

The complaint

Mr L complains about the quality of a car he has been financing through an agreement with STARTLINE MOTOR FINANCE LIMITED ("Startline").

What happened

I issued my provisional decision on this complaint in early January 2023. An extract from that provisional decision is set out below.

Mr L took receipt of a used car in June 2021. The car was about six years old and had already completed about 100,000 miles.

Later that month Mr L complained to the dealership about an engine management light issue. A quote to replace the Exhaust Gas Recirculation (EGR) valve was generated but the work wasn't completed as Mr L had the fault code removed and it didn't reoccur.

In August 2021 Mr L says the car broke down. His text message to the dealership explained that a parking sensor wasn't working and there were engine issues. He explained that the engine was shaking and noisy and expressed his disappointment this had happened within about two months of ownership.

The credit broker arranged for an independent inspection of the car and that took place, after some delay, in January 2022. The inspector was asked to look at an engine management light issue and the fact that the engine rattled and was shaking. The engineer noted there was a knocking from the engine. He didn't investigate any further as he explained the engine would need stripping to investigate the cause, but he did suggest the car was unlikely to have been experiencing the fault when it was supplied to Mr L. He said that was because it had passed its MOT shortly beforehand, and because he would expect a fault of that nature to have become apparent after the car had driven about 1,000 to 1,500 miles and the car had completed about 3,000.

Starline didn't therefore uphold Mr L's complaint and he referred it to this service. Our investigator thought there was evidence Mr L had been experiencing issues with the car very soon after he'd taken receipt of it. She was persuaded those issues were therefore developing at the point of supply. She suggested Startline should repair the car after completing a manufacturer's recall on the EGR valve. She noted Mr L had incurred some costs as a consequence of the car failing and thought Startline should refund them and that they should refund Mr L's finance instalments for the period he'd been unable to use the vehicle.

Startline didn't agree so the complaint has been passed to me, an ombudsman, for a final decision.

What I've provisionally 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 agree with the investigator's view that Startline are responsible for repairing the car, but I don't think the redress suggested is sufficient. I'm expecting to tell Startline to take additional action.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr L acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Startline, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr L. The car here was already about six years old and had covered an appreciable mileage. So, I think a reasonable person would expect it to be experiencing quite a bit of wear and tear, but I don't think they'd expect what appear to be significant issues, to develop with the engine after only a couple of months of driving.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when Startline were responsible for its quality, unless they can demonstrate otherwise.

Startline have relied on the independent inspector's comments to dispute that assumption but I don't find the inspector's comments persuasive.

I say that because I don't think the inspector took account of the fact the issue with the car was first reported in August, only a couple of months after Mr L had taken receipt of the vehicle. I think that makes it much more likely that the car was developing the fault it currently has, from the onset of the agreement. I'm supported in that view as I can see a quote for a replacement EGR valve was generated after Mr L had been in possession of the car for only a few days.

Whilst it's clear that the dealership were prepared to take a look at the car when the EGR valve problem presented itself, that wasn't feasible for Mr L as he lived hundreds of miles away. The garage he took it to cleared the fault code and, as it didn't reoccur, a repair was never completed. I've thought about whether that was negligent of Mr L and whether he can reasonably be considered to have contributed to the eventual failure of the engine because he didn't get this early issue resolved. Mr L has explained he isn't a mechanic and I think it's reasonable for him to rely on the guidance given by the garage he took the car to. That guidance was to come back if the fault reoccurred and I don't therefore think Mr L did anything wrong when taking that advice.

So, I think there is evidence this car was developing a fault when it was supplied to Mr L and

that it was therefore of unsatisfactory quality.

Putting things right

The relevant legislation gives the business one opportunity to fix a fault that is present at the point of supply. So Startline should arrange to have the fault fixed.

Our investigator said that should be done after Startline had arranged for the manufacturer's recall on the EGR valve to be completed. It seems the EGR recall is safety related and I think it unlikely it will reverse the fault that the car is experiencing. But it seems sensible to complete the manufacturer's recall as well, as part of any necessary repairs.

Our investigator didn't think Startline had been advised of an issue with the parking sensors that Mr L says he raised. I can see he mentioned that the parking sensors weren't working when he initially texted the dealership. He also mentioned the parking sensor issue when he wrote to Startline, setting out the problems he had with the car, in February 2022. I've explained that the onus is on Startline to demonstrate faults reported in the first six months were not present from the onset and I don't think they've been able to do that in relation to the parking sensor either; so that will also need to be repaired for Mr L.

