

## Complaint

Miss W has complained about the quality of a car that Startline Motor Finance Limited ("Startline") supplied to her through a hire-purchase agreement.

## Background

In August 2023, Startline provided Miss W with finance for a used car. The car was just over seven years old and had completed 85,447 miles. The cash price of the vehicle was £7,348.00. Miss W paid a deposit of £740 and applied for finance to cover the remaining £6,608.00 she needed to complete her purchase. Startline accepted Miss W's application and entered into a 60-month hire-purchase agreement with her.

The loan had an APR of 26.8%, interest, fees and total charges of £4,803.20 (made up of interest of £4,793.20 and a credit facility fee of £10) and the total amount to be repaid of £11,411.20 (not including Miss W's deposit) was due to be repaid in 59 monthly instalments of £190.02 followed by a final payment of £200.20.

Miss W says she began having issues with the car in August 2023 itself. A tyre sensor light illuminated shortly after purchase. I can see that Miss W notified the supplying dealer of this in August 2023. It sent her an email agreeing to cover the cost of repairing the sensor and Miss W arranged an appointment, with a manufacturer garage, for this to take place.

However, Miss W subsequently discovered a number of issues including a coolant leak, issues selecting higher gears and the clutch sticking. The manufacturer garage also confirmed that these matters needed attention as well as the tyre pressure sensor. Miss W was unhappy at this level of work being required on the vehicle so soon after the sale and contacted both Startline as well as the supplying dealer to exercise her short-term right to reject the vehicle.

The supplying dealer arranged for its own diagnostic to be carried out. And this diagnostic didn't show any faults with the car. As a result of this, Startline did not accept Miss W's rejection of the vehicle and also rejected her complaint. Miss W was dissatisfied at Startline's response and referred her complaint to our service.

In the period between Miss W's complaint and it being allocated for review, Startline arranged its own inspection. This engineer who carried this inspection didn't identify any faults on the vehicle. Miss W's complaint was then reviewed by one of our investigators. He thought that the available evidence showed that it was more likely than not that Startline had supplied Miss W with a vehicle that was not of satisfactory quality and it therefore should have accepted her rejection. So he upheld Miss W's complaint.

Startline disagreed with our investigator's view. It said that it was its view that the vehicle was fault free based on its inspection report. As Startline disagreed with the investigator's assessment, the complaint was passed to an ombudsman for a final decision and the complaint has been passed to me to decide.

## **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied that what I need to decide in this case is whether the car supplied to Miss W was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Startline to do put things right.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Startline purchased the vehicle from the dealership Miss W visited. Miss W then hired the vehicle from Startline and paid a monthly amount to it in return. Startline remained the legal owner of the vehicle under the agreement until Miss W's loan was repaid. This arrangement resulted in Startline being the supplier of Miss W's vehicle and so it is also responsible for answering a complaint about its quality.

### *The Consumer Rights Act 2015 ("CRA")*

The CRA covers hire-purchase agreements – such as Miss W's agreement with Startline. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

### *Is there a fault with the vehicle?*

I've read and considered everything provided. I accept and acknowledge that a number of submissions have been made and a number of conflicting reports have been provided. It's fair to say that both parties have significantly differing views on whether there is a fault with the vehicle that Startline supplied to Miss W and they've provided more than one expert report supporting their respective positions.

On the one hand, Miss W has provided a copy of a diagnostic report from a manufacturer garage and also a second diagnostic report from a gearbox specialist. The report from the manufacturer garage lists a number of faults with the vehicle, which include the need for the clutch and flywheel to be replaced. And the report from the gearbox specialist suggests that there is a fault with the gearbox and that the clutch may need repair too.

Startline has provided a copy of a report from an independent engineer and it has also provided a copy of a diagnostic report which the supplying dealer arranged to be carried out at a separate independent garage. Both of these reports state that no faults could be found with the vehicle.

I've therefore considered this information and reached my own conclusion on whether there is a fault present. In doing so, I want to reassure the parties that I've considered the content of all the reports provided.

