

Complaint

Mr B has complained about the quality of a car that Startline Motor Finance Limited ("SMF") supplied to him through a hire-purchase agreement.

Background

In March 2023, SMF provided Mr B with finance for a used car. The car was just under eight years old and it is my understanding that it had completed 96,150 miles at the time of supply. The cash price of the vehicle was £7,659.00. Mr B paid a deposit of £750 and applied for finance to cover the remainder of the funds he needed for the car. SMF accepted Mr B's application and entered into a 49-month hire-purchase agreement with him.

The loan was for £6,909.00 had an APR of 26.8%, interest, fees and total charges of £4,084.50 (made up of interest of £4,074.50 and an option to pay fee of £10) and the total amount to be repaid of £10,993.50 (not including Mr B's deposit) was due to be repaid in 49 monthly instalments of £219.67 and a final payment of £229.67.

Mr B began having difficulties with the vehicle in May 2023. He said the Engine Management Warning Light ("EML") illuminated and a noise came from the engine. Mr B says he took the car to a manufacturer garage of the vehicle and it confirmed that there were several fault codes including ones relating to the cooling system and the heating matrix. Mr B contacted the supplying dealer who told him not to get the car repaired by the supplying dealer and instead referred him to a garage to get the car looked at.

Mr B subsequently visited the garage he was referred to by the supplying dealer. The car was returned to him the following day. However, two days later (at the end of May 2023) the coolant warning light returned and Mr B had to contact his breakdown provider. The breakdown provider believed that there was a cooling charge issue. Mr B then went back to the garage he was previously referred to by the supplying dealer and multiple visits to the garage followed.

At the end of June 2023, the car was returned to Mr B after the garage said the issues with the coolant leak were repaired. However, in early July 2023 the car broke down and was attended to by the breakdown provider for a second time. This time the breakdown provider stated that the timing belt had slipped. As I understand it, the car has not been operational since then.

By this stage, Mr B had already complained that the vehicle was not of satisfactory quality to SMF. After obtaining a statement from the garage that repaired the vehicle stating that it believed the damage was caused by interference (which I take to mean deliberate tampering), SMF obtained an independent report.

The independent engineer ("IE1") provided his opinion that the faults weren't present at the point of sale. However, he stayed silent on the garage's allegations regarding interference. Nonetheless, SMF rejected Mr B's complaint saying that it didn't believe that the fault was present at the time that the car was supplied to Mr B.

Mr B remained unhappy with SMF's response. He obtained his own independent report completed by independent engineer 2 ("IE2") and referred the complaint to our service. Mr B's complaint was then reviewed by two of our investigators. Both investigator's reached the conclusion that they weren't persuaded the car that SMF supplied was not of satisfactory quality. So they think that Mr B's complaint should be upheld.

Mr B remained dissatisfied and asked for an ombudsman to review his complaint.

My provisional decision of 27 November 2024

I issued a provisional decision – on 27 November 2024 - setting out why I was intending to uphold Mr B's complaint.

In summary, I was intending to conclude that SMF had supplied Mr B with a car that wasn't of satisfactory quality.

SMF's response to my provisional decision

SMF didn't respond to my provisional decision or ask for any additional time to do so.

Mr B's response to my provisional decision

Mr B accepted my provisional decision in principle. However, he also provided evidence of his insurance costs which he believes SMF should reimburse him for, as well as an invoice he paid to recover the car when it broke down and a bank statement showing he made a payment to the company which provided his inspection report.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered matters, I'm satisfied that what I need to decide in this case is whether the car supplied to Mr B was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for SMF to do put things right.

It may also help for me to explain that I have to reach my decision on the balance of probabilities. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I have to consider what is most likely to have happened in light of the evidence that is available and the overall circumstances.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, SMF purchased the vehicle from the dealership Mr B visited. Mr B then hired the vehicle from SMF and paid a monthly amount to it in return. SMF remained the legal owner of the vehicle under the agreement until Mr B's loan was repaid.

This arrangement resulted in SMF being the supplier of Mr B's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Mr B's agreement with SMF. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Is there a fault with the vehicle?

Having considered the information provided I'm satisfied that there is a fault currently present on the vehicle. I say this because while there may be a dispute regarding the extent of the fault as well as the party that is responsible for rectifying it, both independent engineers and the breakdown provider all agree that the timing chain has slipped and that there may now be a problem with the engine.

This all occurred after all parties accept that there was a problem with the car's cooling. I'm satisfied that three separate technicians all confirming that there is a problem with the timing chain and that it, at least, needs replacing means that a fault of some description remains with the vehicle.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, meant that the car wasn't of satisfactory quality at the point of supply.

