

The complaint

Mr L complains about the vehicle he acquired from Startline Motor Finance Limited ("Startline") being of unsatisfactory quality.

What happened

The facts of this case have been discussed and shared many times, but I will summarise them below.

Mr L acquired a vehicle through a hire purchase agreement from Startline in March 2022. The car was around seven years old and had covered around 81,000 miles when it was supplied to Mr L.

Mr L reported several issues within the first few months, including an engine management light coming on and some cosmetic issues with the car. There was some dispute around these issues but by June 2022 Mr L had raised further concerns about the suspension and then the gearbox and provided two diagnostic reports from April 2022 showing a series of faults with the vehicle. Mr L had also broken down during this period and had an AA report showing problems including with a NOx sensor and other issues, many of which were the same issues the diagnostic reports highlighted.

Startline did not uphold the complaint; they didn't investigate all of the issues or arrange for an independent report to further investigate the problems being suffered by Mr L. He therefore brought his complaint to our service.

An investigator here found the vehicle to be of unsatisfactory quality and upheld the complaint. They issued their first view in October 2022, and recommended that the car could be rejected, the agreement should be ended with nothing further to pay, the car should be collected, and Mr L should be refunded his monthly payments since the agreement began. They also recommended any costs of the garage inspections be refunded and Mr L be paid £250 for the distress and inconvenience caused. Finally they said any adverse information relating to the agreement should be removed from Mr L's credit file.

Mr L accepted this view, and after some delays, Startline also accepted this view in November 2022. However, in January 2023, Mr L contacted us to say that Startline still hadn't collected the car or actioned the redress. When the investigator reached out to Startline, they apologised and said they would arrange collection as soon as possible.

Over the following weeks, Startline said they couldn't arrange to collect the car from Mr L, who confirmed he had suffered some family problems which had delayed his ability to arrange this with them. Startline also said they had concerns that Mr L had continued to drive the car.

Eventually in March 2023 the car was collected. At this point, Startline reached out to us to question the original view, because when they collected the car, they discovered that Mr L had been using it and it had now covered approaching 99,000 miles, nearly 18,000 miles since Mr L had acquired the car. They highlighted that the car hadn't had a valid MOT

certificate between 30 November 2022 and 15 March 2023, when Mr L took the car for an MOT before they came to collect it.

The investigator decided to issue a second view, and while they still upheld the complaint, they removed the requirement to refund any monthly payments to Mr L, as he had clearly been able to continue using the car.

Mr L didn't agree with this and said he hadn't used the car since November, so he asked for an Ombudsman 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.

When the case was passed to me for a decision, after assessing the evidence, I reached out to both parties to discuss the possibility of resolving the complaint informally. The MOT for the car had run out by 30 November 2022, and when I spoke to Mr L he said he hadn't driven the car since then.

Startline had already agreed to a rejection of the car, which felt fair in the circumstances, as there were clearly faults with the car which Startline had not investigated properly, which made the car of unsatisfactory quality.

However, Mr L had been using the car from when he acquired it until the MOT ran out. He told me that he had to use it for work, and that it had been using a lot more petrol during this period due to the faults with it. He said that he thought he had sent evidence already of this problem causing it to use more petrol, but we have never received this evidence.

When I spoke to Startline, they confirmed that the last payment they had received from Mr L was in November 2022, so they felt that if they could keep the payments they had received up to that point in November 2022, to recognise them as him paying for fair use of the car, they were happy to write off any remaining billed but not paid payments after that.

I proposed to both parties that I felt a fair resolution would be for the agreement to be ended, for Mr L to only be refunded any payments he made from 30 November 2022 onwards, for him to be paid £250 distress and inconvenience, for his credit file to be amended to remove any adverse information regarding this agreement, and for him to be paid back for garage diagnostic reports if he had paid for them (confirming we had not seen invoices for these reports so Mr L would need to prove this).