Mr L says he broke down on the 16 August 2021 and the car was subsequently removed by the broker and stored pending an inspection. It's not therefore been used by Mr L since 16 August 2021 and it's unfair for him to be paying any finance instalments for it. I can't see that a courtesy car has been provided. Startline should refund all instalments paid by Mr L since 16 August 2021 and waive any that were due but haven't been paid. They'll need to add interest to any refund.

The car was stored whilst waiting for an inspection to take place. As I'm upholding Mr L's complaint I would add for clarity, that Mr L should not be held accountable for any storage costs.

Mr L has explained that there have been some costs he's had to pay as a consequence of the car breaking down. He's provided evidence that he has continued to pay road tax at £11.37 per month and car insurance at £178.57 per month. The terms of Mr L's agreement with Startline obliged him to keep the car taxed and insured and as he's not had possession of the car I think these expenses should be refunded by Startline for any full month since 16 August 2021 and until the complaint is settled. Startline will need to add interest to the refund as Mr L has been deprived of that money.

Mr L has also explained that he's had to pay transport costs to get to and from hospital, to complete school runs, and to get to work. But as I'm asking Startline to refund any finance instalments paid whilst Mr L was off the road it wouldn't be fair to ask them to compensate him for any transport costs as well.

An MOT was completed on the car before it was provided to Mr L. He's explained that the MOT has run out whilst the car has been off the road, but I don't think it would be fair to ask Startline to fund a new MOT. That cost was always Mr L's and is unrelated to any fault that was present with the car when supplied.

Mr L has experienced distress and inconvenience as a result of these issues. Our investigator suggested Startline should pay Mr L £200 in compensation, but I don't think that's sufficient. Mr L has had to wait well over a year for his complaint to be resolved and I think Startline could have resolved it earlier for him. There was a significant delay before an inspection was arranged and there have been further lengthy delays waiting for responses from Startline whilst the complaint has been with our service. In the meantime, Mr L has had to make alternative transport arrangements, pay for a car he hasn't had, and frequently

chase progress. Mr L has explained that he suffers from mental health issues and whilst Startline may not have known about that I think it's likely to have made the distress more significant than what would have been experienced by a consumer without such issues. In all the circumstances I think Startline should pay Mr L £500 to compensate him for the distress and inconvenience experienced.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and tell STARTLINE MOTOR FINANCE LIMITED to:

- *Collect the car at no cost to Mr L and arrange for repairs to resolve the problems with the engine knocking, the excessive oil usage, and the parking sensor, that Mr L advised them of. Ensure the manufacturer's recall relating to the EGR valve is completed before the car is returned to Mr L.*
- *Remove any adverse information they may have reported to Mr L's credit file in relation to this issue.*
- *Refund any finance instalments Mr L has paid since 16 August 2021 (waive any that have been due but haven't been paid) and add 8% simple interest per year to that refund from the date of payment to the date of settlement.*
- *Refund the cost of car tax at £11.37 per month and car insurance at £178.57 per month, for any full month Mr L has been without the car. That period to be calculated from 16 August 2021 until the date of settlement. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.*
- *Pay Mr L £500 to compensate him for the distress and inconvenience he's experienced.*

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.

Startline didn't respond to my provisional decision, but Mr L did. He was happy with the provisional decision but said he'd spoken to a garage in anticipation of needing to MOT the car. He said they'd advised him that as the car has been in storage for some time it may need new brakes and a check to ensure any repairs completed are adequate and the car is roadworthy.

Putting things right

I understand Mr L's concerns but there's no evidence that there are any issues with the car as a result of it being stored for an excessive period of time. Whilst I understand the garage's apparent assertion that there may be issues, I don't think it would be appropriate to tell Startline to, for instance, replace the brakes before returning the car to Mr L.

I don't therefore see any reason to ask Startline to take any action other than what I've set out above.

My final decision

For the reasons I've given above I uphold this complaint and tell STARTLINE MOTOR FINANCE LIMITED to:

- Collect the car at no cost to Mr L and arrange for repairs to resolve the problems with the engine knocking, the excessive oil usage, and the parking sensor, that Mr L

advised them of. Ensure the manufacturer's recall relating to the EGR valve is completed before the car is returned to Mr L.

- Remove any adverse information they may have reported to Mr L's credit file in relation to this issue.
- Refund any finance instalments Mr L has paid since 16 August 2021 (waive any that have been due but haven't been paid) and add 8% simple interest per year to that refund from the date of payment to the date of settlement.
- Refund the cost of car tax at £11.37 per month and car insurance at £178.57 per month, for any full month Mr L has been without the car. That period to be calculated from 16 August 2021 until the date of settlement. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.
- Pay Mr L £500 to compensate him for the distress and inconvenience he's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 7 March 2023.

Phillip McMahon
Ombudsman