Was the vehicle that Mr B was supplied with of satisfactory quality?

I've read and considered everything provided. I accept and acknowledge that both parties have made substantial submissions regarding a number of issues. However, in reaching my determination, I've concentrated on what I think is most relevant.

So I want to reassure the parties that where I haven't commented on a specific issue that they have raised, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I don't think I need to do so, in order to reach what I think is the right outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

I now turn to who is responsible for rectifying the fault currently on the vehicle. It's fair to say that both parties have significantly differing views on who is responsible for the fault with the vehicle that SMF supplied to Mr B and they've each provided their own expert report in order to support their respective positions.

On the one hand, SMF has provided a copy of an independent report where IE1 confirms his opinion that any faults weren't present at the point of sale. On the other hand, Mr B has provided a copy of a report where IE2 appears to offer his opinion that the car either had faults at the time that it was supplied, or faults developed during the warranty period. IE2 has also said that there is doubt over the quality of the repair works that the garage carried out.

The first thing for me to say is that the car had a number of repairs completed to it during May 2023 and June 2023 as a result of it having cooling issues and the engine overheating. I appreciate that SMF has provided comments from the garage which completed the repairs saying that it carried out water pressure tests and that it carried out leak tests. However, I've not been provided with copies of any job reports, invoices or anything else confirming the specific details of what work was carried out. And Mr B has consistently said that he wasn't provided with any job sheets either confirming what work was done either.

Furthermore, while the garage's letter, to SMF, says that both it and the breakdown provider inspected the car and that they both found it to be in good working order, I don't think that

this is accurate. The garage may have considered the car to be in good working order. However, the first time the breakdown provider attended the car, the technician found issues with there being a lack of coolant in the vehicle. Indeed, at the time of the second breakdown, the breakdown provider's report states that the technician found no coolant in the car.

The report says that Mr B filled up the coolant the night previously. But even if he didn't, the garage returned the car to Mr B, after repairs to rectify overheating and a lack of coolant, less than six weeks previously. I wouldn't expect a car that was functioning correctly to have lost all its coolant in such a short period of time. In my view, there is an argument for saying that this in itself indicates that the garage made an unsuccessful repair to a fault that was present at the time the vehicle was supplied to Mr B.

In any event, I think that there are further reasons to support the problems now being linked to the previous issues with the car and the previous repair. I say this because having considered the pictures of the car that IE2 has supplied, I can see that the timing belt has slipped from a pulley which is right next to the water and coolant tank.

It's my understanding that a pulley will regulate the flow of water (and coolant) and where a belt slips, or ends up misaligned on a pulley, this will affect how the pulley operates. I don't know for sure that the misaligned belt is on the pulley operating the coolant tank. However, the proximity of the pulley to this tank leads me to think that it is likely to be the case.

I've also considered that SMF's investigation summary document of the case shows that it received a description (again I've not been provided with any job sheets) from the garage on some of the repairs that it carried out. From this investigation summary, I can see that the garage confirmed that it replaced the tensioner on the cambelt on 1 June 2023 in order to resolve the issue with the noise coming from the engine. It therefore seems to me that the garage also found an issue with the timing belt and attempted to repair this as a result. And this is also likely to constitute a failed repair.

For the sake of completeness, the notes also indicate that the supplying dealer told SMF that the timing belt had only been replaced 6,000 miles previously (I'm assuming that this was at 90,000 miles, so 6,000 miles before the car was supplied to Mr B, rather than at 96,000 miles and before the 6,000 miles Mr B completed).

Whether the timing belt was replaced at 90,000 miles or 96,000 miles, I think that a reasonable person would expect it to last significantly longer than 6,000 or even 12,000 miles. And the fact that the timing belt appears to have failed so soon after being replaced, leads me to think that Mr B was supplied with a car that had a timing belt that wasn't durable.

In reaching my conclusions, I've also thought about the assertions that the garage made, to SMF, that any damage to the timing belt was caused by interference. I note that this allegation was specifically included in the instructions SMF supplied to IE1 when commissioning its independent report. Therefore, I'm assuming that SMF wanted IE1's opinion on this. However, IE1 said nothing at all about this and instead merely provided his opinion that he didn't think that the faults were present at the point of sale. So I'm satisfied that the garage's assertions aren't corroborated by anything else that I've been provided with.

Equally, having reviewed the content of IE1's report, I can't see that he was made aware that of any of the details of the repairs that the garage had completed (in particular, that it had repaired the tensioner as part of the repairs), or that the car had only been driven a maximum of 12,000 miles since the timing belt was replaced. In these circumstances, the

weight I can provide on IE1's opinion on what or what isn't likely to have been present at the point of supply is limited.

