

Complaint

Mr M complains that Startline Motor Finance Limited refused to let him reject a faulty car.

Background

In July 2018 Mr M acquired a second hand diesel car costing £5,990 funded by a hire purchase agreement and a small deposit. The car was some seven years old and had done 75,627 miles. Two weeks later he was informed that the car was emitting blue smoke and he took it to local garage. He says he was told that this was most likely due to a fault with the turbo, worn valves or guide seals.

He took the car to the dealer and asked to be allowed to reject it. The dealer couldn't replicate the smoke and replaced the air filter and replaced the oil in the turbo filter. It suggested he drive it for 2,000 to 3,000 miles to see if the smoke subsided which it thought may have been due to it sitting on the forecourt for a long period. Mr M was unhappy with this and suggested an independent inspection.

In October Mr M took the car back and the car remained with the dealer for some time. It concluded Mr M had filled the car with petrol rather than diesel and this had been the cause of the fault. Startline issued its final response letter and in February 2019. Mr M supplied a diagnostic that showed smoke was still being emitted and he also obtained evidence that he hadn't filled the car with petrol.

As Startline had rejected his complaint Mr M brought the matter to this service. It was considered by one of our adjudicators who recommended it be upheld. He noted that Mr M had stopped using the car in February 2019 and he had only driven it for some 300 miles. He also noted that Mr M's suggestion to have the car subjected to an independent inspection had been rejected and Startline had maintained this position throughout.

Our adjudicator didn't believe there was sufficient evidence to show that fuel contamination had occurred and he thought Mr M had made the dealer aware of the issues immediately and his concerns hadn't been properly addressed. It was up to the dealer and Startline to demonstrate the car was fit for purpose. He reckoned Mr M should be allowed to reject the car.

The business didn't agree and said Mr M hadn't provided a diagnostic to show the same issues were still present and he hadn't let the dealer opportunity to look at it.

My findings

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

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Startline is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *“the quality of the goods is satisfactory”*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Mr M identified a fault with 30 days, had it inspected by a third party who gave several possible causes. He then took the car back to the dealer and asked if he could reject it, but the dealer said no fault could be found. There is no job card and so we don't know what tests were carried out. Mr M offered to pay for an independent inspection, but this was rejected. No reason has been given for this.

Later the dealer suggested the fuel had been contaminated and Mr M went to great lengths to prove that he hadn't filled the car up with petrol. However this seems to have had no impact in Startline's approach to the complaint. The last recorded mileage was 75,936 and Mr M estimates he has driven the car for a further 60 miles. This means he had done less than 400 miles and as such I am happy to accept that he only filled it up once.

If petrol had been used rather than diesel it may well have happened before Mr M bought the car. However, I don't find the dealer's claim to have found evidence of petrol in the tank very persuasive. It has produced no evidence to support that claim.

This matter could have been resolved much sooner had the dealer and or Startline agreed to an independent report. The Consumers Rights Act 2015 allows a consumer to reject faulty goods in the first 30 days. Mr M provided supporting evidence from a third party that the car was faulty and if the dealer hadn't been able to find the fault then it would have been sensible to go with Mr M's suggestion of an independent inspection. The onus wasn't on Mr M to prove there was a fault.

On balance I am satisfied there was fault which wasn't properly addressed and as it was brought to the attention of the dealer within 30 days Mr M should have been allowed to reject the car.

My final decision

My final decision is that I uphold this complaint and I direct Startline Motor Finance Limited to:

- end the agreement with nothing further to pay
- refund any payments made from inception onwards as he has had little use the car
- collect the car at no further cost to Mr M
- refund any deposit Mr M may have paid
- pay interest at 8% simple interest to be paid on all sums repayable from date of payment to date of settlement
- remove the agreement from Mr M's credit file
- pay £250 for the trouble and upset caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 April 2020.

Ivor Graham
ombudsman