

The complaint

Mrs P complains a car she acquired under a hire purchase agreement with STARTLINE MOTOR FINANCE LIMITED ("Startline") had various defects and was not worth the agreed selling price.

What happened

I issued a provisional decision on this case on 20 March 2024, in which I set out the background to Mrs P's complaint along with my provisional findings on it. A copy of my provisional decision is appended to, and forms a part of, this final decision.

In my provisional decision I said I was minded that Mrs P's complaint should be upheld in part. I considered the car she had been supplied with by Startline under the hire purchase agreement had not been satisfactory quality due to a variety of issues, some of which had not been repaired by the time she had sold the car in December 2023. I thought Mrs P had been put to some inconvenience as a result of the car being unsatisfactory quality, and that she should receive £150 compensation to reflect this.

Mrs P had also been seeking the cost of repairing some remaining bodywork and interior trim issues. She had produced an estimate for these repairs but hadn't had them done before she sold the car. Mrs P had been disappointed with the price she achieved for the car.

I compared photos and job cards Mrs P had provided at different points during her complaint, with the estimate from the garage she had approached for repairs. Having done so, I thought there was sufficient evidence that repairs to the off side front door and near side rear door would have been necessary to bring the vehicle up to a satisfactory standard. The estimate for these came to £662.40. Mrs P hadn't actually incurred this expense, but I reasoned that the unsatisfactory condition of the car would have been likely to affect the price she was able to achieve for it. Looking at things in the round, and reminding myself of my duty to determine complaints by reference to what was, in my opinion, fair and reasonable, I concluded it would be fair if Mrs P was paid this amount also.

I asked both parties to let me have any further submissions they wanted me to consider, by 3 April 2024. Startline has not replied. Mrs P said she would agree to accept the provisional decision to draw a line under matters but wanted to point out that she had provided sufficient photographic evidence of other bodywork issues which I'd not said should be included as part of the refund, such as a chrome trim and the bumper. She supplied further photos to support this point.

As the deadline has expired, the case has now been returned to me to review.

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.

The only points which have been raised by either party to the complaint following my provisional decision have come from Mrs P. I've considered her further submissions carefully.

Mrs P has supplied a set of photos. Three of these are new to me – one is of damage to the car's windscreen (which was later replaced), another appears to be of surface damage to some leather material, and the last one is of a manufacturer's badge with what looks like some dirt on one of the letters, and a small mark on the paint off to one side. It's unclear from the photo if the badge is on the front or back of the vehicle.

I appreciate it is not always straightforward to take good pictures of alleged damage to a car. However, a difficulty I have had with some of Mrs P's photos is that it's not always been very clear what I'm looking at due to a lack of context to the photos, and this has limited their evidential value. This was something I mentioned in my provisional decision. The new photos (apart from the one of the windscreen) unfortunately share this problem. I also note that the repair estimate did not include any repairs to damaged leather, which makes it difficult to attribute a value to this.

Ultimately, I don't see a reason to depart from the conclusions I reached in my provisional decision. I think the redress outlined in that provisional decision remains fair and reasonable in the circumstances, based on the available evidence of damage to the car at the point it was supplied to Mrs P, cross-referenced against the repair estimate and taking into account the potential loss in value which would be attributable to this damage.

My final decision

For the reasons explained above, and in my appended provisional decision, I uphold Mrs P's complaint in part and direct STARTLINE MOTOR FINANCE LIMITED to take the following actions:

- Pay Mrs P £662.40 to reflect what it would have cost to repair the remaining defects with the car which dated from the point it was supplied to her.
- Pay Mrs P £150 compensation to reflect the inconvenience associated with arranging repairs for the non-bodywork defects back in 2022.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 3 May 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I arrived at a slightly different set of conclusions to our investigator, and wanted to give all parties to the complaint an opportunity to make further submissions before I make my decision final.

*I'll look at any more comments and evidence that I get by **3 April 2024**. But unless the information changes my mind, my final decision is likely to be along the following lines.*

The complaint

Mrs P complains a car she acquired under a hire purchase agreement with STARTLINE MOTOR FINANCE LIMITED ("Startline") had various defects and was not worth the agreed selling price.

What happened

The background to the complaint is well known to all parties involved so I will not go into all the details – but in summary:

Mrs P sourced a car from an online dealership in March 2022. The car was three years old and had covered about 24,500 miles. Mrs P didn't see the car physically but was shown a description and a few photos. A price of £23,980 was agreed, of which £21,980 was financed by Startline under a hire purchase agreement. The remainder of the price was paid via other means. There were separate charges for delivery and a paint protection product.

