

## **The complaint**

Mr D is unhappy that a car supplied to him under a hire purchase agreement with Startline Motor Finance Limited was of an unsatisfactory quality.

## **What happened**

On 10 June 2022, Mr D was supplied with a used car through a hire purchase agreement with Startline. He paid the dealership £2,000, trading a car in part exchange, and the agreement was for £14,999 over 60 months; with 59 monthly repayments of £362.38, and a final payment of £372.38. At the time of supply, the car was around four years old and had done 25,494 miles.

Two days after being supplied with the car, the engine management light (EML) came on. He took it back to the dealership, who said they'd repaired the problem. However, the EML came on again shortly afterwards. Mr D tried to reject the car, but the dealership refused. So, Mr D complained to Startline.

Startline instructed an independent engineer to inspect the car. The engineer noted a number of issues with various warning lights and said these issues would've been developing at the point of supply. However, Startline took no action, instead saying they were waiting for the dealership to accept rejection of the car. So, Mr D brought his complaint to us for investigation.

Our investigator said that Startline had failed to co-operate with our investigation – failing to provide any evidence or comments. However, based on the independent engineer's report, the investigator said there were issues with the car that were present when it was supplied. And, because Mr D had asserted his short-term right to reject the car, he should be allowed to do so.

The investigator said that, because Startline had settled the outstanding finance on Mr D's previous agreement, then they were entitled to keep the £2,000 he'd paid. However, they should unwind the agreement and collect the car; refund Mr D all the payments he'd made since 12 June 2022 (when he stopped using the car) plus interest; remove any adverse credit relating to the agreement from his credit file; and pay him £500 compensation for the significant distress and inconvenience he'd suffered.

Mr D agreed with the investigator, but Startline didn't respond. Instead they told Mr D that they'd received the funds from the dealership for the rejection of the car, but they had no duty of care towards him. Because of this, they wouldn't be reimbursing him any funds on the unwinding of the agreement. And, on 26 September 2020, they told him the agreement had now ended.

Despite this, Mr D has provided evidence that Startline are still reporting his agreement as active, and not settled, to the credit reference agencies, with an outstanding balance of £21,430. And he's said that this is stopping him taking out any further credit for a replacement car.

Because of this, this matter has been passed to me to make a final decision.

### **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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr D was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Startline are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Startline can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr D to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr D took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Startline to put this right.

I've seen a copy of the independent engineer's report on the car, dated 15 July 2022. This report said that *"when the engine was started the EML, traction control, ABS and tyre pressure monitoring light displayed ... the cooling fan is permanently on and the vehicle appeared to be idling, unevenly."* The engineer considered that the faults made a road test impossible i.e. the car couldn't be driven, and concluded *"these issues would have been in the development stage at the point of sale."*

The CRA allows for a short-term (30-day) right of rejection when the car is faulty. It also allows for rejection where a repair has been attempted, but the faults still remain. As is the case in this instance. However, as Startline have accepted that Mr D is able to reject the car, my decision will now concentrate on what should be done to remedy the situation.

### **Putting things right**

Where a car is being rejected, I'd usually expect the finance company to refund the deposit paid and clear the outstanding finance at no cost to the customer. However, I've seen a copy of the dealership's invoice, which shows that Mr D paid them £2,000 towards clearing the finance on the car he was part-exchanging. So, I'm satisfied this wasn't a deposit, and therefore shouldn't be refunded to Mr D.

When rejecting a car, I'd also expect the customer to pay for the usage they had. In this instance, Mr D was supplied with a car on 10 June 2022, and he only got a few days use from it before it couldn't be driven – by not being able to conduct a road test because of the faults, the independent engineer's report confirms that the car was undrivable. And Mr D wasn't supplied with any alternate transport i.e. a courtesy car, by either the dealership or Startline.

As such, I'm satisfied that Startline should refund any payments made after the car became undrivable.

Finally, Mr D has suffered a substantial amount of distress and inconvenience with what's happened. Without access to transportation, he's had difficulties getting to work, which has had an impact on his income. And this has affected his ability to pay his rent, meaning that his home has been put at risk. The situation has also had an impact on Mr D's mental health, resulting in him receiving medical treatment. What's more, Startline's actions relating to the credit reporting has impacted Mr D's ability to obtain finance on an alternate car.

The investigator has recommended Startline pay Mr D £500 compensation for the impact of their action. And, given the circumstances described, I'm satisfied this is something I would've recommended, had it not already been done. So, this recommendation will be adopted as part of my final decision.

So, Startline should:

- (if not already done so) end the agreement with nothing further to pay, and collect the car at no cost to Mr D;
- refund all the payments Mr D has made after 12 June 2022, when he stopped using the car;
- apply 8% simple yearly interest on the refund, calculated from the date Mr D made the payments to the date of the refund †;
- remove any adverse information relating to this agreement from Mr D's credit file, ensuring that the agreement is shown as being settled with the credit reference agencies; and
- pay Mr D an additional £500 for the distress and inconvenience he's suffered as a result of being supplied a car that wasn't of a satisfactory quality.

†HM Revenue & Customs requires Startline to take off tax from this interest. Startline must give Mr D a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr D's complaint and Startline Motor Finance Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 December 2022.

Andrew Burford  
**Ombudsman**