

The complaint

Miss O complains about the satisfactory quality of a car Startline Motor Finance Limited ("Startline") supplied her under an agreement.

What happened

In April 2023, Miss O acquired a used car using a hire purchase agreement with Startline. The car was over seven years old and Startline said the invoice for the car stated its mileage was 82,816. The cash price of the car was £5,508. The agreement was for 49 months and Miss O was to pay regular monthly amounts of £162.75 towards the agreement, followed by a final repayment of £172.75.

Upon being supplied with the car, Miss O noticed a fault light appear on the car's dashboard. Miss O said the initial fault was to do with the tyre pressure monitoring system ("TPMS"). She said later on, further faults appeared.

Miss O was able to evidence problems which showed the engine management light ("EML") appear on the car dashboard, as well as problems with the fuel system and the TPMS. A diagnostic report was completed in June 2023, at a cost of £96 to Miss O. The report said the car's mileage at the time was 83,640. It also said:

"Investigated EML present, Carried out global scan found faults relating to fuel system too lean and throttle body. Carried out road test monitoring live data found in fuel system suspicious, Carried out testing found Fuel tank vent valve stuck wide open, Mechanically failed new required. Faults relating to throttle body removed and cleaned and fault with this now seems ok, customer to monitor. TPMS fault is related to both Rear TPMS sensors no response suspect battery has ended new required and initialisation."

Miss O complained to Startline and they responded to her in July 2023. Startline upheld Miss O's complaint and said that they understood that the car was being repaired by the supplying dealership and the costs for the repair were being covered under warranty.

Startline have provided a job sheet / proforma invoice for the repairs which showed works were carried out in June 2023. The job sheet also said that the invoice is being paid by the warranty company and the dealer. The mileage recorded on this job sheet was 83,640.

Miss O later complained to our service and said that the same fault was appearing that she believed had been repaired. Startline told our service that they would require further evidence of failed repairs, such as evidence supplied from a VAT registered garage.

Miss O explained to our service the stress and anxiety she suffered when driving the car due to the issues that occurred. She went on to explain the impact it had on her arranging visits with her children, among other things. Miss O also supplied our service with a photo which she believed showed that the issue with the TPMS still persisted but wasn't able to evidence any further faults as she said they were intermittent.

Our investigator upheld the complaint. In summary he said that while it wasn't in dispute, he agreed that the car was supplied of unsatisfactory quality. He went on to explain that he hadn't seen enough evidence to see that the car was still faulty after repairs were completed, so he didn't think Miss O had the right to reject the car. Our investigator went on to direct Startline to pay Miss O £250 for any distress and inconvenience that had been caused due to the faulty goods.

Miss O responded and submitted to our service two photos that she believed showed the faults were still present after the repair. One photo showed a message that appeared on the car's dashboard and it said "CODE 84", alongside several warning lights appearing on the dashboard, including the EML and TPMS. The second photo showed the car's current mileage of 85,491, alongside the EML illuminated.

Our investigator conducted a further view in which he upheld the complaint and was satisfied that the car was still faulty following repairs. And so, he thought it would be fair for Miss O to be able to reject the car, among other things.

Startline responded and asked for Miss O to supply evidence provided by a third-party garage. Our investigator didn't feel Miss O needed to, as her complaint was originally upheld by Startline for faults appearing with the car, and specifically due to the EML appearing on the dashboard. The investigator believed Miss O has showed that the light has appeared again at 85,491 miles – so within a reasonable number of miles since when the car was repaired.

Startline didn't believe the two photos recently sent to our service by Miss O was enough evidence to show that the repair failed and the issue was still underlying.

As Startline didn't agree, the complaint was passed to an ombudsman to decide.

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'm upholding this complaint and I'll explain why below.

Miss O complains about a car, supplied to her under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Miss O's complaint about Startline.

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. So, it's important to note here that the car Miss O acquired was used and cost around £5,500. So, I don't think a reasonable person would expect it to be in the same condition as a new one, but still expect the car to be in good condition, free from anything other than very minor issues and would expect trouble free motoring for some time.

What I need to decide in this case is whether the car was of satisfactory quality or not. The first thing to consider is whether the car developed a fault.

