

## The complaint

Mr B complains that a used car he got with a hire purchase agreement (HPA) from Startline Motor Finance Limited was mis-sold and of unsatisfactory quality.

## What happened

Mr B acquired this car under the HPA on 7 January 2022. The cash price was £15,000 and the car was about eight years old with 81,000 miles on the clock. Mr B was unhappy with the car from the outset. He says he was told it had a full-service history which wasn't true, the car had more owners than advertised and it also had several faults. Mr B refused to take delivery and complained to Startline (on 17 January 2022), after the first finance payment was taken.

Startline asked Mr B for evidence to show there was something wrong with the car. So, he returned to the supplying dealership (which was some distance away) and collected it and paid £125 for an independent engineer to carry out an inspection. On 14 February 2022 the engineer identified numerous issues including broken backrest handles, the handbrake needed adjusting, the gearbox needed investigating, excessive play and knocking in suspension, a possible oil leak to the turbo, excessive play in wheel bearings, issues with one tyre and evidence of previous bodywork repairs.

Startline contacted the supplying dealer and the finance broker (that I'll call Z) and arranged for another independent expert to inspect the car, on 21 February 2022. This expert also found faults - an oil leak from the turbocharger and excessive play in a wheel requiring adjustment, amongst other things. He thought these issues would have been present when the car was supplied and Startline agreed to take the car back and provide a refund. Collecting the car and unwinding the HPA took longer than it should have and the parties disagree about why that happened and how to put things right.

Mr B says, aside from any faults present, the car was misrepresented - and Z acknowledged this at the time so Startline should have cancelled the finance at the outset. He thinks Startline acted unreasonably in that (among other things) it stopped him from using the car when he needed transport. This made it difficult to get to work - putting real strain on his finances. And Startline wouldn't suspend monthly payments – even after accepting rejection and taking the car back. Mr B feels it's unfair that he's been left out of pocket - for the cost of the inspection, travel to collect the car, alternative transport, car insurance and road tax. He wants Startline to provide a full refund and pay appropriate compensation for all he's been through.

Startline acknowledged the matter should have been resolved faster but says rejection was agreed within eight weeks. And it considers delays after that were due to Mr B – as his behaviour made communication with third parties more difficult, he was unwilling to co-operate, he failed to provide information needed to unwind the HPA (such as evidence of the up to date mileage and the amount of deposit paid, for example) and he refused to let Z collect the car.

Our investigator considered the evidence and recommended the complaint should be

upheld. In summary, she thought it was reasonable that Mr B was allowed to reject the car and he should have his deposit refunded as well as the cost of any inspection he paid for. She was satisfied that Mr B had little benefit from acquiring the vehicle so it's fair that Startline should refund any monthly payments made along with any travel costs incurred (above the amount of monthly payments refunded) for the time he was unable to use the car as well as road tax and car insurance – on proof of payment.

The investigator wasn't persuaded that all of the delays were Startline's responsibility. She didn't think it was unreasonable, for example, that Startline wanted the car back before providing a refund. But, she thought the onus was on Startline to show the car was of satisfactory quality in this situation and, rather than asking Mr B for evidence of faults, Startline could have done more to progress things and assist him. She was satisfied that Mr B experienced distress and inconvenience as a result of being supplied with a car of unsatisfactory quality and she said Startline should pay £200 compensation for that. She recommended Startline should also pay interest on any refunds and remove any adverse information recorded about the HPA from Mr B's credit file.

Mr B mentioned Startline had sent him a default notice but Startline denied this and the investigator left it to Mr B to contact Startline if he still had concerns. Mr B accepted the investigator's recommendations but Startline didn't agree. It says Mr B was supported to the best possible standard the circumstances and it shouldn't be held responsible for delays and/or distress and inconvenience or have to pay compensation - in view of Mr B's behaviour and unwillingness to co-operate. Startline asked for the matter to be referred to an ombudsman for review and said (in summary):-

- it's the consumer's responsibility to provide evidence of faults so soon after supply, under the Consumer Rights Act 2015 (CRA);
- faults were present here and rejection was agreed within a reasonable timescale;
- it was Mr B's decision not to collect the car initially and Startline was obliged to investigate so waiting two weeks for an expert's inspection is not unreasonable - it's in line with industry standards - and any associated delay caused Mr B no detriment;
- it refunded the deposit and covered the cost of experts and Mr B hasn't been charged for use – no monthly payments were retained;
- Mr B shouldn't be entitled to a further refund for travel expenses although it will review insurance and road tax costs - on receipt of relevant evidence.

