

## The complaint

Ms C is unhappy that a car supplied to her under a hire purchase agreement with Startline Motor Finance was of an unsatisfactory quality.

## What happened

In January 2023, Ms C was supplied with a used car through a hire purchase agreement with Startline. She paid a £3,677 deposit and the agreement was for £12,818 over 48 months, with 48 monthly payments of £300.78 and a final optional payment of £6,562.97. At the time of supply, the car was around three and a half years old and had done 36,165 miles (according to the MOT record for 24 November 2022).

In March 2023, Ms C contacted the supplying dealership about a system warning message displayed by the car. The dealership arranged for the car to be inspected, which took place on 12 April 2023. The front camera was replaced and calibrated to fix the system issue, and a vehicle health check also took place. As part of this health check, it was confirmed that the coolant was at the correct level.

The car broke down on 20 May 2023 when it had done 39,003 miles – 2,838 miles since it was supplied to Ms C. The breakdown company suspected a head gasket issue, and the car was recovered to an independent garage who, on inspecting the car, said *“bad coolant leak was discovered from the thermostat housing, engine also has LOW compression from all cylinders. ENGINE HAS MAJOR INTERNAL FAULTS deeper diagnostics and stripping will be required to find the exact fault.”* The garage who inspected the car subsequently confirmed that the car *“did indeed possess coolant upon its arrival at our facility ... it is important to note that the coolant level was low, but remained within the acceptable minimum range.”*

Ms C raised a complaint with Startline on 23 May 2023. Startline agreed to have the car independently inspected, but they didn’t arrange for this inspection to take place until 5 September 2023, around 15 weeks after Ms C first raised the issue with them. The independent engineer said *“customer had a major breakdown the other day ... the dealer had collected the vehicle and inspected it he advised us that have inspected the vehicle are saying that it’s been running without water, which had caused an engine fault.”*

The engineer went on to say *“engine coolant level was not registering ... evidence of historic fluid leakage was present ... the symptoms noted at the time of inspection have all the characteristics of a breach of the cylinder head gasket as a result the vehicle had been run at elevated temperatures caused by a coolant leak from the thermostat housing ... staining confirms to us that the vehicles had an ongoing coolant leak for multiple hundreds and possibly thousands of miles. As it is the vehicle owner’s responsibility to check the engine bay levels on a regular basis, we believe that this had been done the owner would have noticed the loss of coolant [and] the engine damage could have been avoided.”*

As a result of this report, Startline didn’t uphold Ms C’s complaint. Unhappy with this, Ms C brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said the evidence showed that the coolant level was at the correct level a few weeks before the car broke down, and when it did break down there was still coolant in the car. As the breakdown occurred within six months of the car being supplied to Ms C, the investigator said that the car wasn't of a satisfactory quality when it was supplied to Ms C.

The investigator also said that, although Startline have the right of repair, given the delays in the process it was now fair to allow Ms C to reject the car and receive a refund of her deposit and the payments she'd made since the breakdown. The investigator also recommended that Startline refund the diagnostic costs Ms C had incurred; and pay her an additional £250 compensation for the distress and inconvenience she'd been caused.

Startline didn't agree with the investigator's opinion. They said that Ms C should've checked the fluid levels on the car monthly, and had she done so she would've noted the coolant loss. So, by continuing to drive the car without coolant, she contributed to the engine damage and *"the coolant loss is entirely down to the owner's negligence."*

Startline also said that their opinion was supported by that of the independent engineer, and they've asked for an ombudsman to make a final decision.

### **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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Ms C 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, Startline 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 Startline can show otherwise. So, if I thought the car was faulty when Ms C 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 Startline to put this right.

I've seen a copy of the independent engineer's report, for the inspection that took place on 5 September 2023. The key findings of this report are stated above, so I won't repeat them here. And it's clear from this report that, based on the information that was provided to the

engineer, that they considered Ms C failing to regularly check the coolant level, and therefore identify the coolant leak, makes her responsible for the engine failure.

However, I have noted that the engineer referred to “*a major breakdown the other day*” which implies the engineer believed the breakdown took place in late-August 2023. This wasn’t the case, and the breakdown took place months earlier – in May 2023.

