

## The complaint

Mr B complains about a car supplied to him using a hire purchase agreement taken out with Startline Motor Finance Limited ("Startline").

## What happened

In February 2023, Mr B acquired a used car using a hire purchase agreement with Startline. The car was around four and a half years old, the cash price of the car recorded on the agreement was £17,888, the agreement was for 60 months, made up of 59 regular, monthly repayments of £372.25, followed by a final payment of £373.25, which included a £1 option to purchase fee. The deposit recorded on the agreement was £1,159. Startline said the mileage of the car at the point of supply was 58,872 miles.

Mr B said he began to experience a knocking noise from the engine. In September 2023, Mr B took the car to a third-party garage for the noise to be investigated. Mr B was charged £45 for the investigation, and it concluded that the car's engine was, "... *damaged due to seriously degraded engine oil...*" which caused the oil filter to clog and restrict air flow to the engine.

Mr B complained to Startline in September 2023. Mr B said he has been without the use of the car since September 2023.

An independent inspection report was completed on the car in October 2023 ("Report 1"). Mr B commissioned the report and said he paid £250 for it to be completed. The mileage of the car recorded on the report was 70,887 miles. The report said that the car's engine oil was in a poor condition which was leading to an engine failure. It went on to explain that the symptoms seen were indicative of a car that was poorly maintained and due to only being driven around 10,000 miles since it was acquired, it was their opinion that the car wasn't properly serviced at the point of supply. The report concluded that they thought the car should be returned for any necessary repairs to be completed to it, to return it to a serviceable condition.

Within the report completed, there was a photo of the car's service book, which showed that the car was serviced on:

- 2 August 2023 at 43,646 miles
- 5 September 2022 at 56,593 miles
- 13 September 2023 at 70,882 miles

The findings of the report were sent to the supplying dealership who disputed the conclusions made. In summary, they said that the car had passed a MOT in September 2022 with no issues detected and also they said they were only informed of issues with the car after over 10,000 miles was driven in it. As the supplying dealership didn't think there was a fault with the car which was present at the point of supply, another independent inspection was carried out by a different third-party ("Report 2").

Report 2 was carried out in December 2023, and the car's mileage was recorded as 70,890 miles. Report 2 concluded Report 1's findings was possible, but that they thought the deterioration of the engine oil was likely due to it being contaminated, rather than it not being changed frequently. It went on to say that the oil that was in the car at the time of the fault was no longer available for analysis as it was flushed out. So, they could not determine whether the fault was the responsibility of the supplying dealership or not.

In February 2024, Startline issued their final response to Mr B where they explained they didn't uphold his complaint as they relied on the findings made in the second independent inspection report, which explained that further analysis was required to determine who was at fault.

Unhappy with Startline's final response, Mr B referred his complaint to our service.

Our investigator upheld Mr B's complaint. In summary he explained that he thought Report 1's findings to be more plausible, as it had taken place before the car had been flushed of its oil. The investigator also thought that the condition of the oil turning to a sludge suggested it hadn't been replaced for a long time. So, he concluded the car wasn't of satisfactory quality at the point of supply. The investigator thought it was now fair for Mr B to reject the car among other things, due to the time that had passed as repairs hadn't been carried out in a reasonable time.

Startline disagreed with the investigator's findings. Among other things, Startline believe the findings of Report 2 didn't conclude the fault with the car was present or developing at the point of supply and they thought it was important that further analysis took place of the oil that was flushed from the car to determine when the fault occurred.

Our investigator explained that his opinion hadn't changed relating to this complaint. In summary, he didn't think it was plausible that the engine oil had solidified to the extent it had whilst the car was in Mr B's possession.

As Startline disagreed, the complaint was passed to me to decide.

### **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'm upholding this complaint and I'll explain why below.

I'm aware I have summarised events and comments made by both parties very briefly, in less detail than has been provided, largely in my own words. No discourtesy is intended by this. In addition, if there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Mr B complains about a car supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr B's complaint about Startline.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Startline here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable

person would expect – taking into account any relevant factors. It's important to point out in this case that the CRA specifically explains that the durability of goods can be considered part of whether they are unsatisfactory quality or not.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note that the car Mr B acquired was used, around four and a half years old, had been driven around 59,000 miles and cost around £17,900. I think a reasonable person would accept that it would not be in the same condition as a new car and was likely to have some parts that are worn. But I think they would still expect to have trouble free driving for some time.

