

The complaint

Miss J complains about a car acquired through a Hire Purchase agreement with STARTLINE MOTOR FINANCE LIMITED ('Startline'). Miss J has had problems with the car and says these defects would've been present when the car was sold.

Miss J's complaint has been brought with the help of a representative and much of the correspondence has been with them. However, for the sake of ease, I will refer to Miss J throughout.

What happened

Miss J acquired the vehicle in May 2023. When it was sold, it was seven years and six months old, had covered 64,673 miles and cost £7,695.00.

While driving the car, it lost power and needed to be recovered to a garage. She was told the car would need a new engine. An inspector said there was an issue with the car that would've been there at the point of supply. When Startline handled the complaint it said she had made the issue worse by driving on it and so it shouldn't be responsible for these repairs.

The investigator considering the complaint felt Miss J wouldn't have been aware of the issues or therefore unreasonably contributed to the damage. They said the repairs were more expensive than the car and so Startline should take the car back and end the agreement.

Startline did not respond and so the case has been passed to me to issue 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.

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Miss J acquired the car through a Hire Purchase with Startline. Under this type of arrangement, Startline became the supplier of the car and is responsible for any issues with the quality of goods provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

From the evidence I have it seems as though this issue first arose on 30 September 2023. This issue was initially raised with the dealer and broker. The broker said because the issue happened in the first six months, the dealer had an opportunity to fix the car. They also said that the cost of the car being recovered could have been avoided if they had taken out breakdown cover.

A warranty report was carried out on 10 November 2023. This noted that the car failed on 4 October 2023 and the mileage on inspection was 68,125. I've not seen evidence to confirm this was the exact date of failure, but I don't think that makes a difference here. It seems most sides accept the failure happened on 30 September 2023.

This report said a previous repair was attempted, which entailed the cylinder four ignition coil being replaced. However that initial repairer felt there may be internal engine damage because there was no compression to the replaced cylinder.

The subsequent inspection found evidence of an oil leak and contamination around the intake manifold. Multiple fault codes were also found relating to cylinders three and four.

It said "*cylinder 4 freeze frame data confirmed that the fault was first triggered at 68,100 Miles and had a count occurrence for misfire of 3166 times.*"

The inspector said there was carbon build-up which was causing damage to the piston and valves. This consequently impacted on the combustion and detonation, leading to a heavy misfire.

They said this issue would have been developing at the point of sale, however the misfire would have been noticeable to the operator of the vehicle.

Miss J had initially been in contact with the dealer and broker at this time and a complaint was then raised with Startline mid-to-late November 2023.

Startline eventually responded to the complaint on 15 February 2024. It said that while the fault may have been present at the point of sale, it said the report indicated Miss J made the issue worse by driving while the issue was present.

They said the initial repair may have been minor, but this additional driving has meant the required repair is now more significant. They said they didn't have evidence to show the issues weren't caused by Miss J continuing to drive the car and she should obtain a repair quote so that it can '*potentially look to progress this further*'. Absent that, it said it would look to close the complaint.

Startline accepts the issue would have been present at the point of supply. However it maintains that Miss J would have been aware of the issue and her continuing to drive the car

has made it significantly worse. As such it says that the supplier can't be held responsible for the repairs.

The initial report is clear that the issue in question would have been developing at the point of supply. This is accepted by all sides and I don't see any reason to depart from this conclusion.

The report also states, "*The operator would have been aware of the condition in the form of a misfire.*" It seems to be this that's being relied upon to say that Miss J has unreasonably contributed to the current condition of the car. Miss J questioned how she would have known there was a misfire when she's not a mechanic, and when the car was inspected prior to sale and during the MOT didn't pick up on any issues with the car.

I've focused on this aspect as it seems to be the main point in dispute.

The initial report says the fault would have been developing at the point of supply, that it was not a sudden failure and that it was progressive in nature. So it does not seem like there was a single event prior to the point of failure that can be obviously pointed to, to say that Miss J would have become aware of the issue – it was confirmed to be 'progressive in nature'.

Startline has provided an email from the inspector which elaborates on its earlier report.

They say the issue would have started as a minor concern. They say the ultimate failure of the car resulted from a cumulative impact of incomplete combustion, which eventually damaged the valve or piston skirt. And this caused a lack of compression and the ultimate failure of the engine.

They said if the car was in its current condition when it left the dealership, there would have been constant misfiring and it would have been obvious and the pre-sale reports and MOT would have picked up on it. So at the outset there would have been no obvious signs of this issue. But the ultimate damage was the result of using the vehicle while it was misfiring.

