

complaint

Mr C complains that a used car he got with finance from Startline Motor Finance Limited was not of satisfactory quality.

background

Mr C began to experience problems not long after he got this car but the dealer said they were due to wear and tear. He asked a third party garage to have a look and it found various faults and thought the car had been in an accident. Then the car broke down and Mr C paid the third party garage to repair it. Five days after he got the car back, it broke down again. And Mr C wants to reject the car for a refund. He says he's lost his job - because of lack of transport - and he's suffering from anxiety and stress as a result of what happened.

Startline doesn't think it should be held responsible as Mr C didn't tell it about the problems until after the repairs had been arranged. It says

- Mr C shouldn't have authorised repairs because they weren't urgent and he didn't need the car as he was about to go abroad;
- it wasn't given the chance to inspect and decide what repairs might be needed and have those undertaken "at a reasonable cost";
- not all of the work Mr C paid for was necessary - some was cosmetic and breached his finance agreement; and
- Mr C continued to drive the car after he was told it was unfit for use, so he's responsible for the engine damage that followed.

Our adjudicator doesn't think it was unreasonable for Mr C to arrange for repairs himself under the circumstances. She notes an independent expert concluded that this car probably wasn't of satisfactory quality at the point of supply. And the damaged parts are still available for inspection. Overall she's satisfied it's more likely than not the car was faulty when Mr C got it. And she recommends Startline should take the car back, cancel the finance and refund the deposit, cost of repairs and any instalment payments Mr C made while the car was off the road - along with interest.

Startline thinks our adjudicator relied heavily on the expert's view. And there's no way to show issues were present at the point of sale "definitively and beyond reasonable doubt" because of Mr C's actions. It asked an expert to re-evaluate and provide further comments and says (in summary)

- the garage should have warned Mr C that timing belt was worn when it first checked the car. And he caused the subsequent damage by driving it when he shouldn't have;
- the initial oil loss was probably caused by perished valve seals. They're a wear and tear item and may deteriorate over 1,000 to 2,000 miles. That could have happened over the first few weeks when Mr C drove about 1,500 miles so Startline's not responsible;
- the current fault may have been caused by oil loss and maintaining oil levels is a maintenance issue which was Mr C's responsibility.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've come to broadly the same conclusions as our adjudicator for much the same reasons.

Startline says it's not possible to prove this car was faulty when Mr C got it beyond a reasonable doubt. So, for the sake of clarity, I should explain that we provide an informal, alternative dispute resolution service and the formal rules of evidence don't apply. Where the evidence is incomplete, inconclusive or contradictory - as some of it is here - I make my decision on the balance of probabilities. That means I consider all of the evidence available and the wider circumstances in order to decide what I think is most likely to have happened - and reach a fair and reasonable outcome.

Mr C acquired this car under a hire purchase agreement - meaning Startline supplied both the finance and the car itself. Mr C had the right, under legislation, to expect the car to be of satisfactory quality - at the point it was supplied. So, the car should have been of a standard that a reasonable person would expect, taking into account various factors such as its age, mileage and cost.

This car was nine years old, cost nearly £7,000 and had nearly 60,000 miles on the clock when Mr C got it, at the end of August 2015. As such, I wouldn't expect it to meet the same standards as a new car - but I consider the car should have been fit for use and in a reasonable condition for its age and the price paid.

I'm satisfied Mr C was concerned about oil loss within weeks but the dealer wouldn't help. And the garage Mr C asked to check the car found "perished valve stem oil seals" and damaged and badly painted panels, amongst other things. I note the garage also expressed some surprise that car had passed its MOT a few weeks earlier because it had corroded brake and fuel lines and an inoperative horn. Mr C says he tried again to resolve matters with the dealer without success. So he told the other garage to carry out the repairs and the car broke down before they started.

Startline has provided very detailed submissions. And I have seen one expert's report compiled after the car was inspected and what looks like another expert's comments. I consider the crux of what's in dispute now is

- whether that first breakdown was caused by an inherent fault or Mr C's actions
- which, if any, of the repairs he authorised were warranted and whether those were carried out at a reasonable cost
- whether the second breakdown resulted from an inherent fault that was present at the point of supply
- redress

what caused the first breakdown ?

Startline says Mr C caused the first breakdown by driving the car after the garage check up - when he knew (or should have known) that the timing belt had perished. In the invoice dated 29 September 2015 the garage says the first breakdown was caused by a pulley that "shattered" causing the [timing] belt to "tear". So it sounds as if the pulley breaking tore the timing belt and I don't think the belt itself failed simply because it was worn. The garage

considered that was such an unusual occurrence that it consulted a specialist - who advised they had only seen it happen when a car had been in a crash.

I can see the "description of works" the garage provided in March 2016 says the belt was worn the previous September. But, there's no mention of that in the report it gave Mr C at the time. Given that report was prepared contemporaneously I think it's likely to provide a more accurate indication of what the garage found and Mr C was told.

