

The complaint

Miss P is unhappy that a car supplied to her under a hire purchase agreement with Startline Motor Finance Limited was of an unsatisfactory quality.

What happened

In October 2022, Miss P was supplied with a used car through a hire purchase agreement with Startline. The agreement was for £6,840 over 42 months; with 41 monthly payments of £221.22 and a final payment of £231.22. At the time of supply, the car was almost eight and a half years old and had done 86,031 miles (according to the MOT record for 6 September 2022).

Miss P said she started to have trouble with the car shortly after it was supplied to her, and this was traced to issues with the cooling system. The supplying dealership attempted a repair in April 2023, but this didn't fix the issue. And the car has been undrivable since. She complained to Startline who arranged for an independent engineer to inspect the car.

Following an inspection that took place on 24 May 2023, when the car had done 90,075 miles, the independent engineer said they couldn't identify any coolant leaks, nor was there any evidence of the exhaust smoking or the engine overheating. However, the engineer said, *"the fact that [a breakdown company] put a coolant system sealant in the system could have, potentially, masked any cooling system leaks."* So, the engineer recommended the car be subject to an overnight pressure test and *"hopefully this will expose any potential leaks."*

The pressure test took place on 20 June 2023, and this identified a coolant leak. It also said the car needed repairs to the coolant system at the cost of £549.42 (which included £10 plus VAT (£12) for replacement anti-freeze). Startline said the work could be carried out, but it would need to be done by the supplying dealership, as they *"would be looking to exercise their right to repair."*

Miss P wasn't happy with this, as she had no confidence in the supplying dealership carrying out the repair after their failed attempt to repair the car in April 2023. So, she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator was satisfied there was a fault with the car, and that this made the car of an unsatisfactory quality when it was supplied. As the supplying dealership had attempted, and failed, to repair the car in April 2023, the investigator said the Consumer Rights Act 2015 ('CRA') now gave Miss P the right to reject the car.

However, as Miss P didn't want to reject the car, the investigator thought it reasonable that it was repaired. Given the previous failed repair, and that Miss P has lost confidence in the supplying dealership, the investigator said Startline should cover the cost of the car being repaired at the garage who provided the quote, less the cost of the antifreeze as this was a service item. The investigator also said that, as the car had been off the road since 12 April 2023, and as Miss P hadn't been supplied with a courtesy car, Startline should refund any payments she'd made since this date, refund her the costs of any inspection reports she'd paid for, and pay her £200 for the distress and inconvenience she'd been caused.

Miss P had asked for Startline to cover her car insurance and road tax payments while the car was off the road, but the investigator didn't think they needed to as Miss P was legally required to tax and insure the car. Miss P also said that she was a named driver on her daughter's car and, having to use this while the car supplied by Startline was off the road, meant the mileage allowed by the insurance had been exceeded, and this had cost an additional £270. However, the investigator didn't think this should be refunded as, being a named driver, it was always Miss P's intention to use that car.

Startline queried whether the car had been repaired yet and, once they were advised it hadn't, they failed to respond to the investigator's view. Miss P accepted the investigator's view but thought Startline should cover the additional insurance premium her daughter had to pay. And she confirmed she was only a named driver on her daughter's insurance so as to reduce the insurance premiums, and not because she ever intended to drive the car.

Given this, 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. Miss P 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 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 Miss P to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss P 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.

In this instance, it's not disputed there was a problem with the cooling system, nor is it disputed that Miss P had problems with this from shortly after being supplied with the car.

The car has been inspected by an independent engineer, and the additional tests this engineer requested were carried out. The key parts of these reports have been referred to above and, based on these, I'm also satisfied there was a fault with the cooling system.

The independent engineer's report of 24 May 2023 also concluded that *"any necessary repair costs, should be borne by the sales agent, on the grounds of durability as the vehicle has covered less than 4,000 miles since the date of sale."* The engineer has confirmed their duty is to the courts, not to the person who instructed and/or paid for the report. As such, I'm satisfied this report is reasonable to rely upon. And, based on these comments, I'm also satisfied the car wasn't of a satisfactory quality at the point of supply, given its lack of reasonable durability. So, Startline should do something to put things right.

Putting things right

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.

The CRA is clear that, if the single chance at repair fails, as was the case here, then Miss P has the right of rejection. However, this doesn't mean that Miss P is required to reject the car, and she can agree an alternative remedy i.e., further repairs to the car.

The single chance of repair has already been taken by the dealership in April 2023, and, as can be seen from the independent reports referred to above, this failed. While Miss P has agreed for the car to be repaired, she's asked this is not done by the dealership, as she's lost confidence in them. I don't think this is unreasonable. However, I do think Startline are being unreasonable in the circumstances by insisting the dealership has the right to repair – they've already had this option and failed to repair the car. So, I won't be directing that the car needs to go back to the dealership for a second chance at repair.

Miss P has said she stopped using the car in April 2023, after the dealership's repair attempt failed. Given the car has a cooling system issue, and overheating could result in both an inconvenient breakdown and potentially severe damage to the engine, I don't think it's unreasonable she did this.

So, the car has been off the road and undrivable since 12 April 2023, during which time Miss P hasn't been supplied with a courtesy car. As such, she's been paying for goods she wasn't able to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Startline failed to keep Miss P mobile; I'm satisfied they should refund the payments she made since April 2023.

Miss P has asked for her daughter's increased insurance premiums to be refunded, as these were incurred as a direct result of the increased mileage caused by her driving the car. I consider these to be 'alternate transport costs' – something Miss P (indirectly) incurred as a result of the car supplied by Startline being off the road. The refund of the payments she made to Startline is designed to offset any alternate transport costs, which in this case would include the £270 additional insurance premium.

So, if I were to direct Startline to refund the £270, on top of the payment refund, Miss P would be in a double recovery situation – she'd be receiving a payment refund to cover her

alternate transport costs AND be receiving a refund of these costs. Which I don't consider to be fair. As such, I won't be directing Startline to refund the insurance costs.

The evidence shows that three diagnostic reports were completed in February and April 2023. However, it's not clear if Miss P was required to pay for these. As these reports were only obtained because the car wasn't of a satisfactory quality when supplied, if Miss P had to pay for these, I think it's only fair that Startline reimburse these costs.

Finally, it's clear that Miss P has been inconvenienced by what has happened, and by the car breaking down on multiple occasions. So, I think Startline should compensate her for this. The investigator had recommended Startline pay her £200, 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, Startline should:

- pay Miss P £537.42 (the cost of the repairs to the car, less the cost of the antifreeze), to allow her to arrange for the car to be repaired;
- remove any adverse entries relating to this agreement from Miss P's credit file;
- refund any payments Miss P paid from 12 April 2023 to the date the repair costs are paid;
- upon receipt of proof that Miss P paid for any diagnostic reports in February and April 2023, reimburse these payments to her;
- apply 8% simple yearly interest on the refund/reimbursements, calculated from the date Miss P made the payments to the date of the refund[†]; and
- pay Miss P an additional £200 to compensate her 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 Miss P a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss P'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 Miss P to accept or reject my decision before 20 December 2023.

Andrew Burford
Ombudsman