

The complaint

Mrs B complains that Startline Motor Finance Limited supplied her with a car under a hire purchase agreement which wasn't of satisfactory quality and that specific features of the car were misrepresented to her.

What happened

In July 2023, Mrs B acquired a used car using a hire purchase agreement from Startline. The cash price of the car was £5,790. Mrs B paid a cash deposit of £1,000 and financed the remainder of the balance using the hire purchase agreement. She was required to pay 42 monthly repayments of £169.23 followed by a final payment of £179.23. The total payable was £8,286.89.

Before entering into the finance agreement, Mrs B had approached a broker over the phone to try and source finance for a car she had found advertised with a specific car dealership. The broker explained that it wasn't affiliated with the dealership Mrs B had found and said it would see if it could find her a similar car through one of its affiliated dealerships that met her requirements. Mrs B explained to the broker that the car needed to be ULEZ compliant as she drove into central London on a regular basis.

The broker found a car within Mrs B's budget and told her it was ULEZ compliant. Mrs B said on that basis she was happy to proceed if the broker could source a finance agreement for her. The broker then arranged the finance with Startline.

A little over a month after Mrs B had taken possession of the car she contacted the broker to raise a complaint. She said that the car had broken down on the motorway and no mechanic could diagnose any fault with the car. She said that she felt unsafe driving it and wanted to return it. Further, she explained that she'd received a ULEZ fine and was unhappy as she had been assured the car was ULEZ compliant.

The broker didn't uphold Mrs B's complaint so she raised a complaint with Startline. However, Startline didn't think it needed to do anything to put things right. It said that it was Mrs B's responsibility to check the car was ULEZ compliant and that as she had not been able to provide any evidence of a fault with the car, it didn't agree to take back the car and end the agreement.

I sent Mrs B and Startline my provisional decision on 9 September 2024. I explained why I thought the complaint should be upheld. I said:

Mrs B acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 ("CRA") covers agreements like the one Mrs B entered into. The CRA implies terms into the agreement that the goods that are supplied are of satisfactory quality. Startline is the "trader" for the purposes of the CRA and is responsible for dealing with a complaint about the quality of the car that was supplied.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

In this case, the car supplied was used, around 8 years old and had covered around 83,000 miles when Mrs B took possession of it. It had a cash price of £5,790. What would be considered satisfactory would therefore be considerably different to if Mrs B had acquired the same car brand new and at a greater cost.

Mrs B says the car broke down within the first 30 days of her taking possession of it. However, she's been unable to provide any evidence of a specific fault that may have caused it. She says that at least two different mechanics inspected the car and could find no issues.

I understand Mrs B did pay for some repairs in around November 2023 on the car, but it isn't clear exactly what these repairs were or what necessitated them i.e. were they as a result of normal in service wear and tear or due to some inherent defect or unexpected premature fault with the car.

Overall, I've not been presented with anything persuasive to demonstrate that the car Mrs B was supplied with wasn't of satisfactory quality. However, I do think the car was misrepresented to her. I'll explain why and what this means Startline ought to do to put things right.

Section 56 of the Consumer Credit Act 1974 has the effect of holding Startline responsible for the antecedent negotiations between Mrs B and the broker – who acted as Startline's agent when brokering the hire purchase agreement. What this means is that anything said or done by the broker when arranging the finance agreement, I can consider against Startline.

I've been provided with several calls between Mrs B and the broker both before, during and after the brokering of the finance agreement. Having listened to the initial call where Mrs B asks the broker to arrange finance for a car, it is very clear that Mrs B's main requirement for the car is that it is ULEZ compliant. While the car Mrs B approached the broker to acquire wasn't a possibility, the broker found another alternative car which it said was suitable for her needs. During this call Mrs B reiterated several times that it would need to be ULEZ compliant. I note that when the broker suggested a diesel car to her, Mrs B specifically highlighted a concern that her understanding was that diesel cars were not ULEZ compliant. The broker told her this was not correct and that this car it had found for her was compliant. However, it was not.

