

## The complaint

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

## What happened

In November 2022, Mr P was supplied with a used car through a hire purchase agreement with SMF. The agreement was for £9,890 over 60 months; with 59 monthly payments of £247.87 and a final payment of £257.87. At the time of supply, the car was almost seven years old, and had done 72,611 miles (according to the MOT record for 5 November 2022).

In May 2023 the car broke down and needed to be recovered at the cost of £50. Mr P had the car examined by a local garage, who replaced the spark plug at a cost of £70.85. They also said:

*"Vehicle came in with low power and engine misfire.  
Checked fault codes and showed misfire on cylinders 1&4.  
Checked spark plugs and found all spark plugs covered in oil and carbon deposits.  
Suspect engine to be burning oil.  
Carried out compression check on engine and found cylinder 4 has little or no compression.  
Engine will need a strip down to accurately diagnose, suspect worn piston rings."*

As the changing of the spark plugs didn't fix the issue, Mr P was quoted over £9,000 for a replacement engine.

Mr P complained to SMF, and he arranged for the car to be inspected by an independent engineer at the cost of £288. The inspection took place on 22 June 2023, at which point the car had done 80,772 miles – 8,161 miles since it was supplied to Mr P. The engineer confirmed there was an abnormal misfire, with low compression on cylinder four. The engineer also said, *"the vehicle requires the cylinder head removed in order to ascertain the root cause of the faults and what remedial action is required ... low compression often suggests a valve seating issue, piston or ring defect, or head gasket breaches."*

In conclusion, the engineer said that *"on the balance of probability the faults with the vehicle would not have been present or developing at the point of sale."* Based on this report, SMF didn't uphold Mr P's complaint, so he brought it to us for investigation.

Our investigator said the car had a full service history, which was in line with the manufacturer's guidelines. As such, parts such as valves, pistons, and rings should be expected to last at least 100,000 miles. Given that the engine failed at 80,000 miles, the investigator thought it wasn't sufficiently durable at the point of supply, which made it not of a satisfactory quality.

As such, the investigator recommended that Mr P should be allowed to reject the car and receive a refund of the repair/diagnostic costs he'd paid; receive reimbursement of the repair

and diagnostic costs he'd incurred; and receive an additional £200 compensation for the distress and inconvenience he'd suffered.

SMF didn't agree with this opinion. They said the spark plugs were a serviceable item, so it wasn't their responsibility to cover these costs. They also said the car broke down after more than six months, and the independent engineer said the faults weren't present when the car was supplied. So, they thought the engine had failed due to normal in-service wear and tear.

Finally, SMF said they'd already paid Mr P £100 as a goodwill gesture towards the costs he'd incurred.

I issued a provisional decision on 4 June 2024, where I explained my intention to uphold the complaint. In my decision I said:

*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 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 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, SMF 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 SMF can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr P to show it was present when the car was supplied.*

*So, if I thought the car was faulty when Mr 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 SMF to put this right.*

*In this instance, it's not disputed there is a fault with the car, which is resulting in misfiring and low compression. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what is in dispute – whether this fault made the car of an unsatisfactory quality when supplied.*

*I've seen a copy of both the May 2023 report by the local garage and the independent engineer's report dated 22 June 2023. Both of these state the underlying issue is unknown and, while they have speculated on what this might be, the engine will require stripping down to identify the actual cause. Given that the independent engineer can only identify the symptoms, not the cause, of the issue; I don't think it would be reasonable for me to solely rely on their statement the (unknown) cause wasn't present when the car was supplied.*

*Given this, I've considered the durability of the car alongside the full service history, which shows it was maintained to the manufacturer's minimum requirements. I've also looked at the information provided by the manufacturer about the expected lifespan of the parts – while the actual cause is unknown, the manufacturer indicated that the suspected faulty parts are expected to last between 100,000 and 150,000 miles on a well maintained car.*

*As such, based on what I've seen, I'm satisfied it's more likely than not the engine failed as some of the parts weren't sufficiently durable. This makes the car of an unsatisfactory quality, and therefore SMF should do something to put things right.*

*The investigator has recommended Mr P be allowed to reject the car as the cost of a replacement engine makes it uneconomical to repair. While the cost of replacing the engine would likely make this the case, as the actual root cause hasn't been identified, it's not possible to say that a replacement engine is actually required.*

*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, in this instance, neither the supplying dealership nor SMF have been given the opportunity to diagnose the cause of the failure or attempt to fix it. I think it would be fair to allow them this opportunity, and Mr P should only be allowed to reject the car if (a) an actual diagnosis of the cause of the fault results in the car not being economical to repair, or (b) the single chance to repair the car subsequently fails.*

