

The complaint

Mr R complains about a used car he acquired through a hire purchase agreement with Startline Motor Finance Limited (Startline). Mr R says he experienced numerous problems with the car, which have ultimately resulted in the car's failure.

What happened

In November 2020 Mr R acquired a used car and after paying an initial deposit used a hire purchase agreement with Startline to fund the remainder of the cost. Mr R says that immediately after taking possession of the car he started to experience problems with it and had to return it to the supplying dealership. Despite this, problems persisted with the car and after further work and breakdowns, the car finally broke down in December 2022 and is now a 'non-runner'.

Mr R complained to Startline and unhappy with its response he then referred his complaint to our service. It was considered by one of our investigators and they found the car was not of satisfactory quality when it was supplied to Mr R. They then set out what Startline should do to put things right. Mr R accepted the investigator's conclusions, but Startline did not. In summary, it referred to the length of time and amount of mileage that had passed since Mr R acquired the car and it finally breaking down. It refers to the conclusions of an independent report and considers the car was of satisfactory quality when it was supplied.

As the complaint cannot be resolved informally it has now been referred to me as the last stage in our process.

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 have come to broadly the same conclusions as the investigator for what are essentially the same reasons.

It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. I'm very aware that I have summarised in much less detail what has been submitted by the parties in this complaint. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr R or Startline, but reflects the informal nature of our service, its remit and my role in it.

Mr R acquired a used car through the hire purchase agreement with Startline. Startline is the owner of the vehicle, until such time as Mr M makes all the repayments under the agreement. As owner, Startline is also the supplier of the car and as such it is responsible for the quality of the car at the point it was supplied. This is because the Consumer Rights Act 2015 (CRA) implies a term around satisfactory quality into the hire purchase agreement and the car should therefore be of satisfactory quality when supplied to Mr R.

I think it is important to note that Startline's obligations around the quality of the car apply to the time of supply. They do not apply to the general upkeep and maintenance, servicing or more general faults and repairs that are often required with cars as they age and increase in mileage. When considering whether goods are of satisfactory quality a number of things would usually be considered. In this instance, when considering the quality of a car, the age and mileage of the car at the time it was supplied are in my view key considerations. So for example, a brand new car would have different expectations to a used and considerably cheaper car. Those expectations would therefore be lower in a used or older higher mileage car, when compared to a new car.

In this instance Mr R was acquiring a used car that was around seven and a half years old and had travelled over 70,000 miles. As already mentioned above, a car of this age and mileage would not be expected to be in the same condition as a brand new car, which would have cost considerably more than the price Mr R paid. Considering the age and mileage here it would not be unreasonable to expect the car to be showing some signs of wear and tear. This would be in relation to its general overall appearance but also the underlying components.

However, although the car was used this does not mean it is reasonable to supply a car that has underlying problems, especially where they should have been apparent at the time. Mr R returned to the dealership within a few days as an engine warning light came on. I have noted what Startline has said about the checks it says the dealership completed prior to Mr R acquiring the car but I think it is unlikely the engine warning light came on for the first time immediately after Mr R took possession of the car. As the light came on so soon after Mr R got the car, even when considering its age and mileage at the time, I am satisfied that the car was not of satisfactory quality when it was supplied to Mr R.

The engine warning light highlighted a significant issue with the engine that required work to rectify the issue. This was not a general wear and tear or serviceable issue or something it would have been reasonable for Mr R to expect so soon after acquiring the car.

Although work was done to rectify the issue Mr R has referred to and evidenced numerous further problems with the car since then, up to its ultimate failure. The car was returned several times to a manufacturer aligned dealership, along with an alternative garage Mr R chose. Repairs were carried out but despite this the car broke down on at least two occasions.

Looking at the repairs and work carried out I accept there is some work that may not be unexpected in a car of this age and mileage. But there does however seem to be a related theme with the engine management and exhaust system that was an issue at outset and throughout the period Mr R had the car. Work has been done, yet the problems and issues, which started immediately after Mr R acquired the car, persisted up and until the car finally failed.

I have noted that Mr R was able to use the car and that the mileage has built up over this time. And I have noted the car passed two MOTs while in Mr R's possession. But this does not in my view negate the fact that the issues reported immediately after Mr R took possession appear to be connected to the ongoing problems he had and the ultimate failure. It appears that attempts to remedy the issue have not been successful and this is what has now resulted in the car not running.

Having considered all the parties have said and provided I consider it more likely than not the car was not of satisfactory quality when first supplied to Mr R and these issues persisted and resulted in the car's failure some time later. I have therefore considered what Startline should now do to put things right.

Putting things right

As it appears that attempts to rectify the issues have failed I do not consider further attempts at repair will be successful. Startline should therefore take back the car and end the hire purchase agreement with nothing further owed. Mr R should receive his £2,500 deposit back, with interest. As Mr R has been without the car since its failure in December 2022 any payments made to the hire purchase agreement after 13 December 2022 should be refunded to Mr R, with interest.

If Startline has recorded any adverse information on Mr R's credit file this should be removed.

Mr R has also incurred some costs he would not have needed to pay if the car was of satisfactory quality and Startline should refund these to Mr R, again with interest. The diagnostic report in December 2022, the independent inspection report, the £170 diagnostic and storage fee charge and the £140 recovery cost should all be refunded to Mr R.

If not already done so, Mr R may need to provide evidence of payment to Startline so it can determine the amount to be refunded, along with any associated interest.

If any further storage fees are charged Startline should also ensure these are settled promptly and Mr R is not responsible for these.

Mr R has had use of the car so I do not consider Startline should refund the payments Mr R made to the hire purchase agreement while he was using the car. But Mr R has been put to some considerable inconvenience by not having full use of the car, repeated breakdowns and trips to the garage. Startline should pay Mr R £250 in recognition of this.

The interest that is to be added to the refunded payments should be calculated at 8% simple per year from the date of payment until the date of settlement. If Startline does not settle the complaint within 28 days of Mr R accepting this final decision, Startline should also add interest, at the same rate as set out here, to the £250 payment.

My final decision

My final decision is that I uphold Mr R's complaint against Startline Motor Finance Limited and direct Startline to settle this complaint in line with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 September 2023.

Mark Hollands
Ombudsman