

## **The complaint**

Miss B complains that a car she acquired via a hire purchase agreement with Startline Motor Finance Limited wasn't of satisfactory quality.

## **What happened**

In June 2021 Miss B acquired a used car via a 60-month hire purchase agreement with Startline. The car was six years old and had a mileage of 54,332.

Within a short time, Miss B experienced problems with the car's gearbox and with the boot not opening. Miss B also says there was a chip in the windscreen which had been present since she'd collected the car from the supplying dealer.

In July 2021 the car was taken to a garage to be repaired and Miss B says it was thought that the issue with gearbox had been sorted. Unfortunately, only a few days later the car broke down as it became stuck in second gear. Miss B took the car back to the repairing garage who diagnosed it as having engine misfires and an internal gearbox failure that required it to be stripped for investigation. It provided Miss B with a diagnostic report. Miss B says that at this time the engine management light was also illuminated.

Miss B contacted the supplying dealer and notified it of the problems with the car. She explained that the garage that had inspected the car had advised that the warranty which had come with the car may not cover the costs of these repairs. Miss B said she would be happy to keep the car but would reject it if necessary.

The supplying dealer agreed to take the car back for repair and Miss B says she was given a date in August 2021 by which it would be fixed. However, the car wasn't repaired as the dealer said the fault couldn't be diagnosed. The car was returned to Miss B and she says that the supplying dealer agreed she could reject it during a phone call.

The broker who had arranged the hire purchase agreement was contacted, but Miss B says the supplying dealer then said the car couldn't be rejected as there wasn't any fault with it. The broker opened a complaint, but said if Miss B was unhappy at the progress or outcome of her complaint she could raise the matter with Startline as it was the finance company for the car.

Less than two weeks later the car broke down for a second time due to it again getting stuck in second gear. The broker arranged for the car to be independently inspected. Miss B says that following the inspection the independent engineer advised her not to drive the car. Miss B didn't receive a copy of this report and was told by the broker that it had been sent to the supplying dealer and that the dealer had the right to repair the car. It was agreed the car would be collected from Miss B.

Although it was agreed that the car would be collected at the beginning of September 2021 it wasn't actually collected until around two weeks later. In the meantime, Miss B complained to Startline.

In October 2021 Miss B was emailed by the supplying dealer saying that a third garage was investigating the issues she had been having with the gearbox but, as yet, no fault had been found. It said it had fitted a new coil pack.

Due to the length of time it was taking to repair the car Miss B contacted Startline and asked to reject it. She said she had been unable to use the car for 10 weeks and the supplying dealer had had it for over three weeks.

Miss B says she had no response and wasn't able to obtain information from the supplying dealer either. She sent Startline an email repeating that she wished to reject the car.

Miss B says the car was returned to her at the start of November 2021, she queried with the supplying dealer what repair work had been carried out to the gearbox as it hadn't supplied her with any repair invoice for that part.

Miss B says that the supplying dealer hadn't fixed the issue with the gearbox as it continued to get stuck in gear intermittently.

Miss B made another complaint about the quality of the car to Startline at the end of November 2021. Startline upheld her complaint but said the repairs had been completed. and she therefore now didn't have a right to reject the car.

Miss B complained to this service. Our investigator recommended that Miss B's complaint should be upheld.

Our investigator said that although the misfire had been repaired, no repairs to the gearbox had been undertaken as the supplying dealer said no fault could be found with it. However, Miss B said that the problem had persisted and had even provided video-evidence of that. Our investigator said on the evidence that had been provided, she was satisfied that the car had either been developing a fault or been faulty at the point of supply. And that it wasn't therefore of satisfactory quality.

As the repairs undertaken by the supplying dealer didn't appear to have been successful, our investigator said that it would be fair for Miss B to now reject the car and the agreement to be cancelled and her deposit returned. She also said that as Miss B hadn't been able to use the car since the inspection date in August 2021 it would be fair for Miss B to be reimbursed any monthly payment made from that date.

Due to not being able to use the faulty car, our investigator said Miss B had also incurred additional expenses such as insurance costs for the car and arranging alternative transport. She had also repaired the chip in the windscreen. She said the total costs incurred amounted to £605 and should be reimbursed by Startline.

Finally, our investigator said that due to Miss B's personal circumstances dealing with the faulty car had had a significant impact on her and so £350 compensation was fair for the distress and inconvenience that had been caused.

Startline disagreed with the view of our investigator. It said while it appreciated Miss B's frustration at the length of time the repairs had taken, no repair could have a definitive time line because the age, use of and condition of the car would all play a part in the fix being effective. Startline also said that in line with the agreement's terms and conditions it wasn't liable for any associated costs for Miss B while she was without the car. It said the car had been repaired.

As the parties were unable to reach an agreement the complain has been passed to me.

## 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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable. And where information is missing or contradictory then I must consider what I think is the most likely thing to have happened in the circumstances.

As the hire purchase agreement entered into by Miss B is a regulated consumer credit agreement this service is able to consider complaints relating to it. Startline is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here the car was six years old and had a mileage of 54,332. So, some issues of maintenance and repair would be expected over time. However, I've seen that Miss B experienced problems with the car's gearbox within the first few weeks of acquiring it. She has supplied a diagnostic report from a garage that sets out the car is suffering from misfires and an internal gearbox fault.

