasonable person would not expect the car to be in the same condition as a new or younger model with less miles. But, I do think they would expect it to have been free of any major faults at supply and to have trouble free motoring for a reasonable time.

In this case, it doesn't seem to be in dispute that Ms T's car had a fault with it when it was supplied. But I still think it's worth me commenting briefly on this. She complained very early about the car making noise. And I've seen a job sheet from shortly after Ms T got the car that notes:

"checked fault and confirmed found excessive play in steering column and req's replaced (sic). Also steering rack worn and req's replaced (sic) as motor noisy"

Considering this fault and how early it occurred, I'm satisfied this was present when Ms T got the car. And, I'm satisfied this meant it wasn't of satisfactory quality when it was supplied. So, I now need to think about what should've happened to put this right, and if anything further needs to now be done.

Startline says that the fault has now been fixed so there isn't anything further it needs to do. Ms T says the fault was never fixed as the car continued to make a noise after the repair took place.

I can see this argument from both sides. I'm satisfied that it's clear from the notes and what Ms T told us that it's likely the car started to make noises shortly after she got it back. But, the most recent information on the job sheet from November 2021 says that the issue is due to the "off side front top mount creaking". The top mount is part of the suspension – so seems like a separate part of the car from the steering issues which were previously repaired.

So, it seems to me that one of two things happened here. Firstly, the car may have been repaired and unfortunately developed a separate fault shortly afterwards. I can understand Startline's point here that it may not be responsible for this as, if this was a separate issue, it developed some time after supply. Or, secondly, it's also possible that this is the same fault from when Ms T got the car that was never repaired. In which case, I think Startline would be responsible for it.

But, I don't think I need to make a finding here on what I think most likely happened. I say this as, either way, I still think Startline need to do something to put things right for Ms T. I'll explain why.

Looking at the communication between Startline and L, it seems in this case from an early point that both parties agreed there was a fault with this car. It seems they both accepted the repairs were taking too long - and I think it's worth me briefly noting here that I also don't think it was acceptable for Ms T to wait over six months for a repair to take place. And, it seems L and Startline were working to do something for Ms T to put things right for her at this time.

I'm satisfied Ms T made it clear in this case she no longer wanted the car quite early on, which was effectively exercising her right to reject under the CRA. I'm satisfied, given how long the parts took to arrive, that Ms T had a right to reject when she complained. There is communication between L and Startline that suggests Ms T was either going to be able to return the car or replace it. L later said Ms T wasn't engaging with the process of finding a replacement car and then refused to hand this one back. But, I don't think it's most likely this was the case.

I say this as Ms T continued to complain to Startline and referred her complaint to our service during this time. I don't think it's likely she, on one hand, would've been refusing to engage with L about returning the car, while on the other continuing to engage with Startline and ourselves about the fact she couldn't return it.

The other important point to make here is that, despite it appearing it was agreed between L and Startline that Ms T could replace or reject the car, I've been provided with no evidence at all that Ms T was made aware of this. Startline also said in its final response that it failed to keep in touch with L and Ms T and it upheld this part of her complaint. But, it didn't offer to do anything to put this right. In the meantime, Ms T continued to drive a car with a fault and eventually a repair was attempted.

In summary, I'm satisfied the car had a fault when Ms T got it that meant it was of unsatisfactory quality. I'm satisfied she made it clear to Startline and L she no longer wanted the car and exercised her right to reject it. I'm satisfied L and Startline agreed with Ms T here that this would be fair. But, I'm satisfied this was never communicated with Ms T, who remained unhappy with the situation.

Thinking about all of this, I think it's clear Ms T should've been allowed to reject the car shortly after she got it. I appreciate a repair was attempted – but I'm satisfied this was an unacceptable amount of time after the fault appeared. Given Ms T was still making it clear she didn't want the car, I'm satisfied this repair was effectively done under duress and so Ms T didn't authorise it. Thinking about things in the round here, I don't think this repair is therefore a fair and reasonable way to put things right – especially as, as I've explained above, it might not have been successful.