Most importantly of all, given there isn't anything in IE1's report to corroborate that the timing belt had been interfered with, despite directly being asked about this and SMF's investigation notes suggest that it is the garage that worked on the timing belt, I'm not persuaded that it is more likely than not that the timing belt was interfered with while the car was in Mr B's custody. On the contrary, it seems to me that any fault with the timing belt, is more likely than not due to issues related to the previous repairs, or the fact that the timing belt on the car wasn't durable.

So overall and having considered everything, I'm satisfied that SMF supplied Mr B with a car that wasn't of satisfactory quality.

What SMF needs to do to put things right for Mr B

I've gone on to think about what I think SMF should do to put things right as a result of supplying him with a vehicle that was not of satisfactory quality.

Mr B has told us that he wishes to reject the car. As I've explained previously, there is an argument that as the supplying dealer directed Mr B to the garage which carried out repairs in May 2023 and June 2023, it has already had a failed repair on the car's cooling issues. And as this failed repair was carried out in the first six months of the agreement, Mr B is entitled to exercise his final right to reject the car.

For sake of completeness and in any event, I'm also mindful that even if I were to conclude the current fault is wholly unrelated to the previous issues and that this particular fault is the first instance where it could be said that the car was not of satisfactory quality, I'm mindful of the circumstances.

The CRA makes it clear that where a repair is carried out it must be done so within a reasonable time and without significant inconvenience to the consumer. Given Mr B has been reporting issues with the vehicle to SMF regarding the timing belt, at least, since August 2023 and he's been without the use of it since then, I don't think that a repair being carried out now, would be carried out within a reasonable period of time. It's clear that the length of time that has already passed has caused significant inconvenience.

I also think that it's worth also noting that all of the reports supplied state that further engine damage beyond what has already identified, in relation to the timing belt, is likely. This means I can't say it's more likely than not that a repair to the timing belt would even result in the issues present being resolved.

This is particularly given the work already carried out and there is the possibility that a further repair may, in any event, prove to be uneconomical in the circumstances. Therefore, I'm not persuaded that there is a sound rationale for SMF, or the supplying dealer, to repair the vehicle – notwithstanding any previous opportunities which may or may not have presented themselves and the length of time that has passed.

In these circumstances, I'm satisfied that the fair and reasonable resolution here would be for Mr B to reject the vehicle and for SMF to collect it from him. As Mr B will have rejected the vehicle, I'm satisfied that SMF should end its agreement with him and ensure that he has nothing further to pay on it.

This will seek to place Mr B in the position he would be in had he not entered into the hire-purchase agreement in the first place, so I'm satisfied that SMF should refund Mr B the £750 part exchange paid towards this agreement with interest at 8% per year simple.

I now turn to what Mr B if anything should pay. To start with, I'm satisfied that it is more likely than not that Mr B hasn't had any use of the vehicle since August 2023. I understand that he may even have purchased another vehicle at this point. So I'm satisfied that if Mr B made any payments from September 2023, these should be returned to him, with interest at 8% a year simple.

Mr B also says that any payments he made before this should be refunded to him. I understand and appreciate what Mr B has said and why he might be unhappy at having to make some payments. But the fact remains that Mr B was able to have some use of the vehicle for the first five months he's had custody of it. Indeed he was able to complete around 6,000 miles. I'm therefore satisfied that he should have to pay something to account for his usage.

I've carefully considered what it would be fair and reasonable for Mr B to pay in order to account for his usage of the car. There isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about Mr B's usage of the car SMF supplied as well as what sort of costs he might have incurred to stay mobile, in an equivalent vehicle, had he not had it.

I've considered whether the monthly payment for the period Mr B was able to use the car reasonably accounts for what it would have cost Mr B to stay mobile in an equivalent vehicle each month. However, I think that this would not take into account that the agreement SMF entered into with Mr B was a traditional hire-purchase agreement with level payments across the term (albeit the last payment was larger to account for the option to purchase fee).

So it's fair to say that the whole amount of Mr B's monthly payment was never supposed to be a reflection of his usage of the car each month and a reasonable proportion was accounting for the fact that Mr B would end up with ownership of the vehicle at the end of the term. It's also worth noting that this is in contrast to a Personal Contract Payment ("PCP") type agreement where the customer effectively pays rentals (or an amount to account for the depreciation in the value) for the duration of the agreement and then makes a much larger final payment which is meant to be reflective of purchasing the car at its market value at that point.

