

The complaint

Mrs A is unhappy that a car supplied to her under a hire purchase agreement with Startline Motor Finance Limited (Startline) was of an unsatisfactory quality.

When I refer to what Mrs A has said and what Startline have said, it should also be taken to include things said on their behalf.

What happened

On 12 October 2023 Mrs A was supplied with a car via a hire purchase agreement with Startline. The car was first registered in January 2016, so was over seven years old at the time of supply and had travelled 49,365 miles. The price of the car was £6,139 and Mrs A paid a deposit of £111, with 59 payments of £159.50 and a final payment of £169.50.

Shortly after receiving the car Mrs A experienced issues with it. There is some difference in opinion between Mrs A and Startline as to the exact nature of conversations that took place. But it is agreed that the car was of unsatisfactory quality at this point. Startline state that Mrs A was informed of her right to reject the car but she chose to have a repair instead. Mrs A states that she was told that she was not able to reject the car and had to accept a repair. Whatever version is correct the car required a replacement head gasket, which was undertaken at no cost to Mrs A and she was supplied with a courtesy car whilst the repairs were undertaken.

Mrs A made a formal complaint to Startline about the car on the 7 November and they responded to her on 26 November 2023. They upheld her complaint but stated the fact that the car had been repaired had discharged their duty in relation to this complaint.

In early February 2024 Mrs A experienced issues with the power steering and battery light. Mrs A formally complained on 8 February 2024. An independent inspection was carried out on the car on 26 February 2024. At this point the car had travelled 53,579 miles. The conclusion of the inspection was that the faults were due to general wear on the alternator, and this would not have been developing at the time of supply.

Startline's response was sent on 15 March 2024 in relation to her complaint made to them by Mrs A on 8 February 2024. The points they addressed were both the mechanical faults on the vehicle (this included the battery light being on, the steering wheel being locked and failed alternator) and the fact that Mrs A was not given the right to reject the car when she first had issues with the car.

Startline set out that to uphold the complaint the faults that Mrs A was experiencing with the car would either have needed to be present at the time of supply or as a result of a failed repair. They referenced the independent inspection report that stated the faults were commensurate with fair wear and tear. In relation to whether Mrs A had been given the right to reject they stated that Mrs A had accepted the repair, with the evidence supplied being a conversation with the supplying garage and the fact that Mrs A had a courtesy car whilst the repair was undertaken.

As Mrs A did not agree she complained to us.

During the course of their considerations our investigator asked Startline on 19 April 2024 about the element of Mrs A's complaint that related to her being misadvised that she could not return the car as the garage has started repairs. In particular they asked if they were aware of any communications to that effect. They did follow up with a further request for any call recordings or other information relating to the repair.

On 6 May 2024 Startline sent the job card relating to the repair dated 17 November 2023. They also stated that they had spoken to the broker and that "Miss O" raised a complaint in November and was initially offered a rejection but opted for a repair. They further stated that on 8 November 2023 they confirmed to "Miss O" that she could not unwind the agreement as she had accepted the repair.

On 30 May 2024 Mrs A contacted us to inform us that there were further issues with the car. She provided a photo message from an independent garage showing a fault code and a note from the mechanic that there was leaking gases, engine timing is out and the timing belt was too tight and this was caused by the head gasket repair. Mrs A was clear to us, and subsequently clear to Startline that she did not want the car repairing but was looking to unwind the contract. A complaint was raised by Mrs A with Startline on 5 June 2024 and Startline informed us of the same.

Mrs A subsequently provided us with a report from an independent garage that stated "We believe that after the cylinder head was replaced the timing has not been done correctly and the above fault code is due to the timing of the engine being out."

After some delay the car was picked up and returned to the garage on 11 July 2024. Our investigator contacted Startline requesting to be kept up to date as to the inspection and they chased this up on 30 July 2024.

Mrs A contacted us on 6 August 2024 stating that she had been contacted by the garage and they had had everything off and the car was ready for collection.

On 9 August 2024 Startline provided us with a copy of an invoice (dated 24 July 2024) from the garage that undertook the original repair. This basically stated that they had inspected the car (including removing parts) and could not find a fault.

On 21 August 2024 our investigator came to their decision and did not uphold Mrs A's complaint. They felt that the issues in February and the recent issues were commensurate with the age and mileage of the car. They did not feel that Mrs A had produced compelling evidence to show that the issue that manifested at the end of May 2024 was the result of a failed repair on the head gasket, citing the invoice dated 24 July 2024 as the basis for this conclusion. They also felt that as Mrs A had accepted a repair in November 2023 there was no residual right to reject.

Mrs A did not agree with the investigator's decision. She did produce further evidence such as a note of a failed MOT in October 2023 and more faults she had experienced with the car since it had been returned to her. Our investigator did not believe that this provided compelling evidence that the faults were not commensurate with a car of the age and mileage supplied, so did not change their view.

Because Mrs A didn't agree, this matter has been passed to me 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.

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.

Mrs A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". The CRA says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. Where goods are second hand, as in this case, due regard must be had to the price, age and any description applied to the car.

So, if I thought the car was faulty when Mrs A 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.

As stated earlier the age, mileage and price of any vehicle has to be taken into account when deciding what is satisfactory quality. Second hand cars also have an element of fair wear and tear that needs to be taken into account when coming to any decision.