Having considered the available evidence, I was minded to uphold the complaint. My reasons were a bit different to the investigator's and I was inclined to reach a somewhat different outcome overall. So, I thought it was fair to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. I issued a provisional decision on 3 August 2022. I've set out below what I decided provisionally - and why – and this forms part of my final decision.

### **My provisional decision**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*I can see that Mr B has had a very difficult time and I understand both parties want this matter to be determined as soon as possible. I have no wish to prolong things unnecessarily. But, for the reasons I've set out below, I'm minded to come to a somewhat different view to the investigator. And I think it's fair to issue this provisional decision and give the parties a*

*little more time now to make further submissions and/or clarify some issues before I make my final decision.*

*A lot has gone on here, and both parties have made fairly detailed submissions, so I'm going to have to summarise things in my decision. The rules of our service allow me to do this. I want to assure the parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However I'm going to concentrate on what I consider is key to reaching a fair and reasonable outcome.*

*I think it might be helpful to make a few things clear at the start. The Financial Ombudsman Service provides alternative dispute resolution that's free to complainants. I'm not a regulator. I don't have the power to tell Startline how to operate on a day to day basis. And it's not within my remit to punish a financial business or any individual. Instead, my job is to look at all of the information available about this particular complaint, without taking sides, and consider the merits on a fair and reasonable basis.*

*Mr B brings his complaint to our service because Startline supplied the car under a HPA. And I'm looking at Startline's obligations arising out of that finance agreement here. Again, I think it's important to be clear about my remit. I can see that Mr B is unhappy about the actions of the dealer and others. And I should explain that I can't hold Startline responsible for the actions of third parties (except as I've explained further below).*

#### *Satisfactory quality*

*As the car's supplier, I'm satisfied that Startline was obliged to ensure it was of satisfactory quality when Mr B got it - under the CRA - and failure to do so would amount to a breach of the HPA.*

*Startline doesn't dispute that the car it provided to Mr B was of unsatisfactory quality so I don't need to make any specific findings about that. I can see there's been some disagreement however about whether it was for Mr B or Startline to provide evidence about the condition of the car. I'm satisfied the CRA says it's for the consumer to supply evidence of faults present in order to exercise the short term right to reject - within 30 days of supply. Mr B complained to Startline about ten days after he signed the HPA. So I can see why Startline may have taken the view he wanted to exercise his short-term right to reject and asked for evidence of quality issues.*

*However, I think it looks as if Mr B was concerned about more than just the condition of the car here. He says he refused to accept the vehicle because the service history and number of previous owners wasn't what he was led to believe before he took out the HPA – in other words, he considers misrepresentations were made at the outset.*

#### *Misrepresentation*

*I'm satisfied that Startline may held liable for representations made during the course of pre-sale negotiations in this situation - under section 56 of the Consumer Credit Act 1974. Mr B says Z acknowledged very early on that he'd been told things about the car that were untrue. I don't think it would have been too difficult for Startline to check that but I've seen nothing to show that it did so. I note Startline says it had agreed "the return of funds" initially because Mr B had chosen not to collect the car. But I've got no evidence of Startline informing Mr B it accepted rejection and would provide a refund in January 2022. I think Mr B was probably still under the impression that he needed to supply evidence of fault to Startline – when he took the time and trouble to collect the car and arrange an inspection at the start of February.*

*I realise Startline may say, even if misrepresentations were made, it doesn't automatically entitle a consumer to reject goods. And I accept Mr B would have to show that he reasonably relied on untrue statements when he decided to take out the HPA in order to do so. I don't have much evidence about what happened around the time Mr B acquired the car. But, I don't think there's any dispute that he didn't accept it at the point of supply. I think this seems consistent with Mr B's version of events – that he realised then the service and ownership history was not as promised. And Mr B's subsequent actions suggest the car's history was very important for him - so he probably wouldn't have agreed to finance if he hadn't been received relevant assurances.*

*On the current evidence, I can't be certain if the car was misrepresented. But, I think it would have been reasonable for Startline to look into this. And I understand Mr B's frustration that this aspect of his complaint wasn't addressed properly – as things might well have been resolved much faster at considerably less trouble and expense.*

