

The complaint

Mr C complains about the quality of a car he has been financing through an agreement with STARTLINE MOTOR FINANCE LIMITED (Startline).

What happened

Mr C took receipt of a used car on 16 April 2024. He financed the deal through a hire purchase agreement with Startline. At the point of supply the car was about five and half years old and had already completed about 86,962 miles. It was sold as having an MOT completed on supply.

The day after receipt Mr C realised the MOT wasn't completed when supplied and was disappointed to find that an error message appeared on the dashboard telling him there was an emissions fault. He asked to return the car, but the dealership said they that if he'd driven more than 250 miles, they had a right to repair it. The dealership asked him to take it to a garage and that they would pay for the MOT and repairs. A diagnostic was completed on 29 April 2024 and that identified a faulty NOx (Nitrogen Oxide) sensor. The car was taken to a Vauxhall garage in May 2024, and they completed the MOT but, while they inspected the car, there's no evidence the NOx sensor was replaced.

Mr C collected the car on 6 June 2024, but the emissions error message returned. The car was returned to the Vauxhall garage and they identified the presence of fault code P20EE. They couldn't find any leaks, but said further checks would be required, and that there was also play in the turbo.

On 6 June 2024 Mr C asked Startline to allow him to reject the car. They arranged for the car to be taken back to the Vauxhall garage and on 11 August 2024 Mr C was told that the car was ready to be collected and no fault had been found.

Mr C didn't collect the car. He still wanted to reject it and to end his agreement. He referred his complaint to this service and our investigator thought Startline should allow him to do that as he was persuaded there had been a fault that Startline hadn't been able to fix and that Mr C had a short term right to reject the car in those circumstances. He suggested Startline should refund any finance instalments Mr C had paid since the car was taken to the Vauxhall garage on 29 June 2024 as that was the last time Mr C had used it. He also suggested Startline should pay Mr C £250 to compensate him for the distress and inconvenience caused.

Startline didn't agree with the investigator's opinion. They thought there was no evidence of a fault with the car. Mr C also disagreed as he thought the compensation hadn't taken account of the costs he incurred keeping the car taxed and insured while it was out of his possession. The complaint has, therefore, been referred to me, an ombudsman, for a 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.

I think Startline should allow Mr C to reject the car and end his agreement with them. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr C acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Startline, who are also the supplier of the car, are responsible. The relevant law also 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.

Short term right to reject

The relevant legislation explains that a consumer has 30 days to reject goods that are of unsatisfactory quality without there being a need to allow the business an opportunity to repair them.

Mr C asked the dealership to allow him to do that on 28 April 2024, the day after he took receipt of the car. Their explanation, that if he'd driven more than 250 miles, he couldn't reject it, was not an accurate reflection of what the Consumer Credit Act (2015) said.

At that point, given there was a fault with the car that was subsequently diagnosed the next day as a NOx sensor failure, I think Mr C should have been allowed to reject the car. I don't think the NOx sensor problem was a trivial issue that could be expected on a car that had completed quite an appreciable mileage. It was a fault that would mean the car would stop working after a few hundred miles and one that I'm persuaded would make this car of unsatisfactory quality.

I note, however, that at that point Startline hadn't been advised of Mr C's request and that Mr C did accept the repairs.

Was there a fault and were repairs successful?

I think there was a fault with the car because the diagnostic completed on 29 June 2024 says there was. There was a NOx sensor fault.

In those circumstances, once a repair has been accepted by a consumer, the business has one opportunity to put things right. I think Startline had that opportunity on 14 May 2024 when the NOx sensor fault was referred to the Vauxhall garage.

I don't think that repair was successful. It may be that it wasn't even attempted and that the fault code was simply reset, but I think Mr C was led to believe a repair had taken place and that he could have expected it to have been completed.

As the fault message reappeared, I don't accept that the repair was successful. And while Startline say there is no fault on the car there has been no explanation as to why the NOx sensor fault is no longer said to be present. I'm not persuaded that Startline have, therefore, been successful in their repair attempts and, in those circumstances, I think they should now allow Mr C to reject the car.

Putting things right

Mr C hasn't been able to use the car since it was taken to be repaired on 29 June 2024. I think it was reasonable of him to refuse to collect the vehicle as it had clearly had an emissions fault when it was taken in and there was no evidence of any repair. It's not fair for him to have been paying for a car he hasn't been able to use so Startline should refund any finance instalments he's made since 29 June 2024, and they should waive any that were due and haven't been paid. They'll need to add interest to any refund as Mr C has been deprived of that money.

Startline offered Mr C £250 compensation in respect of the delays he'd experienced. I've thought about the distress and inconvenience caused here and I think that was a fair amount. Mr C would have been worried about the persistent error message and he's had to arrange for repairs and diagnostics. He's also had to escalate his complaint to this service when I think it could have been resolved earlier. Overall, I think £250 is in line with what this service would usually award in such circumstances, and I'm not asking them to increase it.

Mr C has explained that he's continued to tax and insure the car since 29 June 2024. He always had a requirement to keep the car insured and taxed, so I don't think they were additional costs incurred as a consequence of the failure. He could have SORN the car off the road as it was clearly not his intention to collect it. He could, therefore, have mitigated his tax costs and I'm not persuaded a pro rata refund of tax should be provided. Mr C has explained that he's incurred costs to cancel his insurance. I think those costs will have been incurred as a consequence of the car's failure but Mr C hasn't as yet provided evidence that he paid those costs *himself*. If he can evidence that to Startline, they should be reimbursed.

My final decision

For the reasons I've given above, I uphold this complaint and tell STARTLINE MOTOR FINANCE LIMITED to:

- Allow Mr C to reject the car and end the finance agreement.
- Collect the car at no cost to Mr C if that's not already been done.
- Refund any finance instalments paid since 29 June 2024 in respect of loss of use. Waive any that were due and haven't been paid. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mr C £250 to compensate him for the distress and inconvenience caused.
- Provide a refund of any costs Mr C has incurred to cancel his car insurance as they were incurred as a consequence of the car being of unsatisfactory quality. But Startline need only do that *if* Mr C can evidence that he paid those costs himself. Add 8% simple interest per year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 April 2025.

Phillip McMahon
Ombudsman