The broker very clearly made a statement of fact about the car – in that it was ULEZ compliant, and it made this statement more than once even after Mrs B checked for reassurance on this point. This statement was undeniably false. I'm satisfied that Mrs B would not have entered into the agreement had she known the true position. The car being ULEZ compliant was very clearly the only key requirement for her when acquiring a car and I'm in no doubt she would have opted for something different had she been correctly told this car was not.

I'm therefore satisfied that the car was misrepresented to her and that she suffered a loss as she entered into the agreement because of these representations when she otherwise wouldn't have.

I note Startline has said that Mrs B ought to have checked herself that the car was ULEZ compliant. While I accept that may have been prudent, I don't think it is fair to penalise Mrs B for not doing so when she was categorically assured by the broker multiple times that it was compliant, and the broker was arguably the 'expert' in these matters as it was the one sourcing the car for her based on her specific requirements.

As I don't think Mrs B would have entered into this agreement had she been correctly told the car wasn't ULEZ compliant, I think it's fair and reasonable for her to be able to reject the car and exit the finance agreement at no further cost. I also think it would be fair for Startline to refund all the payments Mrs B made towards the car, minus a deduction for her usage of it for the time it was in her possession. I think this will ensure that Mrs B is placed as close as possible back in the position she would have been in but for the misrepresentation.

There isn't an exact formula for working out what fair usage of the car ought to be. But in deciding what is fair and reasonable, I've taken into account the mileage Mrs B covered in the car – specifically the fact she was charged a ULEZ fine and her decision to limit her usage of the car as a result of the fine as well as her concerns about the car's safety. I note that Mrs B has travelled somewhere in the region of 5,000 to 6,000 miles in the car since taking possession of it. This appears to be lower than a typical average mileage in the time she has had it, particularly as her original intention was to do regular, longer distance journeys.

I note also that Mrs B has paid for some repairs to the car that she would not have needed had she not entered into this agreement. Mrs B has had the car for around 15 months. Therefore, taking into consideration the additional costs she's incurred and her limited usage of the car, I consider it fair and reasonable for Startline to retain only eight of the monthly repayments incurred so far. For clarity, that means Startline can only hold Mrs B liable for a total of £1,353.84.

Anything Mrs B has paid in excess of £1,353.84 (including her deposit) should be refunded to her, along with 8% simple interest per year from the date of each overpayment to the date of settlement. Lastly, Startline should also ensure that it removes any adverse information it may have recorded against her credit file in relation to this hire purchase agreement once any outstanding balance has been settled.

Mrs B accepted my provisional decision and provided a receipt for a replacement battery she had fitted in the car in May 2024. Startline didn't respond.

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.

As Startline didn't respond to the provisional decision, I've seen no reason to change the overall outcome I reached in my provisional decision. I'm satisfied there was a misrepresentation, for which section 56 holds Startline responsible for.

I note Mrs B has now also provided a receipt showing she paid around £150 for a replacement car battery. As I've said in my provisional decision, I don't think this would have been a cost she would have needed to incur had no misrepresentation been made. However, I don't think a further refund on top of what I suggested in my provisional decision for this additional cost would be reasonable.

This is because as I've set out in my provisional decision, there is no exact formula for working out what a fair usage deduction might be when putting things right. The previous figure I reached took into account a range of circumstances, including unforeseen costs Mrs B paid. The additional circa £150 is not significant enough a cost taking into account the overall amounts paid and borrowed to make a material impact on what I consider to be a fair way to put things right. Having thought about all the circumstances here, including the additional repair cost Mrs B has now highlighted, I still think my proposed remedy of refunding everything Mrs B has paid less an amount of £1,353.84 is fair and reasonable.

My final decision

For the reasons given above, I uphold this complaint and direct Startline Motor Finance Limited to:

- End the finance agreement with nothing further to pay.
- Take back the car at no cost to Mrs B.
- Refund all payments Mrs B has made under the hire purchase agreement (including any deposit paid) less £1,353.84 for her usage of the car.
- Add 8% simple interest per year on any refunded balance from the date of each overpayment to the date of settlement.
- Remove any adverse information it may have recorded on Mrs B's credit file in relation to this agreement.

If Startline considers tax should be deducted from the interest element of my award, it should provide Mrs B with a certificate showing how much it has taken off so that she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 22 October 2024.

Tero Hiltunen
Ombudsman