I realise that Miss W has referred to a number of faults with the vehicle. I'd like to reassure Miss W that while I've not referred to each individual fault she says is present on the car, it's not because I've failed to take her concerns on board. It's simply that I've focused on what I'm satisfied I need to decide in order to reach what I think is the right outcome here. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

I now turn to my thoughts on the reports provided and for reasons that will become clear further on, I've focused my attention on the car's clutch and flywheel. The manufacturer garage's report confirms that the clutch and the flywheel on the vehicle have worn to the extent that they need replacing. In my view, it is quite understandable that Miss W has referred this matter to Startline and the supplying dealer before agreeing to any repair.

I appreciate that both the diagnostic check that the supplying dealer arranged as well as the independent report which Startline commissioned didn't find any faults with the vehicle. But in the first instance, while the independent engineer's report states that he was not able to find the faults Miss W reported, I'm mindful that the independent engineer wasn't able to complete a road test on the vehicle.

Miss W said that the clutch was sticking when she attempted to select fifth and sixth gear. So I'm struggling to see how the engineer was able to correctly replicate the circumstances where Miss W was having difficulty with the vehicle – i.e. driving the car at a speed where it was necessary to correctly use fifth and sixth gear - when the report states that he was only able to drive it in a yard.

It's possible that this was a large yard and that there was the space for the speed required to correctly engage fifth and sixth gear could be reached. But as a general starting point it's not unreasonable to question how the faults Miss W reported could have been properly investigated when the car did not leave the yard and enter a road.

Equally, there doesn't even appear to be an explanation, or obvious reasons from the rest of the content of the report – for example adverse or inclement weather – as to why the car wasn't driven on a road either. I've also noted that in response to our investigator's assessment, Startline told him that it would contact the independent engineer to find out how and why he was able to ascertain that there wasn't a fault with the car when it wasn't driven on the road. But despite having been given significant time to do so, Startline still hasn't explained (and certainly hasn't provided any evidence to support) how Miss W's concerns could properly have been investigated in these circumstances.

Furthermore, I don't think that either the technician who carried out the diagnostic check (on behalf of the supplying dealer) or the independent engineer examined the clutch or flywheel for signs of wear. As far as I can see, both of them simply considered whether there were any fault codes reported (which a worn clutch and flywheel wouldn't necessarily trigger until and until they had completely failed), or components that had suffered a complete failure.

I don't think that it has to be the case that the clutch and flywheel needed to have completely and catastrophically failed before it can reasonably be concluded that these parts are defective. I accept that it is not uncommon for a clutch or flywheel to require replacing during the lifetime of a vehicle. So a clutch or flywheel showing some signs of wear and tear would not necessarily demonstrate they are actually defective, like many components in a car, as they are components that will gradually deteriorate and wear over time and through usage.

But in my view, the clutch and/or flywheel having already worn right to the point that replacing the parts is required, is in itself evidence of a defect. As the manufacturer garage is the only party which has confirmed that it inspected these specific components, I'm inclined

to place more weight on this report than the others. And in these circumstances, I'm satisfied that it is more likely than not that there is a fault on the car and that this needs attention.

As this is the case, I'll now proceed to decide whether the fault which I'm satisfied is now present on the vehicle, means that the car wasn't of satisfactory quality at the point Startline supplied it to Miss W.

*Was the vehicle that Miss W was supplied with of satisfactory quality?*

Miss W acquired a car that was used – it was just over seven years old when it was sold and had completed around 85,000 miles. I accept that there would be different expectations regarding its quality when compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors.

Here, the vehicle supplied needs repair work to, at least, the clutch and the flywheel. As I've said, the vehicle had completed over 85,000 miles by the time it was supplied and I do appreciate that as it wasn't new there'd be an expectation that it would have had some wear and tear on it.

I think that a reasonable person would expect Miss W to have had far more use of a vehicle costing over £7,000.00 – notwithstanding the mileage completed prior to the purchase - before a clutch and flywheel would need replacing. Given just how soon after Miss W's purchase – a mere matters of days - that the clutch and the flywheel need replacing, I'm satisfied that the car was supplied to Miss W in a defective state - with an excessively worn clutch and flywheel.

For the sake of completeness, I would also point out that I've not seen any evidence, nor can I see that either Startline or the supplying dealer have argued, that the vehicle was supplied at a discounted price, because the fact that such work needed to be carried out in the near future was brought to Miss W's attention either. Taking all of this into account, I think that the fact a couple of fundamental components – the clutch and flywheel – need replacing immediately after Miss W acquired the vehicle, means that I don't think the car was of satisfactory quality when Startline supplied it to Miss W.