Startline accepted this proposal, but Mr L didn't agree with it. Initially he said he had definitely made a December 2022 payment, and also said he felt he was due considerable redress for the extra petrol he had to use due to the car's faults.

As an agreement couldn't be reached informally, I gave both parties time to send me final comments before writing this final decision.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Startline here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price,

mileage, and description. It's clear in this case that the car was of unsatisfactory quality, and it was fair for it to be rejected. As both parties have already agreed this, I haven't looked into this further. I've moved on to consider how things should be put right, as this is still in dispute.

Firstly, the agreement should be ended, and the car collected. Both parties have confirmed this has already happened. Mr L didn't pay a deposit for the vehicle under the agreement, so there is nothing further required regarding that.

I've moved on to consider the monthly payments made by Mr L until November 2022. The CRA says that *"If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered"*.

Mr L has had considerable use of the vehicle, driving it for approaching 16,000 miles in under nine months. As such, I am satisfied that to recognise this use, it is fair for Startline to keep the monthly payments he made from the inception of the agreement, up to and including the November 2022 payment made. Any payments made from 30 November 2022 onwards should be refunded, as the car wasn't being used from this point, but I don't believe any further payments were made.

I've then gone on to consider any other costs incurred by Mr L as a result of the car being of unsatisfactory quality. He has said there were costs for the two garage inspections he undertook, but we have never received evidence of these costs, or of them being paid by him. Startline have agreed that if he provides this evidence, they will re-imburse the cost of these reports, which I am satisfied is fair.

Mr L in our recent discussions has claimed he had considerable fuel costs because the faults with the vehicle meant it was using a lot more fuel than expected. He's not provided any evidence of these faults for me to assess, so I've thought about this. He said that the garage reports had this detail, but he's not discussed it before, and not supplied any garage diagnostic reports with this detail.

I'm not persuaded that Mr L should receive any payment towards fuel costs or compensation for this. I've seen no evidence of this problem, or that he's raised this issue whilst the car was being driven in 2022. I don't think it's reasonable to continue to use the car the amount he has if there was a problem meaning it was using a lot more fuel than it should, without raising this specific concern. It's not fair for him then to expect further refunds towards these apparent costs. He has taken no action to mitigate this situation, and therefore I won't be asking Startline to do any more about this.

With regards to distress and inconvenience, I proposed to both parties a payment of £250, as per the original view provided by the investigator. Startline said they felt that as Mr L had continued to use the car and they had difficulties recovering it, they disagreed with the amount but would accept it to finally resolve the case.

I think this opinion doesn't recognise the distress and inconvenience they caused in their original complaint handling; we are now 18 months down the line from when problems with the car began, and Startline take a considerable amount of the blame for that. If they had investigated the problems properly at the outset, I'm not sure that any of the ensuing issues might have happened. As such, I am satisfied that £250 to recognise this is a fair amount.

Finally, Startline should remove any adverse information from Mr L's credit file relating to this agreement.

After discussing this with both and reviewing the comments from both parties, my opinion remains the same, that this is the fairest resolution. I am satisfied that this is a fair resolution of this complaint and am instructing Startline to carry out the remaining parts of this redress, as detailed below. I agree that the car was of unsatisfactory quality, and it was fair for Mr L to be able to reject it, and Startline should carry out the remaining parts of the resolution to bring the matter to a close.

My final decision

My final decision is that I uphold this complaint. I instruct Startline Motor Finance Limited to put things right by doing the following:

- If not done already, end the agreement with nothing further to pay.
- Remove any adverse information from Mr L's credit file in relation to the agreement.
- Pay Mr L £250 for the distress and inconvenience caused.
- Refund any monthly payments made towards the agreement by Mr L from 30 November 2022 onwards.
- If Mr L provides them evidence showing the cost of the two diagnostic reports produced by the garage, and proof of his payment, they should refund these costs to Mr L.
- Add simple interest at 8% pa to any payments above being refunded from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 November 2023.

Paul Cronin
Ombudsman