The engineer’s conclusions are also drawn on the basis the engine had no coolant at the time of the inspection. While this may have been the case, as the engineer was unaware of the date of the breakdown, they were also unaware that coolant was most likely leaking from the engine between 20 May and 5 September 2023, which would impact on the findings.

What’s more, the engineer doesn’t seem to have been aware that the coolant level was checked on 12 April 2023, and when the car broke down on 20 May 2023 the coolant was above the minimum level required. Given all this, I’m not satisfied the engineer was fully aware of all the facts when arriving at their conclusion, so the conclusion that the engine failed because Ms C was driving the car with little or no coolant is not something that can be relied upon.

As I’ve said above, because the car broke down within six months of being supplied to Ms C, the CRA assumes the fault with the car was present or developing at the point of supply, unless Startline can show otherwise. For the reasons given, I’m not satisfied the engineer’s report shows this, and Startline haven’t provided any additional evidence that shows the fault wasn’t present or developing when the car was supplied.

I’ve also considered the engineer’s comments that this looked to be a longstanding coolant leak, something supported by the post-breakdown diagnostic Ms C obtained and paid £160 for. So, I’m satisfied this was a longstanding issue, and therefore likely to have been present when the car was supplied.

I’m also satisfied that, as the coolant level was above the minimum on both 12 April and 20 May 2023, had Ms C checked the coolant level between supply and 12 April 2023, or between 12 April and 20 May 2023 (and I don’t know whether she did or not), then it would not have been obvious to her that there was an issue with the coolant levels.

What’s more, I’ve considered the age and mileage of the car at the time of breakdown. And I don’t think any reasonable person would expect the thermostat housing and/or head gasket would fail after less than 40,000 miles. Which implies the car wasn’t sufficiently durable when it was supplied to Ms C.

Taking all the above into consideration, I’m satisfied the car wasn’t of a satisfactory quality when it was supplied to Ms C, and that Startline need to do something to put things right.

### **Putting things right**

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 confirm 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.

The car was repaired in April 2023 for a camera fault. As I haven't seen anything to show me this fault wasn't present or developing when the car was supplied to Ms C, then I'm satisfied this was the single chance at repair. As such, unless Ms C agrees to Startline attempting a repair on the current fault with the car (and she hasn't said she does), then she has the right to reject the car.

However, section 23(2) of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must –  
(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given this and that Startline delayed 15-weeks in even getting the car inspected, even if it could be argued that the camera fault didn't make the car of an unsatisfactory quality, and therefore Startline do have a right of repair, it's arguable that Startline have failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Ms C should be able to reject the car.

As such, I'm satisfied that Ms C should now be allowed to reject the car.

The car has been off the road and undrivable since the breakdown on 20 May 2023, and Ms C hasn't been provided with a courtesy car. As such, she has been paying for goods she was unable to use. As, for the reasons already stated, I'm satisfied the car is off the road due to it being of an unsatisfactory quality when it was supplied, and as Startline failed to keep Ms C mobile; I'm satisfied they should refund the payments she's made since this date.

Ms C has also provided evidence of the costs she's incurred in having the car inspected. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Startline reimburse these costs.

Finally, it's clear that Ms C has been inconvenienced by what has happened, and by having to arrange for the car to be recovered and inspected. So, I think Startline should compensate her for this. The investigator had recommended Startline pay her £250, 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 final decision.

Therefore, Startline should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Ms C;
- remove any adverse entries relating to this agreement from Ms C's credit file;
- refund the deposit Ms C paid (if any part of this deposit is made up of funds paid through a dealer contribution, Startline is entitled to retain that proportion of the deposit);
- refund the payments Ms C has made since 20 May 2023;
- upon proof of payment, reimburse Ms C for the £160 diagnostic cost she incurred on 31 May 2023;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Ms C made the payments to the date of the refund<sup>†</sup>; and
- pay Ms C an additional £250 to compensate her 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 Startline to take off tax from this interest, Startline must give Ms C a certificate showing how much tax they've taken off if she asks for one.

**My final decision**

For the reasons explained, I uphold Ms C's complaint about Startline Motor Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 2 October 2024.

Andrew Burford  
**Ombudsman**