The car was delivered to Mrs P on 25 March 2023. She was unhappy with the condition it was delivered in, and says she noticed the following issues either on delivery or shortly after:

- *Cracks in the windscreen.*
- *Problems with some of the internal trim, specifically around the gear selector.*
- *Stone chips, dents and scuffs on the bodywork.*
- *A rattling parcel shelf.*
- *A broken handbrake.*
- *Noisy air conditioning/heating.*

A delivery note was signed by Mrs P and the dealer which recorded that she was unhappy with the state of the car and that the dealer had agreed to "all remedial work" extending to "all of the photos sent...via email. Windscreen interior trim scratches dents and stone chips."

Over the following weeks the dealer arranged for the windscreen to be replaced and agreed to provide replacement trim. It changed its mind about attending to the bodywork issues, telling Mrs P that these fell within what they considered acceptable for a used car, but they would send a "touch up pen" as a gesture of goodwill. Mrs P visited a main dealer for the car make, who fixed the handbrake, the parcel shelf and the air conditioning under the manufacturer's warranty. The main dealer's job cards also indicated that they replaced the trim around the gear selector.

Mrs P's concerns with the bodywork remained however, and she was not happy with how the dealer had handled things. She carried out some research and concluded that she was paying an inflated price for the vehicle, especially considering the condition it was in. She expressed her concerns to the dealer, but they were not willing to make any changes to the deal. Mrs P then complained about the dealer to a different alternative dispute resolution scheme, but they were unable to help. Mrs P also complained to Startline, who responded on 27 June 2022 to say that they didn't agree the valuation of the vehicle as part of the deal had been excessive.

It was at around this point that Mrs P approached the Financial Ombudsman Service, seeking to make a complaint against the dealer. There was some back and forth and it was identified that we could best address Mrs P's concerns as part of a complaint against Startline.

One of our investigators looked into the case. She arrived at the following conclusions:

- Startline, as the supplier of the car under the hire purchase agreement, was responsible for a complaint about the quality of the car. The Consumer Rights Act 2015 ("CRA") meant the car needed to be "satisfactory quality", taking into account any description, the price and all the other relevant circumstances. What is meant by quality under the CRA includes appearance and finish, and freedom from minor defects.*
- Most of the quality concerns with the car had been resolved, and it was only the issues with the bodywork which remained. A touch up pen had been ordered by the dealer to remedy these, and it seemed likely this would be sufficient to attend to the imperfections. There was no independent evidence to show that this would be insufficient, so she couldn't ask Startline to take further action.*
- The dealer had valued the car at between £19,490 and £21,470. Mrs P had produced a much lower value of £17,260 from a main dealer, but this appeared to have been the price it was willing to buy the car for, not sell it. While Mrs P believed the car had been overpriced, our investigator didn't think Startline should reduce the cost of it.*

Mrs P disagreed with our investigator. She considered the dealer had promised to carry out all the remedial work and then broken its promise. She'd paid a premium price based on the photos supplied by the dealer, but had not got a car which justified the premium. She said she didn't understand how the dealer expected her to resolve all the bodywork issues, such as dents, with a touch up pen.

Our investigator considered Mrs P's points and asked if she could provide some more information. Mrs P sent copies of the photos she'd received from the selling dealer; photos of the car as of 14 April 2023, and job cards from the main dealer who'd repaired the car. She said she'd never received the touch up pen and reiterated the selling dealer had promised to fix all the issues with the bodywork.

This led to our investigator changing her assessment, although she remained of the same view regarding the valuation of the car. She made the following key findings in a second assessment of June 2023:

- Mrs P had raised concerns over the bodywork very shortly after the car was supplied, and had provided evidence of the damage. A touch up pen had been promised but not supplied, and so the quality concerns had not been resolved.*
- Startline should arrange for the car to be repaired at no cost to Mrs P, within a*

reasonable timeframe, or put her in a position where she could resolve the issues herself.

There was then an exchange of correspondence between our investigator and Startline, who were communicating with the dealer in the background. Eventually, on 21 August 2023, Startline accepted our investigator's revised assessment, and suggested Mrs P get some quotes for "rectifying the scuffs".

Mrs P agreed to get a quote and there was then no further activity until mid-October 2023, when Startline contacted us to say it was still waiting for a quote from Mrs P. Our investigator contacted Mrs P, who produced an estimate from a garage dated 12 October 2023. This came to £1,869.52. The quote was forwarded to Startline, who responded on 9 November 2023 to say they thought the quote was excessive and covered more areas of the vehicle than Mrs P had photographed.

In the meantime, Mrs P had ordered a new car and it became urgent for her to dispose of the car which was the subject of the complaint. While further discussions were ongoing between the parties, Mrs P sold the car for £14,200.