I know Ms T said she would accept a replacement for the car. But, practically I need to consider the difficulty Startline would have arranging this, considering the car is several

years old. I don't think it would be realistic for it to be able to source another car of the same model, mileage, age with the same options etc. So, I don't think this would be a fair way of putting things right.

So, I'm satisfied that given Ms T had a right to reject the car and Startline should've allowed her to do so, under the circumstances here it would be fair and reasonable to now allow her to reject it. I also need to consider that she's been driving the car for the whole time she's had it with a fault, or faults, which have been making a noise. I've considered that Ms T thinks she should get all of her repayments back. But, I don't think it would be fair and reasonable for this to happen, as she has still been able to drive the car. Instead, I think it's reasonable she is reimbursed a percentage of her payments to reflect the impaired use of it.

Considering everything, in this specific case I think it would be fair for this percentage to be paid for the whole time Ms T has had the car. I say this as, even if the repair was successful - and I am not making a finding that this was likely the case - she's still then been driving a car which has been making a noise. This would not have been the case if Startline had allowed her to reject the car when she had a right to.

I've thought about the amount Ms T should be reimbursed. While I haven't seen evidence to suggest it affected how the car drove, I think a creaking/grinding noise from the car every time it was used would have quite a big impact. And Ms T says she felt unsafe driving the car which is understandable. So, I think it's fair Ms T is reimbursed 15% of all her repayments.

I also think Ms T has been caused trouble and upset because of what's happened. It must have been frustrating to be left with a car that wasn't in working order. The communication from Startline was not what she could've expected. And, she was waiting too long for a repair to be attempted. I think she should be paid £200 to reflect this.

I gave both parties until 9 March 2022 to provide any further comments or evidence.

Startline didn't respond. Ms T came back and said she wasn't happy with my decision. She said 15% wasn't enough of the repayments to get back. She also said £200 wasn't enough to reflect what happened. She told me she'd had to pay out for maintenance and repair of the car, such as putting new tyres on, that would now be wasted. Finally, she said any faults outstanding should be covered by Startline.

I replied to Ms T and explained I would address most of her points in my final decision. But, I explained if she wanted me to consider reimbursement for any items such as repairs or tyres she should send me invoices or receipts for these. And, I explained, in summary I would only recommend Startline pay for repairs if I was confident this would fix the issue and was fair and reasonable under all the circumstances.

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've carefully thought about everything Ms T said in response to my provisional decision. I understand she isn't happy with the percentage of repayments I thought it was reasonable for Startline to reimburse, nor with the £200 I recommended to reflect the distress and inconvenience caused.

I've considered what Ms T said about this. And, I do appreciate her frustration with the situation. But, having reconsidered things, I still think these amounts are fair and reasonable under the circumstances of the complaint.

I've also thought about whether it would be fair to recommend that Startline repair the car instead of allowing Ms T to reject it. But, I still think under the specific circumstances here that it's reasonable for Ms T to reject the car as I explained above.

Ms T didn't send any invoices or receipts for work to the car so I haven't considered this point further.

I've thought about all the other information and evidence on the complaint again, along with all of Ms T's comments. Having done so, I still think the complaint should be upheld for the reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct Startline Motor Finance limited to put things right by doing the following:

- End the agreement with nothing further to pay
- Collect the car at a time and date suitable for Ms T at no cost to her
- Reimburse 15% of all repayments made towards the agreement*
- Remove any adverse information from Ms T's credit file about the agreement
- Pay Ms T £200 to reflect the trouble and upset caused

These amounts should have 8% simple annual interest added from the time of payment to the time of settlement. If Startline Motor Finance limited considers that it's required by HM Revenue and Customs to withhold income tax from the interest, it should tell Ms T how much it's taken off. It should also give Ms T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 13 April 2022.

John Bower
Ombudsman