I don't think it is in dispute the car developed a fault. I say this because, Startline upheld Miss O's complaint due to faults with the car and understood that the faults were being repaired under warranty. One of those faults was due to the EML appearing on the dashboard. Startline also provided a copy of the job sheet for the repairs. Having reviewed it, I'm satisfied that there was a fault with the car, specifically to the TPMS sensors and to a code to the car which needed to be cleared, as well as regarding a fault with the "Fuel Evap Valve", where the fault also needed to be cleared once repaired.

According to the job sheet for the repairs, the car was repaired in June 2023 – around two months after the point of supply. The car's mileage at the time was 83,640, around 825 miles more since the point of sale. Miss O has provided a photo of the car dashboard which shows the EML, alongside the mileage reading of 85,491. Miss O says this photo was taken after the initial repair and it indicates the fault is still present with the car.

Startline doesn't believe the evidence supplied by Miss O is enough to show that the repair failed and the issue is still underlying. However, I disagree. The photo's supplied clearly show the EML illuminated on the dashboard. The mileage shown in one of the photos is less than 2,000 miles since when it was repaired. I consider this to be within a reasonable number of miles since the repair was carried out. And so, considering Startline was aware that one of the original faults was due to the EML and that this was attempted to be repaired, I think it is likely that the initial repair in June 2023 failed, or the car had an underlying fault that was never put right.

However, I'm mindful there is also the possibility of a second fault, unrelated to the original repairs. 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 conform 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.

Furthermore, the car has recently had a MOT test completed on it. It initially failed the test as the parking brake lever needed adjusting. Once that was adjusted, the car passed the MOT later in the day. On both the failed and later test that passed, there was an advisory for "TPMS light displayed on dash". Startline believe the car passing its MOT further supports it being in satisfactory condition and that it is Miss O's responsibility to maintain the general upkeep of the car.

However, I don't agree with Startline's comments here. Miss O early on when she acquired the car informed them of an issue with the TPMS. And I think this further corroborates an issue with the TPMS still persists.

Considering everything here, I'm satisfied a reasonable person would not consider the car to have been of satisfactory quality when it was supplied to Miss O. So, I've gone on to consider the remedies available to Miss O if a car is found to be of unsatisfactory quality under the CRA.

One of Miss O's options would be a repair. But Startline have already had the opportunity to repair the car and as I've already said, I think it failed or the car had an underlying fault that was never put right.

Another option would be a replacement for the car. However, in this instance, I don't think this remedy would be fair to Startline as I don't think it would be reasonable and practical for them to be able to source a like for like replacement.

This means the available option for Miss O in this instance is rejection, which I understand she would also prefer. I'm satisfied Miss O has the right to reject the car, given the car was of unsatisfactory quality. And I think this is fair because Startline had already had the chance to repair the car and I don't think it is practical for them to find a replacement.

Miss O initially paid for a diagnostic report to be completed on the car before it was initially repaired. As this was to diagnose a fault with the car which was present or developing at the point of supply, I think it is fair that Startline reimburse Miss O the cost she's incurred in paying this.

Miss O has also renewed the MOT for the car in early February 2024. I accept that it is Miss O's obligation under the agreement to arrange for an MOT certificate to be obtained. But, as I think Miss O should be able to reject the car and will subsequently not have the benefit of the MOT certificate for the year it is valid, I think it is fair for this cost to be reimbursed.

I'm also mindful of the inconvenience to Miss O due to the fault with the car, and the impact she says this has had on her. With that in mind, I think Startline should pay Miss O £250 for the inconvenience caused to her.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct Startline Motor Finance Limited to put things right by doing the following:

- Cancel the agreement with nothing further to pay.
- Collect the car at no cost to Miss O at a time and date suitable for her.
- If evidenced, reimburse Miss O £96 for the cost she's incurred in getting a diagnostic report in June 2023. * **
- If evidenced, reimburse Miss O the cost she's incurred in getting a MOT certificate for the car in February 2024. * **
- Pay Miss O £250 to reflect the inconvenience caused.
- Remove any adverse information from Miss O's credit file in relation to this agreement, if any.

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Startline considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Miss O how much it's taken off. It should also give Miss O a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue and Customs if appropriate.

** Upon production to Startline of a valid receipt of payment made.

If Startline has already given compensation in relation to this complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 2 April 2024.

Ronesh Amin

Ombudsman