I accept the report says the car's not roadworthy. Mr C says he understood that referred to the broken horn and there was no reason to think driving the car might damage the engine. And I'm not persuaded it's fair, on balance, to hold him responsible for the first breakdown in all of the circumstances here.

Is Startline liable for the cost of repairs it didn't authorise ?

There's no dispute that Mr C told the garage to proceed with repairs after the first breakdown - before he contacted Startline. He's explained that he was about to leave the country for work. He was worried about how long the repairs would take, as he needed the car for work when he got back. And he felt he had no choice but to organise repairs himself before he left, in view of the dealer's response. Given these particular circumstances, I can understand why Mr C decided to go ahead. And I'm not persuaded that means Mr C chose to bear the cost himself, as Startline suggests.

From the evidence I've seen, it appears the repairs were only just underway when Mr C contacted Startline in October. I think it was probably still open to Startline to inspect the car then, if it wanted to. I note the parts removed were retained, in any event. And the expert who inspected the car after the second breakdown confirmed he saw evidence that the items said to have been repaired at Mr C's expense, had been.

I'm satisfied the repairs were carried out. It seems to me Startline could have asked an expert to examine the retained parts and/or consider the cost of those repairs after the event. And the expert could have commented further, if he felt repairs weren't warranted or the cost was unreasonable. Overall, I'm not persuaded Startline has been put to any significant disadvantage because Mr C authorised these repairs. So I can't fairly find the fact that he did so means Startline shouldn't be liable to pay for them.

Startline says some of the work Mr C paid for wasn't due to the breakdown. I accept the relevant invoice contains service items - and some cosmetic paintwork was done at Mr C's request. Startline says that breached the terms of the finance agreement - because he didn't get Startline's permission first. Mr C says this paintwork was intended to seal and prolong the life of the engine and improve the car's appearance. I think Startline would probably have reasonably consented to that - in the usual course of events. But, I don't think it's likely to have agreed to pay for it. I'll address the associated cost further when I deal with redress below.

what caused the second breakdown ?

The expert who inspected the car after the second breakdown found evidence of re-spraying and bodywork repairs amongst other things. He concluded this car is faulty and had been faulty at the point of supply - albeit he couldn't comment on the cause of the knock reported at the time because the car wasn't running.

When asked for further comments an expert suggests the breakdown probably resulted from damage caused by oil loss due to the perished seals noted in the September check. He thinks those seals could have deteriorated during the time Mr C was able to drive the car - but also acknowledges wear and tear is "progressive" so it could have been developing at the time of inception.

I'm satisfied Mr C acted reasonably quickly to have the car checked when he noticed there was an issue. And, given the length of time he had this car and the distance travelled, I am not persuaded the second breakdown is likely to have been caused by lack of maintenance on his part. I'm satisfied the faulty valves were probably present at the point of supply and caused the damage that led to the second breakdown.

redress

Mr C has only been able to drive this car for about four weeks. From the evidence I've seen, I'm satisfied it's not of satisfactory quality and wasn't fit for purpose when he got it. I agree with our adjudicator Startline should take the car back now and give Mr C a refund. I consider Mr C should be put back in the position he would have been if the faulty car hadn't been supplied. So I find Startline should refund the deposit along with all but one of the instalment payments Mr C has made - to reflect the fact he was only able to use the car for a few weeks.

I've considered carefully which party should pay for the work Mr C authorised. For the reasons I've explained above, I find it fair that Startline should reimburse Mr C for the cost of the repairs needed after the first breakdown – along with any checks and diagnostic tests. I accept service items are a cost associated generally with running a car. But, I can't exclude the fact that Mr C was only able to drive this car for about five days after it was repaired. I think he's had little benefit from those items - and I've found Startline should take this car back so he won't derive any benefit going forward. And I'm not persuaded it's fair that Mr C should have to pay for the service items in the circumstances.

That leaves the cost associated with the paintwork. As I've explained already, I think Startline would probably have consented to this work if it had been asked, in the usual course of events. But, I can't safely find that it would have agreed to pay for it. Having said that, I have no doubt that Mr C has experienced considerable upset and trouble as a result of what's happened. I think it's reasonable that the redress here should take account of that. And I'm not persuaded it would be fair for Mr C to be out of pocket. So, I find our adjudicator's recommendations represent a fair and reasonable outcome overall in the circumstances.

my final decision

My decision is I uphold this complaint. In full and final settlement I require Startline Motor Finance Limited to

1. take the car back at no cost to Mr C and cancel the finance;
2. refund the deposit;
3. refund all but one of the finance payments Mr C made;
4. refund the cost of repairs in the sum of £3,268.80 plus the cost of any diagnostics and checks;
5. pay interest on those refunds referred to at 2-4 above at 8% simple a year from the date of payment to the date of settlement;

6. remove any information recorded about the finance from Mr C's credit history.

HM Revenue & Customs may require Startline to take off tax from the interest paid. It must give Mr C a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 November 2016.

Claire Jackson
ombudsman