#### *Rejection and the deposit refund*

*I am satisfied that Startline accepted Mr B was entitled to reject the car following the second expert's report and agreed (in principle) that he should also have his deposit back. I've seen correspondence that Startline sent Mr B to say the car would be recovered and the deposit of £6,700 refunded. I think that was probably concerning for Mr B because he'd paid a deposit of £7,000. I understand Startline considered there was some discrepancy about how much was paid so it asked Mr B for evidence. And Mr B was unhappy because he felt this was clear from the HPA.*

*I've checked the paperwork completed at the time – including the HPA and the sale invoice. Both show a deposit of £7,000 was paid. The sales invoice says this consisted of a part exchange value of £700 and a deposit of £6,300. The part exchange details aren't completed so this may be the reason Startline didn't accept the total paid, I can't say. But I'd have expected Startline to be able to resolve any discrepancy with Z (who arranged the finance) and/or the dealer fairly quickly. And I think it might have been quite difficult for Mr B, on the other hand, to prove how much he paid by way of deposit - if he didn't have a receipt setting that out. So I understand his increasing concern that he wouldn't get all of his money back.*

*Startline has said the dealer was hard to get hold of and I can see Startline acknowledged (in an email on 22 April 2022) that the dealer placed barriers to accepting rejection. I think this was probably one of those instances. And I'm not persuaded Mr B's responsible for any associated delay. It looks as if Startline has now accepted the deposit paid was £7,000 and refunded that amount. If I'm wrong about that, the parties should let me know.*

#### *Collecting the car*

*Startline says Mr B caused further delay in collecting the car. I can see (from information Startline provided) that Mr B confirmed, at the end of March, that any day was suitable for collection – which doesn't sound like as if he was trying to avoid this. It looks as if Z then contacted Mr B (around 4 April 2022) but he wouldn't allow Z to take the car. I think it's clear Mr B was extremely upset and frustrated by events at this point. Startline told us Z had cut contact with Mr B previously and Mr B says he didn't trust Z. So, it's perhaps not surprising that collection by Z proved problematic. And Mr B's financial situation at the time probably didn't help.*

*I think Mr B may have been reluctant to release the car to anyone other than Startline (the lender and owner) partly because of his money worries. He was struggling to get to work (as he didn't want to use the car), he was still required to make monthly payments by Startline*

and he was (understandably) concerned about his liability under the HPA and getting his money back.

I realise it was more convenient for Startline if Z collected the car. But I don't think the average customer necessarily appreciates the various relationships involved in arranging the sale, supply and finance of a car like this. It looks as if Mr B agreed that Startline could collect the vehicle on 7 April 2022, without too much difficulty. This was the day after Startline sent its final response confirming that a refund would be provided and the finance would be settled. And I'm not persuaded that Mr B sought to delay or avoid returning the car. I can see it was collected 20 April 2022 and Startline ended the HPA just over a week later.

#### **Financial difficulties**

Mr B told us being supplied with this car caused him a great deal of upset, inconvenience and financial difficulty. He feels Startline was slow to agree that he could reject and process a refund and it didn't do enough to help.

I can see (from information Startline provided) that Startline contacted Z about ten days after the second expert's inspection, about rejection. It looks as if Z struggled to contact the dealer and responded to Startline, at the end of March, offering to collect the car. I haven't been provided with Startline's contact notes so I'm not sure what Mr B was told during this time. I think he was becoming increasingly upset and frustrated - because he had a car he couldn't use and he found it difficult to get to work and pay for essentials. Mr B told our investigator that he had to borrow from family in early April 2022 and he offered to send bank statements as proof of his financial issues. I can see the investigator asked Startline to consider suspending payments but it doesn't seem to have replied.

We'd expect a financial business to show forbearance when a customer is having financial problems. I'm inclined to find Startline should have responded more sympathetically and positively to Mr B here. I think it was open to Startline to take a number of steps to assist - the most obvious being it could have considered freezing monthly payments for a time. And I'm minded to find it would have been reasonable to do so in this situation. I think this might have gone a long way to alleviating Mr B's stress and financial difficulties – and probably helped resolve the matter sooner.