What I need to consider is whether the car was of satisfactory quality when it was supplied. And in order to do that, I first need to consider whether the car developed a fault.

#### Had the car developed a fault?

It isn't in dispute here that the car developed a fault. I say this because Mr B complained of a fault with the car and Startline hasn't disputed there's a fault, but rather disputes when the fault had occurred.

But for completeness, I have referred to the evidence supplied. In September 2023, Mr B noticed a noise emanating from the engine area. He took the car to a third-party garage to be investigated and they found the car's engine was, "... *damaged due to seriously degraded engine oil...*" which caused the oil filter to clog and restrict air flow to the engine.

I've also noted that no additional evidence supplied, such as both Report 1 and Report 2, dispute there was a fault with the car. So, considering things here, I'm satisfied there was likely a fault with the car's engine due to its engine oil.

#### Was the car of satisfactory quality at the point of supply?

I now need to determine whether the fault was likely present or developing at the point of supply. And it's worth making clear from the outset that I'm not an expert mechanic. So, I must rely on the information supplied to me to reach a determination on this.

In this instance, we have an independent inspection commissioned by Mr B – Report 1. This inspection took place following Mr B noticing an engine knocking noise. He then said he had the engine oil and filter replaced in the car, but it didn't resolve the issues he found. The oil filter that was taken out of the car was retained, so it could be inspected by the engineer. The findings of Report 1 said:

*"Clearly [the oil filter's] condition patently states that the engine oil had been running through this filter has been used far beyond any reasonable serviceability and as a result, changed from a lubricant to an almost solid matter.*

...

*There is no doubt that the engine failure is due to a lack of oil circulation around the engine as a result of poor oil condition i.e., the oil as a gelatinous condition which has resulted in a blockage of the oil filter.*

...

*The fact that the vehicle has only covered some 10,000 miles or thereby since the date of sale leads us to the conclusion that the oil was in a very poor condition at the point of purchase, with our opinion that the vehicle was not serviced at the point of sale.*

*If the vehicle had been serviced at point of sale there was no way that the oil filter would have been in such a poor condition.”*

I have inferred from the comments above that the engineer who carried out the investigation strongly believes, having seen the oil filter that was in the car, that the car was not serviced correctly at the point of supply, which has led to the oil filter being in such poor condition. Photos supplied alongside Report 1 of the oil filter show a very thick, black substance, akin to a sludge covering all parts of the filter.

On the other hand, another independent inspection commissioned by Startline – Report 2 said:

*“We would conclude that the engine oil had been changed at the time of our visit and flushing had taken place. As such, the pre-flushing oil condition could not be established fully and unfortunate this action has removed some evidence for analysis.”*

Some questions were answered by the engineer who carried out the inspection as part of the report. For example:

*“Q7 Please give an opinion as to whether the selling agent is responsible for the cost of repair or if this is deterioration that should be expected on a used vehicle and as such a running cost the responsibility of the hirer?*

*At this stage is unclear as to who exactly is responsible for the particular condition, oil testing will need to be completed and we anticipate the contamination of the oil may be a specific cause for the defect particularly as the engine is showing signs of coolant depletion and it’s confirmed that the oil was changed a recent service.”*

I have inferred from the comments made in Report 2 that they couldn’t conclude when the fault had occurred, due to the alterations made to the car before their inspection.