*What Startline needs to do to put things right for Miss W*

I've gone on to think about what Startline needs to do to put things right as a result of supplying her with a vehicle that was not of satisfactory quality.

Miss W has told us that she wishes to reject the car and it's clear that she notified Startline that she wished to do so within the first 30 days of it being supplied to her. Bearing in mind the provisions of the CRA – specifically the short term right to reject – as Miss W sought to reject the car within the first 30 days of the hire purchase agreement, I find that Startline ought to have accepted her rejection. I understand that Startline may already have taken possession of the vehicle but if it hasn't, I'm satisfied that it would be a fair and reasonable resolution for Miss W to reject the vehicle and for Startline to collect it from wherever it currently is.

As Miss W will have rejected the vehicle, I'm satisfied that Startline should end its agreement with her and ensure that she has nothing further to pay on it. This will seek to place Miss W in the position she would be in had she not entered into the hire-purchase agreement in the first place, so I'm satisfied that Startline should refund Miss W the £740 deposit she paid, as part of this agreement, with interest at 8% per year simple.

It appears to be the case that Miss W has had very little use of the vehicle, if any, since Startline supplied it to her. It's my understanding that may have made some payments to the agreement, despite this and having made her own arrangements for an alternative vehicle. As this is the case, I'm satisfied that Startline should refund any and all of the payments that Miss W has made, plus interest at 8% a year simple.

Finally, I've seen that Miss W paid £20 for the report from the independent garage she visited. This is a cost which Miss W incurred because she was supplied with a faulty vehicle. So I'm satisfied that Startline should reimburse her for this, plus interest at 8% a year simple. It's unclear whether Miss W paid the manufacturer garage for any of the reports that it provided. But if she's able to provide copies of invoices or receipts showing that she did, Startline should also ensure that she's reimbursed these costs in the same way.

I now turn to any distress and inconvenience Miss W may have experienced. It's clear that Miss W had to deal with the stress of arranging and getting to and from garages for checks to be carried out and reports to be provided. This is in circumstances where she cares for a disabled child and has a strong need for a car to make sure they get to their appointments.

I'm also mindful that penalty charges notices appear to have been incurred on the vehicle while it has been outside of Miss W's possession and in the custody of Startline or the supplying dealer. It is unclear to me how or why penalty notices have been issued on the car since the beginning of October 2024. Particularly as the car was supposed to simply be held pending the investigation of this complaint, rather than driven by an unauthorised party.

Nonetheless, as I'm upholding the complaint and the car has been with Startline or the supplying dealer since November 2023, I'm satisfied that these penalty charge notices are not Miss W's responsibility and that Startline should ensure that any and all of these charges, including any potential additional costs for late payment, are paid.

Bearing in mind the significant amount of distress and inconvenience that Miss W has experienced because of all of this, I think that Startline should pay Miss W £500 for the distress and inconvenience experienced as a result of being supplied with a car that was not of satisfactory quality.

### **Fair compensation – what Startline needs to do to put things right for Miss W**

Overall and having considered everything, I think it is fair and reasonable for Startline to put things right for Miss W by:

- ending her hire-purchase agreement with nothing further to pay and also removing any and all adverse information it may have recorded against her with credit reference agencies;
- refunding her deposit of £740;
- refunding any and all of the payments she made under the agreement;
- reimbursing Miss W the £20 she paid to the independent garage for the report and diagnostic check it provided. If Miss W is able to evidence having paid for any other checks or reports on the car, Startline should also reimburse these costs to her;
- adding interest at 8% per year simple on any refunded or reimbursed payments from the date they were made by Miss W to the date the refund was made†;

- ensuring that any and all penalty charge notices incurred on the vehicle from November 2023 onwards and issued to Miss W, including any potential additional costs for late payment, are paid;
- paying her £500 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires Startline to take off tax from this interest. Startline must give Miss W a certificate showing how much tax it has taken off if she asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Miss W's complaint. Startline Motor Finance Limited should put things right for Miss W in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 5 December 2024.

Jeshen Narayanan  
**Ombudsman**