*The car has been off the road and undrivable since it broke down on 15 May 2023. This is also evidenced by the MOT and road tax having expired on the car, and not being renewed. Given this, Mr P has been paying for goods he's not been able to use since this date. 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 SMF failed to keep Mr P mobile; I'm satisfied they should refund the payments he's made from 15 May 2023 until the car has been repaired / rejection allowed due to uneconomical repair.*

*Mr P has provided evidence of the costs he's incurred in having the car recovered following the breakdown, replacing the spark plugs, and having the car independently inspected. SMF have specifically commented that they don't think they should be responsible for the replacement spark plugs, as this is a normal maintenance item. While I agree this is the case, in this instance the spark plugs weren't replaced as part of normal maintenance but were replaced in an attempt to fix the fault with the car. And, as the fault made the car of an unsatisfactory quality, I'm satisfied this cost should be covered by SMF. So, I think it's only fair that SMF reimburse Mr P for all these costs.*

*Finally, it's clear that Mr P has been inconvenienced by what's happened. So, I think SMF should compensate him for this. The investigator had recommended SMF pay him £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 provisional decision. However, I also need to take into consideration that SMF have already paid Mr P £100. As such, and for clarity, I'm asking SMF to pay Mr P £200 in total, not an additional £200.*

*Therefore, it's my intention to ask SMF to carry out the recommendations of the independent engineer, by arranging for the cylinder head to be removed in order to ascertain the root cause of the faults and what remedial action is required.*

*If this results in the car being deemed economical to repair, then SMF should:*

- *arrange to repair the car at no cost to Mr P;*
- *remove any adverse entries relating to this agreement from Mr P's credit file;*
- *refund the payments Mr P has made from 15 May 2023 to the date the repairs are completed;*

- upon receipt of proof of payment, reimburse Mr P for the £50 recovery cost, the £70.85 cost of replacing the spark plugs, and the £288 independent engineer's costs;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr P made the payments to the date of the refund<sup>†</sup>; and
- pay Mr P a total of £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

However, if this results in the car being deemed uneconomical to repair, then SMF should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr P;
- remove any adverse entries relating to this agreement from Mr P's credit file;
- refund the payments Mr P has made from 15 May 2023 to the date the agreement is ended;
- upon receipt of proof of payment, reimburse Mr P for the £50 recovery cost, the £70.85 cost of replacing the spark plugs, and the £288 independent engineer's costs;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr P made the payments to the date of the refund<sup>†</sup>; and
- pay Mr P a total of £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires SMF to take off tax from this interest, SMF must give Mr P a certificate showing how much tax they've taken off if he asks for one.

## Responses

SMF didn't respond to my provisional decision.

Mr P said that the car had been stationary for 12-months, resulting in the battery going completely flat. He also said that the brake fluid, power steering fluid, and oil, might be compromised, and *"there is visible rust on the brake pads and disks."* As such, he thought it was only fair that these parts were also replaced as part of any repairs.

## 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.

As SMF haven't said anything to the contrary, I'm taking their comments to mean they don't object to my provisional decision.

With regards to Mr P's comments, I've seen no evidence that any of the fluids are compromised, nor that the rust on the brakes is anything more than normal minor surface rust that will disappear with normal usage. As such, I won't be asking SMF to undertake any additional repairs relating to these items. However, if the battery has gone flat due to non-usage and cannot be recharged, as this non-usage was due to the car being of an unsatisfactory quality, then I think it's reasonable the battery is replaced as part of any repairs.

Therefore, with the exception of the battery, the comments I've received don't change my mind and given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision. So, SMF now need to do something to put things right.

## Putting things right

SMF should carry out the recommendations of the independent engineer, by arranging for the cylinder head to be removed in order to ascertain the root cause of the faults and what remedial action is required.

If this results in the car being deemed economical to repair, then SMF should:

- arrange to repair the car at no cost to Mr P;
- remove any adverse entries relating to this agreement from Mr P's credit file;
- refund the payments Mr P has made from 15 May 2023 to the date the repairs are completed;
- upon receipt of proof of payment, reimburse Mr P for the £50 recovery cost, the £70.85 cost of replacing the spark plugs, and the £288 independent engineer's costs;
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- pay Mr P a total of £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

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## My final decision

For the reasons explained, I uphold Mr 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 Mr P to accept or reject my decision before 24 July 2024.

Andrew Burford  
**Ombudsman**