

The complaint

Miss W is unhappy that a car supplied to her under a hire purchase agreement with Startline Motor Finance Limited was of an unsatisfactory quality.

What happened

In February 2023, Miss W was supplied with a used car through a hire purchase agreement with Startline. She paid a deposit, and the agreement was for £9,031 over 50 months with 49 monthly payments of £267.34 and a final payment of £277.34. At the time of supply, the car was almost eight years old and had done 63,725 miles (according to the MOT record for 21 February 2023).

The engine management light ('EML') kept coming on and Miss W had this checked out on multiple occasions between March and September 2023. While most of these couldn't find any issue, a diagnostic report dated 8 May 2023 indicated a potential Body Control Module ('BCM') fault. A further diagnostic on 31 August 2023 found a CAN bus communication fault.

Miss W had raised a complaint about this matter with Startline in August 2023, but they didn't uphold the complaint as a diagnostic didn't identify any faults being present. Miss W took the car to a specialist on 6 February 2024 which supported issues with the BCM and CAN bus. So, she brought the matter to the Financial Ombudsman Service for investigation.

Our investigator said the car was likely faulty, as there were multiple diagnostics that supported this. They said that the Engine Control Unit ('ECU') had been replaced, and this could result in fault codes being lost, and that not all testing equipment will identify all issues. However, the diagnostic done in February 2024 was by a specialist fault diagnosis company, so their results could be relied upon.

Given when Miss W started to have issues with the car, the investigator thought the car wasn't of a satisfactory quality when it was supplied to her. And because the supplying dealership had had multiple opportunities to fix the car (which included them replacing the ECU), Miss W should now be allowed to reject the car, with a refund of the deposit she paid. The investigator also recommended that Startline pay Miss W an additional £200 for the distress and inconvenience she'd been caused.

Startline asked for the opportunity to have the car independently inspected, which was agreed to in July 2024. The car was inspected in September 2024 and the inspector noted that the battery was dead, and a tyre was completely flat. However, despite not being able to carry out any diagnostics or test drive the car, the inspector concluded that, because the car had passed an MOT on 21 February 2023, it was highly unlikely the car was faulty when it was supplied to Miss W.

Based on this report, Startline didn't agree with the investigator's opinion, and this matter has been 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'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 W 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.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Startline are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Startline can show otherwise. So, if I thought the car was faulty when Miss W 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.

Miss W was supplied with the car on 23 February 2023. The MOT record shows that the car failed an MOT on 31 January 2023. While most of the failures related to the brakes and tyres, it also failed due to "*engine mil inoperative or indicates a malfunction.*" The engine mil is another name for the EML so, in January 2023, there was an issue with the EML being illuminated – an automatic MOT failure.

The car passed an MOT on 21 February 2023, two days before it was supplied to Miss W, with no advisories. However, I haven't seen anything to show me what was done in relation to the EML – whether something was fixed, or just whether the fault codes were cleared so as to stop the EML illuminating. As such, I'm not satisfied that the passing of the MOT definitely means there was nothing wrong with the car when it was supplied to Miss W.

The evidence is clear that Miss W was complaining about the EML coming on from March 2023 onwards. The supplying dealership investigated an intermittent EML on 29 March 2023, at which point they cleared some fault codes relating to the battery. Another investigation was carried out by the dealership on 25 April 2023, where they again cleared the fault codes, as well as replacing the battery and the ECU.

On 8 May 2023 the dealership carried out a further investigation, where they found fault codes relating to the BCM, which they suspected to be the underlying issue. However, no repairs were carried out. The dealership then replaced the battery on 26 July 2023, as the battery they'd put on in March 2023 was the incorrect type.

The car broke down on 31 August 2023, when it had done 69,847 miles. The breakdown company found a number of fault codes, specifically relating to the CAN bus.

Based on the above, it's clear that, in addition to the EML issue that caused the MOT failure around a month before the car was supplied to Miss W, within the first six months of Miss W being in possession of the car there were multiple faults which required multiple attempts at repair. Finally, the inspection report dated 6 February 2024 showed there were *"73 faults across various modules."* This confirmed issues with the CAN bus, the HVAC, the BCM, and the ABS braking system. The engineer who carried out the diagnostic suspected there was an issue with the ECU.

I've seen a copy of the independent engineer's report, dated 5 September 2024. In this report, the engineer concluded the car was of a satisfactory quality when it was supplied to Miss W. This conclusion was reached without any fault codes being checked or investigated, instead relying entirely upon the fact that the car passed an MOT on 21 February 2023. For the reasons given, I'm not satisfied that any work was done to the car in February 2023 to fix the already present issue with the EML. As such, I'm not satisfied this report is reasonable to rely upon.

Instead, I'm satisfied the evidence shows there is an ongoing fault with the car, which the dealership has unsuccessfully attempted to repair on a number of occasions. Section 24(5) of the CRA says *"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract."* This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Startline – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, as was the case here, then Miss W has the right of rejection. So, I'm satisfied that Miss W should be allowed to reject the car, and Startline need to do something to put things right.

Putting things right

While she's clearly had some issues, Miss W has been able to use the car while it's been in her possession – the MOT record for 27 February 2024 shows that she travelled almost 9,000 miles in the first year of being in possession of the car. Because of this, I think it's only fair that she pays for this usage, and I won't be asking Startline to refund any of the payments she's made.

However, I think Miss W should be compensated for the distress and inconvenience she has been caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended Startline pay Miss W an additional £200, to recognise the distress and inconvenience she's been caused. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Miss W would've felt by having to arrange for the car to be repaired on multiple occasions, and by these repairs being unsuccessful. So, this is a payment I'm directing Startline to make

Therefore, if they haven't already, Startline should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Miss W;
- remove any adverse entries relating to this agreement from Miss W's credit file;
- refund the deposit Miss W paid (if any part of this deposit is made up of funds paid through a dealer contribution, Startline is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest on the deposit refund, calculated from the date Miss W made the payment to the date of the refund[†]; and
- pay Miss W an additional £200 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (Startline must pay this compensation within 28 days of the date on which we tell them Miss W accepts my final decision. If they pay later than this date, Startline must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires Startline to take off tax from this interest, Startline must give Miss W a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss W's complaint about Startline Motor Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 20 March 2025.

Andrew Burford
Ombudsman