

The complaint

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

Mr A has been represented during the claim and complaint process by Ms W. For ease of reference, I will refer to any comments made, or any action taken, by either Mr A or Ms W as “Mr A” throughout the decision.

What happened

In December 2022, Mr A was supplied with a used car through a hire purchase agreement with Startline. He paid a £4,000 deposit and the agreement was for £11,163.95 over 30 months, with 29 monthly payments of £470.83 and a final payment of £480.83. At the time of supply, the car was just over four years old, and had done 29,896 miles (according to the MOT record of 8 November 2022).

Mr A started to have problems with the car in March 2023, after he’d travelled around 2,500 miles. He took the car to a manufacturer’s garage local to him (as the supplying dealership was some distance away) and it was recommended the car was serviced, despite it having been serviced just before it was supplied to him. As part of this service, Mr A was told the anti-roll bars and engine control unit (‘ECU’) needed to be replaced.

Work was completed on the car in May 2023, but the faults persisted. A further investigation was carried out in June 2023, which found that the ECU had been replaced, as had multiple sensors, but repairs had been carried out poorly. At an inspection that took place a few weeks later, it was reported that the engine had been rebuilt, that repairs had been poorly completed, and that the engine needed stripping down to identify the root cause of the ECU issues. Following this, Mr A stopped using the car.

Mr A had complained to Startline, but they didn’t uphold his complaint, saying that the issues with the car had been repaired. So, Mr A brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said, based on the evidence he’d seen, that there was a fault with the car which made it of an unsatisfactory quality when supplied. Given the repairs that had already taken place, with no success, the investigator said that Mr A should now be allowed to reject the car, and Startline needed to put things right.

The investigator recommended that Startline end the agreement and take back the car; refund the deposit and any payments Mr A made after he stopped using the car; reimburse him for the cost of repairs and inspections he’s incurred (all with statutory interest); and pay Mr A an additional £500 for the distress and inconvenience he’d been caused.

Mr A accepted the investigator’s recommendations. Startline said they were attempting to liaise with the supplying dealership to obtain their testimony prior to responding. However, despite being given ample opportunity to do this, and being provided with evidence of the

repair and inspection costs they asked for, Startline failed to respond. As such, 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 A 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 A to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr A took possession of it, or that the car wasn't sufficiently durable, 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 evidence that the car was initially serviced by the supplying dealership on 8 November 2022, when the car had done 29,894 miles. The vehicle handover form, signed by Mr A on 8 December 2022, also details that this service took place. However, the car was serviced again by a manufacturer's garage on 23 March 2023, at the cost of £219, following warning lights becoming illuminated.

The March 2023 service took place after Mr A had been in possession of the car for less than four months, and when the car had been driven for less than 3,000 miles. Neither of these are service intervals recommended by the manufacturer. What's more, the March 2023 service indicated issues with the ECU and the anti-roll bars. Given the time the car had been in Mr A's possession, and the mileage he'd done, I consider it more likely than not that these issues were present or developing when the car was supplied.

I've seen evidence that the ECU was replaced by the manufacturer's garage on 22 March 2023, and it's my understanding this was covered by the warranty. The anti-roll bars were replaced on 17 May 2023, when the car had done 34,969 miles. It's my understanding that this work wasn't covered by the warranty, and Mr A had to pay £288.70 for this work. Finally,

an O2 sensor was replaced under warranty on 26 May 2023, when the car had still done 34,969 miles.

Based on what I've seen, I'm satisfied the dealership were happy for the garage to deal with the issues with the car, due to the garage being substantially nearer to Mr A's home than the dealership was.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Startline – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

In these circumstances, I'm satisfied that the replacement of the ECU, and the subsequent replacement of the anti-roll bars, by the manufacturer's garage, qualifies as the single chance of repair under the CRA.

Mr A continued to complain that the faults with the car continued to reoccur. I've seen a report by an independent garage dated 14 June 2023 which said "*carry out investigation into engine fault ... vehicle taken for test drive with EML [engine management light] illuminated ... managed to reset EML ... road test again ... light stayed off.*" This diagnosis and repair cost Mr A £120. However, a report by the same garage the following day said "*carry out investigation to EML ... found [O2] sensor looks as if already been replaced sensor has been cable tied to coolant hose and connection had been tapped [sic] together.*"

Mr A had the car inspected again on 27 June 2023, when the car had done 36,994 miles, at the cost of £54. This report says "*customer bought the car to us for diagnostics we have found ecu has been replaced from main dealers. O2 sensor resistor has been replaced several times and when we checked the rocker cover it looked like the whole engine been re build there I believe who ever re build the engine they have done some thing wrong in there. Order to find out will have to strip the engine and find out from there*"

Based on what I've seen, I'm satisfied that the repairs to the car had failed, and the faults remained. I'm also satisfied that this made the car of an unsatisfactory quality when supplied. And, in these circumstances, Mr A should be able to reject the car.

Putting things right

The mileage record detailed above shows that Mr A was able to drive the car while it was in his possession. Because of this, I think it's only fair that he pays for this usage. However, Mr A stopped using the car on 27 June 2023, after the inspection report of that date. Given the contents of that report, I don't consider this to be an unreasonable course of action.

As, for the reasons given, I'm satisfied the car has been off the road since 27 June 2023 due to it being of an unsatisfactory quality when it was supplied, and as Mr A hasn't been provided with a courtesy car to keep him mobile; I'm satisfied Startline should refund the payments he made during this period.

Mr A has also provided evidence of the £681.70 costs he's incurred in repairing the car / having the car inspected. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Startline reimburse these costs.

Finally, it's clear that Mr A has been severely inconvenienced by what's happened, especially with having no transportation while the car was being inspected and repaired. And he's had to pay alternate transport costs during this period, while still maintaining payments to Startline. So, I think Startline should compensate him for this.

The investigator had recommended Startline pay Mr A £500, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, if they haven't already done so, Startline should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr A;
- remove any adverse entries relating to this agreement from Mr A's credit file;
- refund the £4,000 deposit Mr A paid (if any part of this deposit is made up of funds paid through a dealer contribution, Startline is entitled to retain that proportion of the deposit);
- refund the payments Mr A has made since 27 June 2023;
- reimburse Mr A £681.70 for the repair and inspection costs he's incurred;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr A made the payment to the date of the refund[†]; and
- pay Mr A an additional £500 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Startline to take off tax from this interest. Startline must give Mr A 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 A's complaint about Startline Motor Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 December 2023.

Andrew Burford
Ombudsman