The CRA sets out some key dates post contract with regards the burden of proof in relation to the goods being of unsatisfactory quality. The CRA gives the consumer the automatic right to reject if the goods are not of satisfactory quality and that fault is discovered within 30 days. After that period but before six months the burden of proof is on the business to show that the faults were not present at supply and the goods are of satisfactory quality. After six months the burden of proof then resides with the consumer.

Looking at the specifics of Mrs A's complaint I need to consider three main things. The first is that did she try and reject the car when she had the right to do so and this rejection was refused because of incorrect advice given. The second is that if I conclude that Mrs A did accept a repair in November 2023 was that repair effective in rectifying the matter. The third is does the subsequent issues, such as the problem with the alternator that manifested in February 2024, make the car of unsatisfactory quality. I will deal with these points in reverse order as the answers to points two and three are clearer in my mind.

The fault with the alternator came to light in February 2024 and Mrs A raised a complaint about it on 8 February 2024. The car had travelled roughly 4,000 miles since supply and it was some four months after supply. Although it has to be taken into account that Mrs A had not had use of the car for over a month in late 2023 because of the repair to the head gasket. I appreciate that coming so close after the first major fault and within a short time of supply that Mrs A is understandably disappointed. However, I find the evidence of the independent inspection on 26 February 2024 compelling. In particular the conclusion

contained within the report that the fault found was due to general wear on the alternator and would not have been developing at the time of supply. This fault is therefore commensurate with general maintenance on a car of the age and mileage that was supplied to Mrs A and does not make the car of unsatisfactory quality at the time of supply.

When looking at the issues with the car in late May and September 2024 these occurred more than six months after the supply, so the onus is on Mrs A to prove that the faults were either present or developing at the time of supply. Whilst Mrs A does have a note from a mechanic in June 2024 and a copy of the fault code, the note itself does not go into detail and doesn't make clear why they thought the timing was out because of the work done on the head gasket. The repair to the head gasket took place in late 2023 and the time lapsed between the repair and the fault code appearing does raise a question of whether there was clear causation between the two. The servicing garage provided an invoice dated 24 July 2024 and there is a clear statement that no fault was found. On the balance of probabilities I do not believe that these subsequent issues make the car of unsatisfactory quality at the time of supply. Therefore, I do not uphold this element of Mrs A's complaint.

With regards the repair made to the first fault, the head gasket, no compelling evidence has been supplied to show that this repair did not resolve the original fault. Mrs A has the note from a mechanic dated 12 June 2024 that shows an issue with the timing of the engine being out and they believe that this is due to the timing not being done correctly. It would appear that there was no issue with the head gasket just the timing. The garage that undertook the repair has stated that there are no faults. On the balance of probabilities I believe that there is not sufficient evidence to show that the original repair was not effective. So, if I find that Mrs A did accept the repair, this repair is effective and Mrs A does not have any rights to either reject the car or to compensation for this fault.

I will now consider whether Mrs A had the right to reject when discovering the first fault and that if this right was incorrectly denied. She was supplied the car on 12 October 2023 and shortly after had issues with the car. This was within the 30-day period where Mrs A had the automatic right to reject if the car was not of satisfactory quality. Both Startline and the supplying dealer appear to accept that there was a fault with the car that would have given Mrs A the right to reject the car but both state that Mrs A accepted a repair, which is a permitted resolution under the CRA and therefore relinquished the right to reject. They further state that Mrs A was informed on 8 November 2023 that by accepting the repair she would be forfeiting her automatic right to reject. Startline highlight the fact that Mrs A took a courtesy car whilst the repair was taking place as further evidence of this acceptance.

Mrs A disputes this and states that she was specifically informed that she could not reject the car and had to accept the repair. To support this, she has a screenshot of a message from her to Startline on 10 November 2023 stating that she has been told that she needs to keep the car. It should be noted that the invoice for the repair is dated 17 November 2023.

On 1 May 2024 our investigator asked Startline to produce any recordings of phone calls and/or information relating to the repairs. This is particularly in relation to Mrs A's claim that she had been informed that she could not reject the vehicle as repairs had been started. In response to this Startline sent the job card dated 17 November 2023 and restated that the supplying dealer had offered the chance to reject but Mrs A accepted the repair.

It is always difficult to decide whose recollection of events is the correct one where the two sides have conflicting views. I have to decide on the balance of probabilities as to whether Mrs A did try and reject the car before accepting a repair but was misadvised. Mrs A has produced a screenshot of a message dated 10 November 2023 that shows that she has been advised that she has accepted a repair and therefore cannot reject. Both the supplying garage and Startline appear to accept that Mrs A did initially have the right to reject but her

initial complaint was dealt with by way of offering to repair, which she accepted. Based on the evidence supplied I cannot conclude that Mrs A did attempt to reject the car before accepting a repair. Because of the evidence outlined above I find that this repair did rectify the original fault. I also need to take into account that Mrs A used the car after being returned once it had been repaired. This is inconsistent with her rejection of the car and consistent with acceptance of the repair. Whilst sympathetic to Mrs A's circumstances, on the evidence presented I do not uphold Mrs A's complaint.

My final decision

My decision is that I do not uphold this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 18 April 2025.

Leon Livermore
Ombudsman