Our investigator, having examined the estimate for repairs and compared it to photos of the car, concluded Startline should cover £748.20 of the estimated repair costs. This was to cover repairs to the off-side front door, the off-side front bumper corner, paint and materials, and an interior chrome styling trim.

Neither Mrs P nor Startline were happy with this outcome. Mrs P complained the investigator was making assumptions that she had included additional items over and above what she'd reported following delivery of the car. Startline said it still felt the amount it was being asked to pay was excessive. It said the CRA didn't cover cosmetic damage and that it felt the dealer's original offer of a touch up pen was reasonable.

As no agreement could be reached, the case has been passed to me to decide.

What I've provisionally 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.

The agreement Mrs P entered into with Startline, as well as being a regulated hire purchase agreement which the Financial Ombudsman Service can consider a complaint about, is a "contract to supply goods" under the CRA. The provisions of the CRA mean Startline, as the supplier of the car under the hire purchase agreement, is responsible for ensuring it was "satisfactory quality" when it was supplied to Mrs P.

As our investigator noted, satisfactory quality means the standard a reasonable person would consider satisfactory, taking into account any description of the goods, the price paid, and any other relevant circumstances. If the car was not satisfactory quality when it was supplied to Mrs P, she has certain rights under the CRA. Depending on the circumstances, these rights include the right to a repair or replacement, or to reject the vehicle and end the hire purchase agreement.

Mrs P agreed to acquire this car at a time when used car prices were very high following supply chain issues associated with the coronavirus pandemic. Nevertheless, it does appear that she agreed a price which was around 10% over the market value at the time, in March 2022, according to industry guides.

A bad bargain is, by itself, not a cause for action against the party which came out of the deal better off. However, the price paid is a relevant factor when determining whether goods are satisfactory quality – as it will lead to a reasonable person having a higher expectation of quality than if they had paid at or below market value.

There appears to be no dispute that there were a number of problems with the car on delivery which would have meant its quality was not satisfactory. These included the cracked windscreen, the broken handbrake and issues with the parcel shelf. Most of the problems Mrs P reported were fixed (although she was inconvenienced in the process – something I will return to later), but there has remained disagreement over issues with the bodywork and an interior trim.

Startline is not correct to say that cosmetic issues are not covered under the CRA. As our investigator said in her initial assessment, the measure of satisfactory quality in the CRA covers, among other things, “appearance and finish” and “freedom from minor defects”. However, the CRA states that where a person has examined goods, they are unable to claim that anything they ought to have seen during that examination makes the goods unsatisfactory. I believe Startline may be referring to the fact that, in many car sales, the buyer will have inspected and test-driven the car first and, therefore, cosmetic issues wouldn’t be something they could complain about. However, Mrs P didn’t physically inspect or test drive the car in this case. I can see she was sent a small number of photos, however these were low resolution, and out of focus. In short, I think she is not prevented from claiming that cosmetic issues with the bodywork mean the car was not satisfactory quality as supplied.

That of course does not mean that used goods need to be of a perfect standard, and the level of appearance and finish which can reasonably be expected, and just what degree of minor defect is acceptable, will depend on things like the price paid, and the age and mileage of the vehicle. The dealer’s “used vehicle standards”, which Mrs P signed, are also relevant.

Turning to the evidence for the remaining bodywork problems, I’ve seen several photos which appear to have been taken at around the time the car was delivered. They are all close-ups without the rest of the car for context, which makes them difficult to decipher. However, the photos appear to show the following:

- A relatively small scuff through to the primer on the passenger (near) side rear door panel, close to the wheel arch.*
- Some scratches near to a door handle on the driver (off) side of the car.*
- A small dent above a wheel arch on an unknown side of the car.*

Considering the price Mrs P paid for the car, along with the age and mileage, I don’t think a reasonable person would consider the car to be satisfactory quality with these bodywork issues. I’ve considered the dealer’s used car standards and I don’t think this would lower the standard a reasonable person would have expected in the circumstances.

I think it would have been fair, taking into account the provisions of the CRA, for Startline as the supplier of the car, to cover the reasonable cost of repairing the issues identified in these photographs. Matters are slightly complicated by the fact Mrs P has now sold the car and, as far as I’m aware, no repairs took place, but I will come back to that later. First of all, it’s necessary to consider Mrs P’s quote/estimate against the photographic evidence from the time she first reported the bodywork issues.