#### **Further delay, distress and inconvenience**

Just after the car was collected Startline told Mr B, on 22 April 2022, that it was waiting for funds to be returned so it could manually allocate these and unwind the finance agreement. Startline went on to say "without this, the finance payments remain your responsibility and anything paid is refunded as per the standard process. This is something we have continually made you aware of as per your obligations to the finance to avoid any negative credit file impact therefore we ask that .... you remain co-operative whilst we await the funds".

Mr B found this correspondence extremely upsetting and I can see why. As far as he was concerned this suggested that he'd remain responsible for monthly payments until funds were received from third parties that he had no control over - and failing to maintain payments would have a negative impact on his credit record. I think this was particularly distressing for Mr B in light of his ongoing financial problems.

I accept Startline confirmed, on 29 April 2022, that it would process Mr B's refund because Z said funds would be provided. And the refund might not have been provided much faster even if Startline had started the process as soon as the car was returned. But, I think even a few days of uncertainty were likely very difficult for Mr B, given his particular circumstances. I

consider this probably caused him additional stress and upset.

*It looks as if Startline considers Mr B should have done more to help himself here and he could have sorted all of this out with Z – in which case Startline wouldn't "have had to act as a communicator between both parties". But Mr B's contract for the supply of this car was with Startline, not Z. I understand Startline's reasons for wanting the dealer and Z to be on board with any settlement and provide relevant funds before the HPA ended. However, having accepted the car was of unsatisfactory quality and should be rejected, I think it would have been reasonable for Startline to process the termination without delay. And, if delays were unavoidable (as I think some probably were here due to the actions of third parties) Startline should have taken reasonable steps to reduce any adverse impact on Mr B – as far as reasonably possible.*

*I'm satisfied that Mr B experienced a significant degree of distress and inconvenience as a result of being supplied with this car. I think he went to some trouble to collect it and arrange for an expert to inspect, after Startline asked for evidence. And he was stressed and upset because he was required to make payments for a car which (for the most part) he was unable to really use - leading to money problems.*

*For the reasons I've explained, I consider Startline should have done more to assist Mr B, in these particular circumstances. And, taking everything I've seen so far into account, I'm inclined to find it is fair and reasonable overall for Startline to pay Mr B £350 compensation for the distress and inconvenience he experienced.*

*I realise Startline considers it shouldn't have to pay any compensation due to Mr B's behaviour and barriers he put in place to resolving the matter. For the reasons I've given, I don't think Mr B was responsible for any significant delays here. Startline hasn't supplied any evidence of the unacceptable behaviour it refers to. But, even if I was satisfied about that, it doesn't take away from distress and inconvenience that Mr B experienced because Startline supplied a car of unsatisfactory quality, in breach of its obligations under the HPA. And I consider it is fair and reasonable Startline should compensate Mr B for that.*

### **Putting things right**

*I understand Startline has collected the car and refunded the deposit of £7,000 paid - plus all of the monthly payments made towards the finance (consisting of two payments of £233.93 totalling £467.86). I find that fair in the circumstances. If I'm wrong about these refunds having been paid already the parties should let me know in response to this provisional decision.*

*Startline seems to accept Mr B had little benefit from the car - it hasn't retained any monthly payments for use. And I'm inclined to find it is reasonable (in all the circumstances) for Mr B to have any car insurance and road tax reimbursed as well – on proof of payment. Just to be clear, this means Mr B needs to provide evidence of the amounts incurred. It would be useful if he could do so in response to this provisional decision - so I can consider it and make a specific award in my final decision, if appropriate.*

*There seems to be no dispute that Mr B collected the car and arranged an inspection in order to obtain evidence for Startline. I've seen paperwork that shows the cost of the inspection was £125. Mr B hasn't got a receipt for his train fare but he sent a ticket that cost £53.75 on 9 February 2022 from his home to the dealer's location. I'm satisfied that Mr B would not have incurred these costs if the car had been of satisfactory quality when it was supplied. So I'm minded to find it is fair that Startline should refund both amounts plus interest. Startline told us it has covered the cost of expert evidence already but I'm not sure if that includes this inspection. For the avoidance of any doubt, Startline should reimburse the*

*inspection fee of £125, if it hasn't done so already.*

*The investigator recommended that Startline should also reimburse any travel costs that Mr B can evidence in excess of the monthly instalments refunded. There seems to be some confusion about this. I've seen reference to Mr B incurring train fares to work in correspondence from Startline. But I've got no evidence from Mr B about that. And, in one call I listened to, he was clear that he couldn't get the train to work – which was one of the reasons being without a car caused so much additional stress and upset.*

