

The complaint

Mr O complains about the quality of a car he has been financing through an agreement with STARTLINE MOTOR FINANCE LIMITED, who I'll call "SMF".

What happened

I issued my provisional decision on this complaint last month. An extract from that provisional decision is set out below.

What I've provisionally 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'm expecting to uphold this complaint as I think there is evidence the repairs to the differential have been unsuccessful and the car remains of unsatisfactory quality.

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 O 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 SMF, 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.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr O. The car here was about seven and a half years old and had already completed a little over 86,000 miles. So, I don't think a reasonable person would expect it to be fault free as would perhaps be the case with a brand new car.

The independent inspector who looked at the car in July 2022 thought the fault with the Haldex unit suggested the car was in an unsatisfactory condition when it was supplied to Mr O. He said:

"Once it has been confirmed that the Haldex unit is causing the transmission vibration and any necessary repairs have been completed we believe the vehicle would be returned to a serviceable/satisfactory overall general condition for a vehicle that is approaching 90,000

miles.”

In those circumstances the relevant legislation gives the business one opportunity to repair the car but if that repair fails the consumer is entitled to reject the car. I'm persuaded that the repair completed to the car's differential/Haldex unit failed. I say that because a report from a third party garage in March 2023 confirms:

“It looks like it has had a reconditioned unit fit and this is causing an issue. We recommend only fitting new units from manufacturer as they are a very troublesome unit and the fixes/repairs do not last”.

SMF should therefore allow Mr O to reject the car.

Putting things right

SMF should collect the car at no cost to Mr O and they should end the finance agreement. The relevant legislation allows SMF to retain a portion of the finance instalments they've been paid in respect of the usage the consumer has had from the car. Mr O has been able to drive the car throughout the agreement, but that usage has been impaired. The independent engineer explained there were vibrations through the transmission at speed and Mr O must have been concerned driving the car with a known fault. I think that will have spoilt his enjoyment of the car. In the circumstances I think SMF should refund 10% of all finance instalments Mr O has paid in respect of the loss of use and loss of enjoyment he has experienced.

Mr O has been inconvenienced by these issues. Our investigator suggested that SMF should pay him £100 compensation, but I think that's a little low in the circumstances. Mr O has had to drive a car that hasn't been of satisfactory quality for over a year now, he's had to return to the garage frequently and has had to provide his own diagnostic to demonstrate the differential problem persisted. He's been kept waiting for a repair and he's explained that he's had to take time off work and make alternative arrangements to transport his disabled partner. Mr O has also had to escalate his complaint to this Service when I think it could have been resolved earlier. In the circumstances, I'm expecting to tell SMF to pay him £400 in compensation.

I can see that Mr O had the car MOT'd in May 2023. That was after our investigator had suggested SMF support the rejection of the car. Mr O has explained that he had to spend some money putting the car right before that MOT and, as he wouldn't have had to pay for the MOT if SMF had approved rejection after the investigator had provided his view, I think SMF should refund the cost of the MOT, and the cost of any remedial work Mr O had to carry out on the car to get it through the MOT. They'll need to add interest to any refund.

My provisional decision

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

- *Allow Mr O to reject the car and end the finance agreement.*
- *Collect the car at no cost to Mr O.*
- *Refund 10% of all finance payments that have been made in respect of loss of use and enjoyment.*
- *Pay Mr O £400 to compensate him for the distress and inconvenience he's experienced;*
- *Refund the cost of any work or parts required to get the car through the May 2023*

MOT and refund the cost of that MOT. Mr O will need to provide receipts and SMF should add 8% simple interest per year to any refund from the date of payment to the date of settlement.*

- *Remove any adverse reports they may have made to Mr O's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments and/or evidence

Mr O provided an invoice for the brakes he'd had to replace to get through the MOT and he provided the MOT certificate. He explained that he didn't have a receipt for the MOT as he'd paid the £45 in cash.

Startline didn't provide any additional comments.

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've not been provided with any additional information that has led me to change my provisional decision. I think Mr O's explanation about payment for the MOT is acceptable and that it is fair to tell Startline to refund that expense in the absence of a receipt, as an MOT was clearly necessary and Mr O would have been likely to incur the expense.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

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

- Allow Mr O to reject the car and end the finance agreement.
- Collect the car at no cost to Mr O.
- Refund 10% of all finance payments that have been made in respect of loss of use and enjoyment.
- Pay Mr O £400 to compensate him for the distress and inconvenience he's experienced;
- Refund the cost of any work or parts required to get the car through the May 2023 MOT and refund the cost of that MOT. Mr O will need to provide receipts for the work and SMF should add 8% simple interest* per year to any refund from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr O's credit file in relation to this issue.

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or

reject my decision before 31 August 2023.

Phillip McMahon
Ombudsman