

The complaint

Miss C is unhappy with how Startline Motor Finance Limited dealt with the termination of a hire purchase agreement she had with them.

What happened

In May 2022, Miss C was supplied with a used car through a hire purchase agreement with Startline. She paid a £267 deposit and the agreement was for £20,130 over 60 months; with 59 monthly payments of £542.20 and a final payment of £552.20.

Miss C had some issues with the car, specifically relating to a blocked diesel particulate filter (DPF). This was confirmed by an independent engineer's report in November 2022 and, unhappy with what was happening, Miss C had brought her complaint to the Financial Ombudsman Service for investigation. Miss C rejected the offer of a repair to the car in December 2022, but then accepted repair in January 2023.

This complaint was subject to an ombudsman's final decision that was issued on 20 July 2023. The decision said that, as the car had now been repaired, Startline should refund Miss C the payments she'd made from 25 October 2022 (when she didn't have use of the car) to 12 December 2022 (when she rejected the initial offer of repair), plus interest.

Miss C accepted this decision, which became legally binding on Startline. This also meant that Miss C was unable to continue to pursue her complaint about the quality of the car when it was supplied to her – either through ourselves or by any other means.

In March 2023, while the complaint about the quality of the car was being dealt with by this service, but after the car had been repaired, Miss C decided to voluntarily surrender ('VS') the car. This meant that the car would be sold at auction by Startline, with the sale proceeds being applied against the outstanding balance on Miss C's agreement with them. Miss C would then be liable for any shortfall.

The car sold at auction in April 2023 for £16,500 (against a reserve price of £15,050). This resulted in a shortfall of £3,309.04 which Miss C paid by way of monthly instalments between May 2023 and January 2024, along with a lump-sum payment in January 2024. As Miss C hadn't been able to repay the agreement in full, Startline registered a default against her credit file, marking this as being satisfied in January 2024.

Miss C was unhappy with what had happened, and she brought her complaint about the VS to us. Our investigator said that Startline were unable to control how much the car sold for at auction, and the shortfall payment was fairly applied. The investigator also said that, as Miss C was unable to repay this shortfall within 30-days, Startline fairly considered this to be a default, and provided information to the credit reference agencies accordingly. As such, they didn't think Startline needed to do anything more.

Miss C didn't agree with the investigator's opinion. She said that Startline had threatened her with legal action, and she wasn't paying for the car as Startline had failed to take responsibility for the faults with the DPF. She said the only reason she handed the car back,

and therefore was left with a shortfall she was unable to pay immediately, was because the car wasn't fit for use, so she didn't think it was fair that we disregarded the circumstances of the DPF fault. Because of this, she's 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. Miss 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.

Before I address the issues surrounding the VS, I think it would be useful to explain what I'm able to consider. While Miss C says we should consider the circumstances of the DPF fault, as already detailed this has been the subject of an ombudsman's final decision, which Miss C accepted. This means she is unable to continue to pursue this matter, and we are unable to revisit the complaint.

However, we are able to consider what happened after the facts of the complaint decided by the previous ombudsman i.e., what happened after the repair that Miss C accepted in January 2023. While Miss C has said that the car wasn't fit for purpose, and that it was undrivable, she hasn't provided any evidence to show this was the case after the agreed repair i.e., an independent report that shows the repair attempt failed and the DPF fault remained. Where a repair has failed, the Consumer Rights Act 2015 gives the consumer the right to reject the goods. But, without evidence of this, I'm unable to say that Startline should've given Miss C the right of rejection *after* the completion of the repair she agreed to in January 2023.

The evidence shows that Miss C initially contacted Startline on 23 February 2023 about VS. Startline's notes for that contact show that "*cust called as wants to VS, due to vishicle isseues [sic] and now has another car, she has had replairs [sic] done and is now drivable but doesnt want the car anymore, she has another vehicle already.*" Based on this, and as I haven't seen anything to the contrary, I'm satisfied that the repair that Miss C agreed to was successful, and that it is more likely than not that her decision to VS was prompted by her obtaining a different vehicle, and not because of ongoing faults with the car supplied by Startline.

In a letter to Miss C dated 8 March 2023, setting out the terms and process for VS, Startline confirmed:

- *Following the sale of your vehicle, a statement will be issued to you confirming the remaining balance under your Hire Purchase agreement. This statement will detail:*
 - *Sale proceeds received for your Vehicle.*
 - *Any costs incurred in the collection, preparation or sale of your vehicle.*
 - *Remaining balance outstanding by you, after deduction of sale proceeds and adding any costs.*

- *Payment of the remaining balance is due within 30 days of issue, and failure to do so within this period may result in legal action being raised against you, where your credit file may be affected.*

I've also noted that the agreement Miss C signed with Startline on 20 May 2022 is clear that all payments due under the agreement must be paid when specified, and that failure to do so would be considered a breach of the agreement. The terms also clearly state that failure to make any payments due "*could have severe consequences*" and may affect Miss C's credit rating and lead to legal action being taken against her.

I'm therefore satisfied that Miss C was reasonably aware that failure to pay any payments under the agreement, which included any VS shortfall, would likely affect her credit file. Miss C completed the form Startline provided with this letter, confirming that she wanted to proceed with the VS and agreed to the terms.

The car was sold at auction for £16,500 which, after applying an interest rebate, left an outstanding balance of £3,309.04. It's not disputed that Miss C wasn't able to clear the outstanding balance within the 30-days set out in the terms of the VS, and instead she paid this by way of instalments and a lump sum, clearing the amount owing in 2024.

I've seen a copy of Miss C's credit file which shows Startline defaulted the account in March 2023. They then reported a payment arrangement being in place from April 2023, and the agreement having ended in January 2024. It also shows that Miss C missed a payment to Startline in December 2022.

As explained by the investigator in their opinion, Startline have an obligation to correctly report Miss C's conduct of the account to the credit reference agencies – something also implied by the terms of the agreement Miss C signed, and the terms of the VS. I also think it's reasonable that someone taking out a finance agreement, such as the one Miss C took with Startline, would expect the conduct of that account to be reported to the credit reference agencies and available for other lenders to view and consider.

As Miss C failed to repay the VS shortfall within the agreed timeframe, she was in breach of the agreement and therefore Startline were right in classing her as being in default. They were also correct in recording the payment arrangement, and the agreement being settled in January 2024.

As such, and while I appreciate this will come as a disappointment to Miss C, I'm satisfied that Startline have acted fairly in how they terminated the agreement, and how they recorded this on Miss C's credit file. Therefore, I won't be asking Startline to do anything more.

My final decision

For the reasons explained, I don't uphold Miss C's complaint about Startline Motor Finance Limited.

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

Andrew Burford
Ombudsman