

The complaint

Mr S complains about the quality of a car he acquired under a hire purchase agreement with Startline Motor Finance Limited (Startline).

When I refer to what Mr S has said, and Startline have said, it should also be taken to include things said on their behalf.

What happened

In February 2022, Mr S entered into a hire purchase agreement with Startline to acquire a used car first registered in August 2016. The total cash price of the car was approximately £11,480. The total amount payable under the finance agreement was approximately £17,414. The agreement consisted of first repayment of around £290 followed by 58 monthly repayments each around £290 and one final repayment of approximately £300.

In March 2022, Mr S contacted the supplying dealership, and Startline, as he was unhappy with the car. He said there were issues with:

- Paintwork being damaged and scratched;
- Driver's carpet had a large hole with no insulating material underneath, so there was direct contact to the car frame;
- Driver's seatbelt housing was damaged;
- Car struggled to change gear without dropping back;
- Offside daytime running lights were not working;
- Offside wing mirror was not heating/defrosting;
- Offside front door seal were severely torn;
- Nearside back door seal was severely torn;
- The spare key was missing;
- The V5 document wasn't provided at the time of sale.

Mr S asked the supplying dealership and Startline to accept the return of the car and asked them to provide him a car of equivalent value. Later he also added that the window wipers were leaking and not spraying properly and, in April 2022, he complained to both parties that the accelerator pedal started to jam while engaged making the car unsafe. At that time Mr S said that he was not too concerned about the chipped paintwork as he was intending on having the car wrapped or resprayed, but he wanted the other faults looked at. On 15 April 2022, the supplying dealership picked up the car from Mr S to investigate.

Some of the issues were rectified but after Mr S received the car back, he started to experience further problems with it in August 2022. He complained about the car spontaneously reporting gearbox faults, engine faults, ESP faults and cutting out and restarting sporadically. So, a new independent report was completed to confirm the faults.

After this report, Startline wrote to Mr S in October 2022. In this correspondence they said that in May 2022 there was an independent inspection done to confirm the car's condition. They said that the report confirmed that there were no faults with the gearbox and there was only an outstanding issue with the offside mirror not heating which they said would be fixed.

Starline also said that given Mr S advised in September 2022 that the car was spontaneously reporting gearbox faults, engine faults, ESP faults and cutting out and restarting sporadically, a new independent report was completed. But they said that the independent report concluded that the issues found are electrical and the engineer didn't consider that these would've been present or developing at the point of sale. So, they said that as there is no evidence to suggest that the current faults being experienced were present or developing at the point of sale, or the result of a failed repair, they are unable to support Mr S's request to reject the car.

Mr S was unhappy with this response and his complaint was assessed by an investigator at our service. The investigator thought there was enough information for him to say that, on the balance of probabilities, the car was not of satisfactory quality when it was supplied to Mr S – particularly, that it wasn't reasonably durable.

Startline disagreed with the investigator. So, the complaint has been passed to me to decide.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr S acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Startline is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr S entered into. Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says 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.

In Mr S's case the car was used, with a cash price of around £11,480. It had covered around 27,000 miles and was approximately five years old when he acquired it. So, it's reasonable to expect presence of some wear to it as a result of its age, and I'd have different expectations of it compared to a brand-new car. As with any car, there's an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time and it's reasonable to expect that these may need to be replaced. And with second-hand cars, it's more likely that parts will need to be replaced sooner or be worn faster than with a brand-new car. So Startline would not generally be responsible for anything that was due to normal wear and tear whilst the car was in Mr S's possession. But given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after it was acquired.

From the independent report that was carried out in September 2022, I can see that the engineer, after an 11-mile road test, noted that throughout the road test the engine management light and multiple warning lights were intermittently flashing on and off accompanied with a warning type beep from the car's dashboard. The engineer also said that during this road test the car went into limp mode and, at one point, cut out. The engineer also said that stopping and restarting the car numerous times caused all lights to clear and the car would no longer be in limp mode, but after a short period of time multiple warning lights would begin flashing and once again it would enter limp mode. The independent report concluded that this is a possible electrical issue or Engine Control Unit (ECU) issue, and that it would require further investigation.

