

The complaint

Mr B is unhappy with a car that was supplied to him under a hire purchase agreement with Startline Motor Finance Limited.

What happened

Mr B took out a hire purchase agreement with Startline, which started on 30 August 2022. This was for a used car with a cash price of £19,600. Mr B agreed to pay a deposit of £8,189, with the balance repayable over five years using the finance agreement. Mr B said he also bought an extended warranty from the dealer.

Mr B told us the car developed an engine fault in July 2023. He said he took it to two garages that had been recommended by the warranty company, before eventually having to take it to one of the manufacturer's garages to diagnose what was causing the problem.

The manufacturer's garage reported:

"The vehicle was manipulated between the workshop visits on 02.09.2021 (35,949 km) and 12.09.2023 (63,775 km)."

"A manipulation fault code appeared for the first time at mileage 63,098 km on 30.07.2023."

Mr B said he discovered his warranty and insurance were no longer valid because of this modification, known as re-mapping. He complained to Startline that he wanted to reject the car. But Startline said the modification fault had first come to light on 30 July 2023, whilst the car was in Mr B's possession. They said they'd be unable to help unless he provided evidence showing the fault was there when the car was supplied to him.

Unhappy with this response, Mr B referred his complaint to our service. After looking into what had happened, our investigator said as there was no clear evidence showing when the car had been re-mapped, he couldn't say Startline had supplied it in that condition. So, he didn't think it would be fair to ask them to do anything different to resolve the complaint.

Mr B disagreed. He said he'd been advised he shouldn't have to prove the car was modified before he got it – he thought the dealer should prove it wasn't. Mr B stressed this isn't something he'd do to the car, and that he was an innocent victim of fraud.

Mr B said he'd spoken to a re-mapping specialist, who'd advised him it isn't possible to find out the exact date it was done. Mr B asked for an ombudsman to review all the information he'd provided.

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 Mr B's agreement with Startline was for hire purchase, I can consider his complaint about it. Under a hire purchase agreement Startline is the supplier of the car, so they're responsible for a complaint about its quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says every contract to supply goods is to be treated as if it includes a promise that the quality of the goods will be satisfactory.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account all the relevant circumstances. I bear in mind this was a used car, which was just over four years old when it was supplied to Mr B.

It isn't disputed that there's a fault with the car. Mr B told us it displayed a warning about a drive-chain problem with the engine, and that he should contact a garage as soon as possible. I've seen a copy of the report from the manufacturer's garage, which diagnosed this as being due to the car having been modified. I wouldn't consider it to be of satisfactory quality once that came to light.

But for me to direct Startline to do something to put this problem right for Mr B, I'd have to be satisfied that the modification was present when they supplied the car to him. Mr B said he wouldn't do something like that to the car. But Startline pointed out that the modification fault first came to light on 30 July 2023, whilst it was in his possession.

The report from the manufacturer's garage isn't helpful here – it said the modification could've been carried out before or after Mr B got the car. I've seen no supporting evidence showing it was done by the time the car was supplied to him.

Due to the lack of supporting evidence about this, I'm not satisfied that the modification was carried out before the car was supplied to Mr B. And for that reason, I'm not persuaded that Startline are liable for the engine problems it's caused.

Mr B feels strongly that he shouldn't have to prove the car had already been modified before he got it. He's told us he can't prove the exact date it happened because that evidence isn't available. I can appreciate how frustrating this situation must be for him.

But the Consumer Rights Act 2015 is clear about the approach I should take here. It explains that if the car was found not to be of satisfactory quality within six months of the delivery date, I should start from the assumption that it wasn't of satisfactory quality on the day it was delivered. So, if this issue had come to light within the first six months, it would be for Startline to show the car hadn't been modified when they supplied it.

But in this case the car had been in Mr B's possession for 11 months by the time the modification fault came to light. In these circumstances, it wouldn't be fair for me to accept it was re-mapped before Mr B got it without seeing some supporting evidence of that. There's no requirement for Startline to show it hadn't been done when they supplied the car.

My final decision

I realise Mr B will be disappointed with this decision. But for the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 November 2024.

Corinne Brown

Ombudsman