Given a reasonable proportion of Mr B's monthly payment was going towards securing ownership of the vehicle at the end of the term and that will now not happen as the car is being returned to SMF because it is not of satisfactory quality, I'm satisfied that Mr B shouldn't have to pay the whole amount of the monthly payment for the period that he was able to use the car.

Bearing in mind, Mr B's usage of the car SMF supplied, the proportion of each payment that was going towards interest, as well as what sort of costs he might have incurred to stay mobile, in an equivalent vehicle, had he not had it, I'm satisfied that Mr B should pay £150 a month for the period between March 2023 and August 2023.

So if Mr B did make the payments between March 2023 and August 2023 (the lack of a statement of account means that I'm not entirely clear on which payments have been made and which may not have been made), SMF should refund him £61.67 of the payments he made in this period. Again if Mr B made these payments, SMF should also add interest, at 8% a year simple, to the extra being refunded from the date it was paid to the date of any settlement.

Since my provisional Mr B has provided a copy of an invoice of £197.04 which he paid to recover the car after it broke down. This is clearly a cost which Mr B incurred because he was supplied with a vehicle that was not of satisfactory quality by SMF. So I'm satisfied that SMF should reimburse him for this, plus interest at 8% a year simple.

Mr B has also provided a copy of a bank statement showing a payment of £198 which he says was for the independent report he supplied to us. While I accept that this is a payment to the company which provided the report, this isn't the same as an invoice or a deposit as the bank statement doesn't show what this payment was for. I therefore leave it up to SMF to decide whether it is prepared to accept that this is sufficient to show that this payment was for the independent report Mr B commissioned. If not, Mr B will need to provide a copy of the invoice supplied or a receipt for SMF to reimburse him this payment, plus interest at 8% a year simple.

Mr B has also sought to recover his insurance costs from October 2023 onwards. I've considered what he's said and provided. To start with, I am prepared to accept that the £227.85 which Mr B paid for an additional policy to insure the car from 12 March 2024 is a cost which Mr B has had to pay as a result of SMF supplying him with a car that wasn't of satisfactory quality.

Mr B has also provided a renewal quote for £2,334.89 for an insurance policy which commenced on 1 October 2023. I understand that the reason Mr B purchased a policy in October 2023 is because he made an amendment to his previous policy (which was scheduled to run until 30 September 2023) in March 2023 in order to cover the car SMF supplied to him after he acquired it. I accept that this may be the case and this is why Mr B ended up renewing the policy in October 2023.

However, I'm not persuaded that that this is a cost which Mr B has incurred solely because of SMF supplying him with a car that was not of satisfactory quality. I say this because it is clear that Mr B subsequently used the policy to cover the replacement car that he has used in the period he's being refunded his payments for. If he did not, I can't see why he wouldn't have cancelled the policy in March 2024 when he purchased the replacement one. Furthermore, Mr B will have had to pay to insure any replacement car that he was using too.

So while I'm prepared to accept that SMF needs to refund the £227.85, plus interest at 8% simple for the insurance policy which started on 12 March 2024, I'm not persuaded that it also needs to refund £2,334.89 for the policy which commenced on 1 October 2023.

I now turn to any distress and inconvenience Mr B may have experienced. It's clear that Mr B had to deal with the stress of arranging and getting to and from garages for repairs, dealing with breakdowns and getting his own independent report.

Bearing in mind the amount of distress and inconvenience that Mr B will have experienced because of all of this, I think that SMF should pay Mr B £200 for the distress and inconvenience experienced as a result of being supplied with a car that was not of satisfactory quality.

Fair compensation – what SMF needs to do to put things right for Mr B

Overall and having considered everything, I'm satisfied that it would be fair and reasonable for SMF to put things right for Mr B by:

- collecting the car from Mr B at no cost to him;

- ending the hire-purchase agreement and ensuring that Mr B has nothing further to pay. SMF should also remove any adverse information it may have recorded against Mr B as a result of this agreement from his credit file;
- refunding his deposit and all of the payments that he may have made to the agreement from September 2023 onwards;
- refunding £61.29 of any payments Mr B may have made between March 2023 and August 2023;
- reimbursing him the £197.04 he paid to recover the car and the £227.85 he paid for the insurance policy which commenced on 12 March 2024. If Mr B can provide a receipt, or SMF is prepared to accept the bank statement to show that Mr B paid £198 for his independent report, SMF should reimburse him for this;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Mr B to the date the complaint is settled†;
- paying him £200 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Mr B a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 27 November 2024, I'm upholding Mr B's complaint. Startline Motor Finance Limited should put things right in the way that I have directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 January 2025.

Jeshen Narayanan
Ombudsman