

## **The complaint**

Ms I complains about a car she acquired under a hire purchase agreement financed by Startline Motor Finance Limited.

## **What happened**

On 25 May 2022 Ms I entered into a hire purchase agreement with Startline for a used car. The car was five and a half years old and the mileage was about 39,000 miles. When she collected the car, she noticed that it was filthy, the left mirror casing was out of place, and the locking wheel nut key was missing. She says she brought this to the attention of the dealer but nothing was done. She drove the car home, and later noticed some dents and discoloured patches where makeshift repairs had been made, which had previously been concealed by dirt. After three weeks of chasing the dealer about the wheel nut key, a new one was posted to her. Then on a long journey she noticed a rattling sound.

Ms I says that she phoned the dealer several times to ask to reject the car, and then she emailed it on 14 June to repeat that request. She has provided a screenshot of that email.

Ms I says that the dealer fobbed her off and did not deal with her request to reject the car, nor did they repair it. On 7 July 2022 she took the car to a third party garage, which replaced a defective caliper, repaired the bonnet latch, and replaced the front and rear window wipers. She has provided an estimate for these repairs. That estimate does not mention the left mirror casing, but it does mention a knocking noise.

The next day, Ms I complained to Startline. Startline commissioned an independent inspection of the car by an expert, which was carried out on 15 September. The expert confirmed that there was a knocking noise and also an electrical fault, but he concluded that these faults had probably not been present at the point of sale but had developed later due to wear and tear, considering the vehicle's age and mileage. Based on that report, Startline did not uphold Ms I's complaint.

Meanwhile in August, Ms I took the car to a garage for a diagnostic check. This found some historic fault codes relating to electrical issues, and one current fault code (P0036) about the heated oxygen sensor. In October she brought this complaint to our service, represented by her husband.

Our investigator upheld this complaint in part. He thought that the caliper and bonnet latch must have been faulty at the point of sale, and so he recommended that Startline reimburse Ms I for the cost of repairing them. Startline has agreed to do this. But the investigator did not think that Ms I had proved that she had tried to exercise her short-term right to reject the car within the 30-day time limit. He said this meant that she could not reject the car unless the dealer was allowed a chance to repair it. And he said the windscreen wipers were not really a fault but were fair wear and tear.

Ms I did not accept that opinion. She still wanted to reject the car. She asked for an ombudsman's decision. Her husband added that too much weight had been given to the expert's report, as it had been written a few months after Ms I had acquired the car.

## **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 have seen Ms I's email to the dealer dated 14 June 2022 (I will arrange to send Startline a copy with this decision). In that email she asks to reject the car, so I accept that she did try to exercise her short-term right to reject the car within the time limit of 30 days from when she collected it at the end of May.

However, Ms I's short-term right to reject the car only arises if the car was of unsatisfactory quality at the time she collected it. I accept that the car was filthy at that time, and that for this reason it was of unsatisfactory quality. But I think it would be entirely disproportionate if I now required Startline to allow her to reject the car solely for that reason (although I might have taken a different view about that if she had refused to collect it). That is because she has been using the car. So I have also considered the other alleged defects, to see if the short-term right to reject also applied because of those.

I accept that the left mirror casing was out of place, but it is not mentioned in the estimate for the repairs that were carried out in July. So I infer that this was easily fixed by Ms I or by her husband once she got the car home. As that was before she asked to reject the car, I don't think that is a sufficient basis for exercising the right to reject.

I think that a few dents and discoloured patches on a new car would be enough, but as I've said, this was a used car. Having regard to the age of the car, I'm not persuaded that this means that the car was not of satisfactory quality.

I think that the rattling noise described by Ms I and the knocking noise described by the garage in July are likely to be the same noise, despite the different descriptions. The expert's report (which only mentions one noise) says this was probably the result of wear and tear. That report also identified an electrical fault, but he concluded that this was unlikely to have been present at the point of sale. Startline is not liable for ordinary wear and tear.

I do not think that the four month period between Ms I acquiring the car and the expert's report being prepared is significant. Nor do I think that the expert was biased just because Startline paid him for the report. I do not think that the report is unreliable. I have read it, and I find it to be credible and convincing.

I think that the issue with the window wipers are also wear and tear, since these would have to be replaced from time to time. So these three issues (knocking noise, electrical fault code and wipers) do not mean that Ms I could reject the car.

For the same reasons as the investigator gave, I am satisfied that the caliper and bonnet latch were defective, and that they must have already been defective at the point of sale. Startline is therefore liable for them, and I will require it to pay for them. But as Ms I did not know about them until the 30 day time limit had expired, she could not have exercised the short-term right to reject the car based on these faults.

That still leaves her with another right to reject the car (called "the final right"), which is not subject to that time limit. But the final right to reject is only exercisable after the car has been repaired and the repair has been unsuccessful. Here, the caliper and the bonnet latch have now been successfully repaired, so the final right to reject cannot be exercised. (And the final right to reject does not apply to faults which were not present at the point of sale or which have only arisen due to normal wear and tear.)

I have seen the list of diagnostic fault codes, but only one of them is current: the same electrical fault which the expert mentioned. The others are all historic, so they no longer apply.

For all of these reasons, I do not think it would be fair and reasonable of me to order Startline to take the car back and end the agreement. Instead, I will order it to pay Ms I £246 for the new caliper and £19.80 for the repair of the bonnet latch. I will also order it to pay her interest on those payments.

### **My final decision**

My decision is that I uphold this complaint in part. I order Startline Motor Finance Limited to pay Ms I £265.80, plus simple interest on that payment at the rate of eight per cent a year from 7 July to the date of settlement. I do not require it to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 4 September 2023.

Richard Wood  
**Ombudsman**