*I think it's fair that Startline has refunded all of the payments made towards the finance. That means Mr B hasn't paid anything towards the car. I think it's fair he should pay something for transport. I don't have any evidence to show he reasonably incurred additional travel costs. And I'm not presently minded to find Startline should provide an additional refund for this. If Mr B disagrees, it's open to him to supply further evidence in response to my provisional decision and I'll consider that when I make my final decision.*

*For the reasons I've explained, I'm satisfied that Mr B experienced a significant degree of distress and inconvenience here and I'm minded find it fair and reasonable for Startline to pay him £350 compensation. Like the investigator, I consider Mr B should receive interest on any refunds and I think Startline should also remove any information recorded about the HPA from his credit file. As things currently stand, for the reasons set out above, I am minded to uphold this complaint and require Startline to take the following steps to put things right:-*

- *refund the cost of road tax and car insurance incurred by Mr B - on receipt of relevant documentary evidence;*
- *refund £125 for the expert's inspection Mr B paid for (if it hasn't done so already);*
- *refund Mr B's train fare of £53.75 for his journey to collect the car;*
- *pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;*
- *pay Mr B £350 compensation for distress and inconvenience; and*
- *remove any information recorded about the HPA from Mr B's credit file.*

### **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 and/or new evidence by 18 August 2022. Startline accepted my provisional decision but Mr B was disappointed with the outcome. He said (in summary) I haven't got the facts or the law right in my provisional decision and he's been left hugely out of pocket.

Mr B supplied additional information about some but not all of his insurance payments along with a link to his insurer's website - which didn't work for me unfortunately. He also told us that road tax cost £25 a month but he couldn't provide documentary evidence of that.

I was sorry to hear that Mr B was disappointed with my provisional findings and felt I hadn't got things right. I asked the investigator to remind Mr B that I hadn't yet made my final decision and it was open to him to let me know why he disagreed with my provisional conclusions and/or provide further information. I extended the time for Mr B's response to 22 August 2022 - and I said I'd consider extending this further if Mr B needed more time.

I also explained (via the investigator) that working out what a financial business should do – or pay – in this sort of situation isn't an exact science. In order to decide what's fair and

reasonable, I need to consider (among other things) to what extent the business getting things wrong caused Mr B to incur any losses. And whether the business have reasonably expected its failure to cause such losses – or if more could have been done to reduce (or mitigate) any loss. The investigator invited Mr B to provide more evidence of his out of pocket expenses including dates and amounts and supporting documents - such as receipts, invoices, bank statements and the like - where possible.

The time set (or any extension to this) for responses has now passed. Mr B hasn't sent us any new information. I don't think it's fair or reasonable to delay matters any further. Having reviewed all of the evidence available, I see no reasonable grounds to depart from my provisional conclusions. For the reasons set out above, I remain of the view that it is fair and reasonable to uphold this complaint and Startline should take the steps below to put things right.

I can't be certain how much Mr B paid exactly for insurance and road tax from the evidence I've seen. This means I can't fairly require Startline to reimburse a specific amount for that. I remain of the view however Mr B should have these costs refunded if he's able to provide documentary proof. I don't think that should be too difficult - it looks as if Mr B paid for his insurance via direct debit, for example, so it's open to him to supply paperwork such as bank statements to show the relevant payments were made.

I realise this decision may disappoint both parties and Mr B, in particular, because this is not the outcome he wanted. I'm sorry if he feels let down. Mr B is not obliged to accept what I've said - in which case it remains open to him to pursue this matter by any other means available.

### **My final decision**

Your text here My decision is I uphold this complaint and I require Startline Motor Finance Limited to :-

1. refund the cost of road tax and car insurance incurred by Mr B - on receipt of relevant documentary evidence;
2. refund £125 for the expert's inspection Mr B paid for (if it hasn't done so already);
3. refund Mr B's train fare of £53.75 (for his journey to collect the car);
4. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
5. pay Mr B £350 compensation for distress and inconvenience; and
6. remove any information recorded about the HPA from Mr B's credit file.

If Startline considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

If Startline does not pay the £350 compensation for inconvenience and distress within 28 days of the date on which we tell it that Mr B accepts my final decision then it must also pay interest at 8% simple a year on this, from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 October 2022.

Claire Jackson

## **Ombudsman**