

The complaint

Mrs P complains that Startline Motor Finance Limited denied her request to reject a car she had acquired from it and harassed her with correspondence and phone calls about her arrears.

What happened

In April 2022 Mrs P entered into a regulated hire purchase agreement with Startline to buy a used car. The car was eight and a half years old, and had been driven nearly 65,200 miles. Its cash price was £5,190.

Shortly afterwards, she told the dealer that there was a small tear in the fabric on one of the seats, but the dealer refused to repair this as it described the damage as “cosmetic.” When, later, she reported this damage to Startline, she received a similar answer: due to the age of the car, this tear did not mean that the car was not of satisfactory quality, considering its age.

In October 2022 Mrs P complained to the dealer, and later to Startline, that the soft roof had a leak in it and the exhaust had blown. This time, Startline accepted that this was capable of meaning that the car had been of unsatisfactory quality at the point of sale. But it said that due to the time that had passed since then, it needed more evidence. It asked Mrs P’s son, who was acting on her behalf at the time, to arrange an independent inspection of the car. He replied to say this was not necessary, and that Startline should just take the car back.

Meanwhile, in September 2022 Mrs P had stopped her direct debit (which she said was an accident). Startline wrote to her about that and about a missed payment. Mrs P received further letters, emails and phone calls, and she complains that this was harassment. In December her son asked Startline to communicate with him instead of with his mother; there is a dispute about whether this request was made on 3 or 8 December. Mrs P complains that Startline did not comply with this request but continued to pester her. She has mental health issues which made this contact more onerous.

Mrs P’s son told Startline that she could no longer afford to make her monthly payments. In November 2022 Startline terminated the hire purchase agreement. But the car was not repossessed until February 2023. Mrs P complains about this delay, during which time she says the leak in the roof got worse and mould appeared inside the car. She says this may have reduced the value of the car by the time it was sold at auction. After the sale, there remained an outstanding balance of over £3,000.

In its final response to her complaint, Startline said that there had not been evidence that the car had been defective at the point of sale, since Mrs P had not agreed to have the car inspected. It said that the tear in the seat was within the BVRLA’s standards, for a car of that age, and did not amount to a defect. It said it had been obliged to write to her about the arrears, and to send her a default notice and a termination letter. But it said it had complied with her son’s request on 8 December to communicate with him instead of Mrs P.

Mrs P then brought this complaint to our service. But our investigator did not uphold it. She thought that there was not enough evidence that the car had been faulty when sold. She

also thought that even if there had been an inspection, it was unlikely that it would have found that a leak which had appeared about six months after the point of sale had been present all along. So she decided that Startline was not liable for that. She said Startline had been entitled to terminate the agreement and default Mrs P's account, because she had not kept up her monthly payments. She did not agree that Startline had been harassing Mrs P, because it had had to send her letters such as the default notice. She said Startline had written to Mrs P's son when he had asked it to, but then when the car had been auctioned he had asked Startline to stop contacting him, so it had had to write to Mrs P again. So she concluded that Startline had done nothing wrong.

Mrs P did not accept that opinion. She re-iterated that her mental health had made her vulnerable and that Startline's repeated contact had caused her stress. She emphasised that Startline had delayed repossessing the car. So this case was referred for an ombudsman's 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.

Having done so, I do not uphold it. I will explain why.

Was the car of satisfactory quality when it was sold?

Under the Consumer Rights Act 2015, Startline is liable to Mrs P if it sold her a car which was not of satisfactory quality at the time it was sold or hired; that is, in April 2022. It is not liable for any faults which develop afterwards. And when deciding whether the car was of satisfactory quality or not, it is not reasonable to expect a used car to be of the same standard as a brand new one. Allowance has to be made for wear and tear over the years and miles. I think that a small tear in the fabric of a seat is not serious enough to mean that Mrs P's car was not satisfactory. (This is what the dealer meant when it called the tear "cosmetic.")

A leak in the roof is altogether different. That would certainly mean that the car was not of satisfactory quality, if the leak was present when the car was sold. But if the leak had been present in April, then I don't think it would have taken until October to make its presence felt. So on the balance of probabilities, I think it is likely that the leak appeared some time after Mrs P acquired the car. I therefore think that Startline is not liable for that. And I think the same thing about the exhaust.

Did Startline harass Mrs P?

I have no doubt that Mrs P felt harassed and stressed. However, I can only hold Startline responsible for that if I decide that its communications with her were excessive or otherwise unwarranted. And I am not persuaded that they were.

I've seen evidence that Startline sent ten letters to Mrs P in the period from September to November 2022. Five of these consisted of one letter about a missed payment, another about the cancelled direct debit, a third confirming the terms of a six-week payment plan to clear Mrs P's arrears, the default notice, and the termination letter. Those were all letters which Startline had to send her. The other five were about late payments or payment reminders, which were arguably not essential but which were still legitimate to send, to try and avoid further arrears building up. I can see how receiving ten letters in thirteen weeks would be stressful (especially to someone with anxiety and the other issues Mrs P has), but I think that a certain amount of stress can't be avoided when somebody is in financial

difficulty and is unable to make their payments. Startline had a duty to treat her sympathetically and positively, and I think it did that (by agreeing a repayment plan, for example).

All those letters were sent before her son asked Startline to contact him instead of Mrs P in December. Whether that request was first made on 3 December or five days later does not seem to me to be of paramount importance; I can see from emails and from Startline's contact notes that Startline was communicating with Mrs P's son in most of December 2022 and in early 2023, so I'm satisfied that this request was complied with. (The exception is Startline's final response to Mrs P's complaint, which was addressed to her; this might be because its complaint department sent that, while another department was pursuing her payments. That isn't ideal, but I don't think one letter is enough to merit financial compensation.)

Was there an unnecessary delay in repossessing the car?

The termination letter was sent on 24 November 2022, but the car was not repossessed until 3 February 2023. Meanwhile, on 26 January, Startline sent Mrs P its final response. This included the following paragraph:

"We placed a hold on any repossession actions to determine an outcome to your concerns over the faults with the vehicle however as we are unable to conclude this part of your complaint, repossession actions will now recommence. As such, contact will be made with [your son] to discuss vehicle collection soon."

I think that is a reasonable explanation.

I have considered the possible counter-argument that Mrs P's son had told Startline on 15 December 2022 that he did not agree to an independent inspection and that he just wanted Startline to collect the car instead, so Startline should have collected the car in December. However, I don't think that is persuasive, for the following reasons. Mr P wasn't asking for repossession (which does not end his mother's liability under the hire purchase agreement), but for rejection (which does). So before Startline could collect the car in accordance with his wishes, it had to ascertain whether Mrs P was entitled to exercise a statutory right to reject the car. It needed an inspection to do that. Startline subsequently emailed Mrs P's son on 6 and 16 January 2023 to try to get him to change his mind about not getting one. I don't think that was unreasonable, because the alternative – repossession – was a less favourable outcome for her, and not to be used as a first resort. So I don't think there was undue delay.

As for the continuing water ingress and mould inside the car during this period, I don't think Startline is responsible for that. Paragraph 6.1 of the terms and conditions of the hire purchase agreement required Mrs P to look after the car while it was in her possession. So it was her responsibility to protect it from further damage (for example, by putting a tarpaulin over it). If the increased damage resulted in the car being sold at auction for a lower price than it might otherwise have got, then that is not Startline's fault.

My final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 29 November 2023.

Richard Wood
Ombudsman