Startline, in response to our investigator's view, said that they don't disagree that the car had faults previously, but they felt that they have repaired them via the dealership. And they told this service that the independent inspection carried out in September 2022 determined that there's no evidence to suggest the faults identified were present, developing at the point of sale, or a result of a failed repair. And I can see that the report in question said that, taking into consideration the time and mileage covered by the car since the point of sale, it didn't consider this issue would have been present or developing at that point of sale. The report also said that it suspects this is an electrical issue and therefore would be sudden in nature. So, the engineer concluded that he doesn't consider the selling agent is responsible for the costs of these repairs.

I've taken all of this into consideration, but I think that a reasonable person wouldn't expect to experience electrical issues, or issues with ECU, whereby the car's engine management light and multiple warning lights are intermittently flashing on and off, and the car going into limp mode and cutting out. So, it's also reasonable to take into account the nature of the problem and whether it's fair to say that the car was reasonably durable. I understand that components in a car may become faulty over time, but considering the circumstances of this case, I think most likely, a reasonable length of time for a car to experience such issues would be more than around 32,000 miles. I think the issues mentioned are significant and will most likely be very expensive to put right. Given how relatively low the overall mileage of the car was and taking into consideration the cash price of the car, I don't think this was a cost a reasonable person would expect to bear, or a fault that would be expected to arise in the time frame Mr S has had the car for. I think a reasonable person would've expected a certain period of usage before experiencing such major issues. So, I don't think the car, was sufficiently durable. For this reason, I don't think the car was of satisfactory quality.

The CRA sets out that where the supplied goods are not of satisfactory quality, the consumer can require the supplier (Startline in this case) to fix any faults. But Startline didn't think they were required to perform the required repairs with the electronics and the ECU. Mr S didn't feel safe in the car and, as it was not getting repaired, he decided to exercise his right to surrender the car in November 2022. It is also my understanding that the car has now been sold at an auction with the intention that Mr S would take out a new finance agreement on a car with the outstanding balance added to that finance. But considering that the car is no longer available for repairs I think the most reasonable option is for Mr S to be allowed to reject the car.

Due to the issues with the car, Mr S wasn't able to use it since August 2022, and he had to rely on family and public transport. So, I think it's only fair that he receives a refund of the payments he has made since then. Especially given that the faults with the car made it unsafe to drive. I understand that Mr S says that the car had issues with the gearbox from inception and he believes that the issues that he started to experience in August 2022 are linked. But the independent report from September 2022 doesn't mention the gearbox issues. And the independent report done in May 2022 doesn't think the gearbox was faulty. So, I've not seen enough to be able to say, most likely, that is the case. Also, Mr S had some

use of the car before August/September 2022, so it wouldn't be fair for me to direct Startline to refund him any payments he incurred prior to August 2022.

The supplying dealership paid Mr S a total of £300. This amount covered expense of having the car valeted, the expense for petrol that was used while the car was in their possession and some for the distress and inconvenience caused. So, I've considered this, but Mr S has understandably gone through a further degree of inconvenience and stress while he was without the car and when trying to get these issues sorted. During this time he was also due to get married and these issues have caused additional strain on his personal life and his well-being. So, considering the circumstances, I think it's fair that Startline pay him a further £250 compensation for the distress and inconvenience caused.

My final decision

For the reasons given above, I uphold this complaint and direct Startline Motor Finance Limited to:

1. Cancel the hire purchase agreement with nothing further to pay;
2. Refund any money they may have charged Mr S for collecting the car;
3. Refund all hire purchase repayments Mr S made from August 2022 onwards;
4. Add 8% simple interest per year to points 2 and 3 above, from the date of each payment to the date of settlement;
5. Pay Mr S £250 for the distress and inconvenience caused;
6. Remove any adverse information recorded on Mr S's credit file in relation to this credit agreement, and mark it as settled.

If Startline Motor Finance Limited considers tax should be deducted from the interest element of my award, they should provide Mr S with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 August 2023.

Mike Kozbial
Ombudsman