I have thought carefully about things here, and having done so, I’m more persuaded by the findings of Report 1 than those made in Report 2. I say this for two main reasons below:

1. The engineer of Report 1 had sight of the oil filter whereas the engineer of Report 2 hadn’t. So, I’m more persuaded by what Report 1 concludes as more information was at hand to make the findings that were made.
2. I have seen the photos Report 1 made of the oil filter that was taken from the car. There appears to be a thick oil sludge all over the filter. My understanding is that over time, a thick oil sludge can severely damage engines and the best way to prevent engine sludge is to follow the car’s recommended oil change schedule. I don’t think it is likely that oil sludge to the consistency shown in the photo could have formed so soon after the car was supplied and used by Mr B. As Report 1 said, the oil had changed *“from a lubricant to almost a solid matter”*. So, I think it is likely the oil deterioration began before the point of supply.

Considering things here, I’m satisfied the fault was likely present or developing at the point of supply, which meant the car wasn’t of satisfactory quality.

Remedies under the CRA

What I now need to consider is what Startline needs to do to put things right.

I've gone on to think carefully about the remedies available to Mr B under the CRA. I've also thought carefully about the time that has elapsed since the car has been undriveable and since Report 1 had made its findings as to the cause of the fault.

Section 24(5) of the CRA says:

*"A consumer who has... the final right to reject... may only do so in one of these situations..."*

*(c) the consumer has required the trader to repair... the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer."*

Mr B contacted Startline in September 2023 to inform them of the issues he had with the car, alongside evidence of two different third parties showing that there was a fault with the car. Startline disputed the findings and commissioned their own independent inspection. Mr B wanted to initially proceed with repairs, but later wanted to reject the car due to the time it was taking to resolve the complaint.

Mr B has also informed our service that he has since acquired another car. I don't think Mr B's actions to be unreasonable here, as the car he acquired under an agreement with Startline was no longer driveable.

Considering things here, I'm satisfied repairs haven't been completed within a reasonable time, nor without significant inconvenience to Mr B. And I don't think it would now be fair to allow Startline the opportunity to repair the car. So I think it is fair and reasonable for Mr B to be allowed to reject the car.

#### Loss of use

Mr B says the car hasn't been used since it broke down in September 2023. I'm satisfied the car hasn't been used, considering the fault with the car and the mileage recorded on various reports and inspections. So, I think it is fair that Mr B is reimbursed for monthly repayments he has made to the car from when it broke down in September 2023 to when it is collected, and the agreement ends. If Mr B has stopped making payments towards the agreement, Startline only need to reimburse payments actually made and not hold Mr B liable for any arrears nor associated charges.

Considering that I'm satisfied the car wasn't of satisfactory quality at the point of supply and that Startline needs to do more to put things right, I'm satisfied adverse information reported to Mr B's credit file after September 2023, should also be removed, if there is any.

#### Other costs

Mr B says he incurred a cost due to commissioning Report 1 to be carried out on 18 October 2023. Mr B hasn't provided proof of payment made. However, as Mr B commissioned this inspection to diagnose the fault, I think Startline should reimburse him for this, subject to showing proof of payment made to Startline.

#### Distress and inconvenience

I've also thought carefully about the distress and inconvenience Mr B has suffered in relation to this complaint. I'm mindful of the impact this complaint has had on Mr B, considering the fault to the car, and it being undriveable since September 2023. With that in mind, I think

£300 is a fair amount to reflect the inconvenience caused to Mr B.

### **My final decision**

For the reasons I've explained, I uphold this complaint and I instruct Startline Motor Finance Limited to put things right by doing the following:

- End the agreement with nothing further to pay (if this has not been done already).
- Collect the car at no further cost to Mr B (if this has not been done already).
- Refund Mr B's deposit of £1,159. If any part of this deposit was made up of funds through a dealer contribution, Startline doesn't need to refund this amount. \*
- Pay a refund of monthly payments made towards the agreement from 14 September 2023 to when the agreement ends and the car is collected. \*
- Refund Mr B the cost of the inspection completed on the car to determine the fault on 18 October 2023. This should be paid to Mr B on production of evidence to Startline to show payment was made by him. \*
- Pay £300 for any trouble and upset that's been caused due to the faulty goods.
- Remove any adverse information from Mr B's credit file in relation to the agreement, if any.

\* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Startline considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

If Startline has already given compensation in relation to this specific complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 April 2025.

Ronesh Amin  
**Ombudsman**