The estimate covers the “repair and spray” of the following items (with no breakdown of price):

*Off Side Front Door
Off Side Inner Pillar
Near Side Rear Door
Off Side Front Bumper Corner
Rear Bumper*

The estimate also quotes for paint and materials, and the following two parts:

*Lower Chrome Trim Front Bumper
Chrome Styling Trim Surround Gear Shift*

Our investigator thought only the off side front door, the off side front bumper corner and the gear shift trim should be covered, having considered the complaint Mrs P had originally made. She said that the gear shift trim should only be covered if there was no evidence this was previously supplied.

I’ve come to different conclusions to our investigator on this point, based on my analysis of the photographs Mrs P originally supplied along with the other evidence supplied throughout the investigation. I note Mrs P’s more recent photos from April 2023 show other issues such as large amounts of stone chips to the front bumper and peeling chrome bumper trim which were not photographed in March/April 2022. I don’t think it would be reasonable to ask Startline to cover the cost of repairing these items given evidence was not supplied at the time, and many months and miles had passed since. I also note the main dealer’s job cards say it replaced the gear shift trim, so I don’t think this should be included either.

Based on the limited information available, I think it would have been reasonable for Startline to cover the cost of repairing the off side front and near side rear doors, as these are the panels where damage can be seen in the original photographs.

Our investigator came up with a methodology for estimating the cost of repair of individual parts in the absence of any breakdown on the estimate provided by Mrs P. This was to divide the “repair and spray” items by the number of items in total, and then multiply by the number of items she considered should be included, and to use the same calculation for the “paint and materials”. I think this is a reasonable methodology to use in the absence of anything more precise. Applying it to the items I’ve concluded should have been covered by Startline results in the following figures:

<i>Off side front door and near side rear door -</i>	<i>£360</i>
<i>Paint and materials -</i>	<i>£192</i>
<i>VAT -</i>	<i>£110.40</i>
<i>Total -</i>	<i>£662.40</i>

Impact of Mrs P’s sale of the car

I’ve seen evidence Mrs P sold the car to a motor trader on 20 December 2023, for £14,200.

The fact the car has been sold means the repairs will not be carried out, and so Mrs P will not incur the cost of repairing the car. It’s also no longer going to be possible to gather further information about the bodywork problems or obtain any further estimates or quotes, given the car is no longer in Mrs P’s possession.

However, it’s possible the car’s condition will have affected the price Mrs P was able to sell it

for, and this is an avenue I've explored.

According to industry guides, a trade price for the car in good condition and with around 40,500 miles¹, would have been £14,984 at the point Mrs P sold it. So, by one estimate, Mrs P has achieved a price £784 less than she otherwise could have. Not all of this difference will necessarily have been down to the issues with the bodywork which the car was supplied with. Other wear and tear which is apparent from Mrs P's later photos may have played a part, and of course how a person negotiates on the day can also influence the price. But it's plausible that the unrepaired bodywork issues dating from the point the car was supplied to Mrs P contributed to her achieving a lower than market value when she sold it.

I appreciate in a case like this it's not at all straightforward to arrive at a perfect remedy. Under section 228 of the Financial Services and Markets Act 2000 (FSMA) I'm required to determine complaints by reference to what, in my opinion, is fair and reasonable in all the circumstances.

In Mrs P's case, my opinion is that it would be fair and reasonable that Startline pays Mrs P £662.40. This was the estimated cost of repairing the unresolved bodywork issues dating from the point the car was supplied to Mrs P. I think these unrepaired defects will have impacted the value she was able to achieve on sale. In the absence of any more specific evidence, I think it's fair to take a view that the impact of these defects on the sale value will have been approximately the same as the estimated cost of repairs.

Non-financial losses

I mentioned earlier in this provisional decision that Mrs P had needed to do much of the work in arranging the repairs of the non-bodywork defects in 2022 herself. I can see she had to contact the dealer and other third parties on multiple occasions to get things moving, and needed to take the car to be repaired by the main dealer and for the windscreen to be replaced. These are inconveniences Mrs P wouldn't have had to suffer had Startline supplied her with a car of satisfactory quality under the hire purchase agreement.

In light of this, I'm minded to award Mrs P further compensation of £150 to reflect the impact of this inconvenience.

My provisional decision

For the reasons explained above, I intend to uphold Mrs P's complaint in part and direct STARTLINE MOTOR FINANCE LIMITED to take the following actions:

- Pay Mrs P £662.40 to reflect what it would have cost to repair the remaining defects with the car dating from the point it was supplied to her.
- Pay Mrs P £150 compensation to reflect the inconvenience associated with arranging repairs for the non-bodywork defects back in 2022.

I now invite both parties to the complaint to let me have any further submissions they'd like me to consider, by **3 April 2024**. I will review the case again before making a decision.

Will Culley
Ombudsman

¹ No mileage appears on the sale invoice, so this figure is based on the mileage when the car had an MOT the same month.