I think it's clear that had the engine component been inspected in detail at some point in time before the engine failure, the issue at hand may well have come to light and mitigated the extent of the repairs necessary. However what isn't clear is what would've reasonably put Miss J on notice of this issue earlier – and whether she's unreasonably contributed to the current condition of the car.

The initial report said the operator would have been aware of the issue in the form of a misfire, however misfires can manifest in a number of ways. It's not immediately obvious, and I haven't been provided with any evidence to demonstrate, exactly how Miss J would've been aware of this issue. This would require Miss J to have sufficient knowledge of the mechanical issue at hand in order to appropriately diagnose it and assess the risk of continued use. I can't see how she would be reasonably expected to have that knowledge, in the way an expert mechanic no doubt would, or that it would be reasonably foreseeable that driving the car would have the effect it did.

For an issue that was not sudden and which has been progressive in nature, it's not clear that Miss J has continued to use the car an unreasonable amount. Even if I was persuaded that the initial misfire would have had such a significant impact that it would have made Miss J aware of an issue, and that she had the required knowledge to understand that she needed to stop driving the car, the report I have confirms the mileage of the car at the point of inspection was 68,125 and that the "*fault was first triggered at 68,100 Miles*".

I can see the investigator pointed this out to Startline on a number of occasions without reply. I agree with the investigator that the report confirms a minimal amount of use, after the fault first occurred. As such, even if Miss J was aware of the issue at the earliest opportunity, I would not conclude that it's been used an unreasonable amount after the issue first occurred.

In summary, the evidence I have confirms that the issue that led to the failure of the car would have been developing at the point of supply. While this was a used car at the point of supply, the fault occurred within four months of acquiring the car and having only covered roughly 3,500 miles. The inspection carried out confirms that the fault would have been developing at the point of supply.

It now requires significant repairs and the evidence from the engineer's report confirms the issue would've been developing at the point of supply. Because of this I am led to conclude the car supplied was not of satisfactory quality.

Usually a supplier would get the opportunity to repair the goods where the fault occurred outside of a consumer's short-term right to reject the goods. However in this case the repairs exceed the cost of the car, and so repairing the car would likely be disproportionate in the circumstances. The engineer's report also hints at an initial failed attempt at repair.

Additionally, repairs need to be carried out within a reasonable amount of time – and to date the car has not been operational since September 2023. And Miss J has had to make other arrangements to stay mobile. I don't see that repairs now could be carried out in a reasonable amount of time or without significant inconvenience to Miss J.

For this reason Miss J should now be able to reject the car with nothing further to pay. As the car hasn't worked since September 2023, any payments since then should be refunded in full along with the £39 deposit paid at the outset. It should also refund any repair or recovery costs incurred if Miss J can provide evidence of payment. Startline should pay 8% simple interest on these amounts from the date of the payment to the date of settlement.

It's not clear that Miss J's use of the car was impacted prior to the date it broke down, so Startline can keep any payments made up to that date. Had the car been of satisfactory quality it would not have required recovery. Miss J was not obliged to take out breakdown cover, and so any costs she incurred as a result of the breakdown stem from the car not being of satisfactory quality, rather than her choice not to take out optional breakdown cover.

These matters would have had a significant impact on Miss J. Living in a remote area, and trying to get her child to school without a car would have caused a great deal of trouble and stress. While the issues had been diagnosed very quickly, she had been left without a car for a significant amount of time because she was unfairly held liable for the significance of the fault with the car. I think the £200 suggested by the investigator is not unreasonable in the circumstances to reflect the impact this has had.

Putting things right

The car failed within a few months of supply and without significant use of the car. The evidence confirms that the fault in question here would have been developing at the point of supply and so I do not consider it to have been of satisfactory quality.

Miss J's use of the car did not unreasonably contribute to the ultimate failure of the car and given the evidence it was not fair for Startline to lessen its responsibility for the issue in this way.

Startline should:

- End the agreement and collect the vehicle with nothing further for Miss J to pay
- Refund all payments made from 30 September 2023 onwards
- Refund the £39 deposit
- Refund the recovery cost (once provided with a receipt)
- Pay 8% simple interest on the above amounts from the date of payment to the date of settlement
- Pay Miss J £200 to reflect the distress and inconvenience this matter has caused
- Remove any adverse information reported on Miss J's credit file

My final decision

My final decision is that I uphold Miss J's complaint. STARTLINE MOTOR FINANCE LIMITED should settle the complaint in line with the direction set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 27 November 2024.

Scott Walker
Ombudsman