I've also seen that the car was inspected by an independent engineer and a copy of that report has now been provided to me. This report states that faults were found with the vehicle which would have been present from the point of supply and were the responsibility of the retailer. The independent engineer noted the engine misfiring and that the car "*crunched*" when placed into reverse gear. They said there was a gearbox fault present.

Following this report, the supplying dealer agreed to repair the car. I've seen that the supplying dealer had the car for around one month before returning it to Miss B in November. Startline says the car was repaired but Miss B says the problem with the gearbox remains and it continues to intermittently become stuck in gear. She has provided a short video that shows the fault occurring.

Looking at the invoice repairs from the supplying dealer, I can't see that any repairs were carried out on the gearbox. Sparkplugs and a coil were fitted which appear to have fixed the misfiring issue so there were some repairs carried out, but no work undertaken to the gearbox. I've seen an email sent by the supplying dealer to Miss B saying that despite three garages investigating the car no issue with the gearbox could be found.

But I don't know the extent of any investigations or whether the gearbox was stripped as recommended in the diagnostic report so I don't know why no fault could be found. Miss B has been consistent in describing the fault with the gearbox and has also said that it was intermittent. I've also seen that both the diagnostic report from July 2021 and the

independent report from August 2021 set out a fault is present. Taking the evidence into account I'm satisfied that there is a fault with the gearbox and that this was present when the car was supplied to Miss B. The car wasn't of satisfactory quality.

I accept that where faults are found with a car then the retailer should have an opportunity to repair first. And I think it's reasonable to say here that the retailer has had that opportunity but the fault with the gearbox remains. Startline has said that repairs can't have definitive timescales so it would be unfair to criticise how long the car was with the supplying dealer. But under the Consumer Rights Act 2015 repairs must be undertaken in a reasonable time so I disagree this isn't something I can take into account. In any event, despite the car being with the supplying dealer for over three weeks, the fault with the gearbox wasn't fixed.

I think it's fair for Miss D to now reject the car and for the agreement to end with nothing further to pay. Miss D's deposit should be reimbursed to her.

Miss B has only driven around 2,000 miles in the car and says she was advised in August 2021 not to use it by the independent engineer. While that advice isn't contained in their report, I don't think Miss B is mistaken about being told that. I also think that in light of the car having broken down twice and the intermittent fault of getting stuck in a low gear that it isn't surprising Miss D didn't feel safe driving it. I agree with the view of our investigator that it would be fair for Startline to reimburse any payments she has made under the agreement since August 2021 to reflect her inability to use the car.

Startline says it isn't liable for any costs incurred for periods Miss B was without the car. It says this is set out in the terms and conditions of the agreement. But, as the car wasn't of satisfactory condition at the point of its supply to Miss B then I think it's unfair she isn't reimbursed for having to pay unexpected additional travel costs or the costs of keeping the car insured when she wasn't able to use it. Finally, I think it's fair she is reimbursed for the repair to the windscreen that she paid for as I've seen that chip had been present when she collected the car from the supplying dealer. This amounts to a total of £602.33 to be repaid to Miss B by Startline.

Miss B has explained why, due to health problems, the car was so important to her and the impact it has had on her in having to deal with the faulty car. I've also seen that she has had to repeatedly chase about having the car collected for the repairs and then afterwards for information about what was happening with the car. The supplying dealer had the car for around a month while repairs were to be carried out and then returned the car with the same fault with its gearbox. Again, I agree with our investigator that compensation here is warranted and looking at the impact on Miss B I think £350 is fair and reasonable.

For the reasons set out above I'm upholding Miss B's complaint.

### **Putting things right**

I'm asking Startline to do the following:

- End the agreement with nothing further to pay.
- Reimburse Miss B's deposit of £300 together with interest at the yearly rate of 8% simple from the date of payment until the date of payment.
- Arrange for the car to be collected at no cost to Miss B.

- Reimburse all payments made by Miss B under the agreement after August 2021. Tax is to be added to this amount at the yearly rate of 8% simple from the date of payment until the date of collection.
- Reimburse Miss B the amount of £602.33 which she has incurred paying for alternative transport, keeping the car insured though she was unable to use it and fixing the chip in the windscreen. Tax is to be added to that amount at the yearly rate of 8% simple from the date of payment until the date of payment.
- Pay Miss B £350 for the distress and inconvenience caused to her having to deal with the faulty car.
- Remove any adverse information about this account from her credit file.

### **My final decision**

For the reasons set out above I'm upholding Miss B's complaint. I'm asking Startline Motor Finance Limited to do the following:

- End the agreement with nothing further to pay.
- Reimburse Miss B's deposit of £300 together with interest at the yearly rate of 8% simple from the date of payment until the date of payment.
- Arrange for the car to be collected at no cost to Miss B.
- Reimburse all payments made by Miss B under the agreement after August 2021. Tax is to be added to this amount at the yearly rate of 8% simple from the date of payment until the date of collection.
- Reimburse Miss B the amount of £602.33 which she has incurred paying for alternative transport, keeping the car insured though she was unable to use it and fixing the chip in the windscreen. Tax is to be added to that amount at the yearly rate of 8% simple from the date of payment until the date of payment.
- Pay Miss B £350 for the distress and inconvenience caused to her having to deal with the faulty car.
- Remove any adverse information about this account from her credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 July 2022.

Jocelyn Griffith  
**Ombudsman**