

The complaint

Mrs S complains about the quality of a car she acquired under a hire purchase agreement with Startline Motor Finance Limited (Startline).

When I refer to what Mrs S and Startline said, or did, it should also be taken to include things said, or done, on their behalf.

What happened

In November 2021, Mrs S entered into a hire purchase agreement with Startline to acquire a used car first registered in October 2017, that had travelled around 35,000 miles. The cash price of the car was approximately £15,000. The total amount payable was approximately £19,134. Mrs S paid a deposit of around £7,000. The first repayment was around £202 followed by 58 monthly payments of around £202, and by one final repayment of around £212.

Mrs S said that on 21 October 2022, the car experienced a brake failure on the motorway. She said the recovery company that came out to help said the entire calliper had fallen off the brake disc and this could only happen if the bolts were not tightened properly with correct torque. The car was then towed to a local repair shop where it was repaired at a cost of £638.45. At the time the car had travelled a total of approximately 37,880 miles. Mrs S said she first contacted the supplying dealership, but they wouldn't deal with her concerns, so she contacted Startline. Startline wouldn't accept the report from the local repair shop that did the repair, so they told Mrs S to get an independent report which cost £199. Mrs S said that after the repairs were completed, she wasn't using the car for three months as she was expecting a prompt reply from Startline. So, as a resolution to her complaint she would like Startline to refund her the full cost of the repairs, the cost of the independent report, plus three months of payment she made from October to December 2022. She would like them to also compensate her and her partner, for the stress caused and have the car checked by one of the car's manufacturer's service departments. Alternatively, if these requests can't be fulfilled then she would like to return the car and have Startline refund her deposit plus the above costs she incurred.

In December 2022, Startline wrote to Mrs S saying that, when purchasing a used car, there is an expectation that components are not as new and that each component has its own lifespan. Unfortunately, this means that sometimes even shortly after a purchase, a used car may require some form of repair. In this correspondence, they interpreted the independent report, commissioned by Mrs S, as suggesting there is no evidence the faults identified were present or developing at the point of sale. They assumed that there must have been repairs done to the brakes, before the failure on 21 October 2022, but after Mrs S already took possession of the car. So, they said they didn't uphold her complaint.

Mrs S was not happy with Startline's response, so she brought her complaint to this service.

Our investigator thought that the car wasn't of satisfactory quality when supplied, so she believed Startline needed to put things right. She thought that Startline should cover the cost of repairs Mrs S incurred plus reimburse her for the independent inspection. The investigator

also thought that Startline needed to pay Mrs S £100 for the distress and inconvenience that's been caused.

Startline didn't agree with the investigator, so the complaint has been passed to me to issue 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. But I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

Mrs S acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Startline is the supplier of the goods under this type of agreement, and is responsible for dealing with complaints about their quality. So, I've looked at whether the car was of satisfactory quality.

The Consumer Rights Act 2015 (CRA) covers hire purchase agreements such as the one Mrs S entered into. Under a hire purchase agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mrs S's case the car she acquired was used, with a cash price of around £15,000. It had covered around 35,000 miles and was approximately four years old when she acquired it. So, I would have different expectations of it compared to a brand-new car. And, as with any car, there is an expectation that there will be ongoing maintenance and upkeep costs, and that there are parts that will naturally wear over time. In second-hand cars it's more likely parts will need to be replaced sooner, or be worn faster, than in a brand-new car. So, Startline would not be responsible for anything that was due to normal wear and tear whilst in Mrs S's possession. But, given the price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after the car was acquired.

The CRA says that if the car acquired wasn't of satisfactory quality, or not as described, then Mrs S would be entitled to exercise her right to repair or to replace the car. So, for me to conclude that Mrs S can exercise her right to repair, I would need to see that the car wasn't of satisfactory quality, because the faults she complains about were likely to have been present, or developing, at the point of sale.

After Mrs S's car was recovered, the emergency breakdown assistant service indicated that the calliper bolts must have been loose. It also stated that the calliper had come off, the brake pads were missing, calliper piston was missing, and that the brake fluid was low. The

receipt from the local repair shop, that did the repairs after the car was recovered, renewed the rear left brake calliper, rear brake discs and pads, as well as changed the brake fluid. Also, the independent report commissioned by Mrs S said that from the images supplied, the engineer identified that the left-hand rear brake calliper had become completely detached from its axle fixing, the right-hand rear calliper was loosely fitted with one bolt still fitted, and that the calliper has rotated away from the brake disc. It also said that all brake pads were missing, presumed lost during the incident, as well as the right-hand rear calliper application piston also appeared to be missing. Taking all of this into consideration, I think most likely, there was something wrong with the car, so I will now consider if the faults in question were present or developing at the point of sale.

I know that Startline interpreted the independent report, commissioned by Mrs S, as suggesting there is no evidence the faults identified were present or developing at the point of sale. Startline assumed that there must have been repairs done to the brakes before the car failure on 21 October 2022 but after Mrs S took possession of the car. They said that the conclusion of the independent report confirmed that the faults would've been present at the point of sale unless the brakes had been removed since the point of sale, so Startline are of the opinion that the repair in question should be Mrs S's liability. I've considered this but I've not seen evidence to say that most likely Mrs S had any work done on the brakes since the point of sale and before the car broke down. And I've also considered the conclusions of the independent report.

The independent report states that the engineer had inspected the car's MOT history and advised that the rear brake disc have been noted as pitted and scored on the MOT dated 23 September 2020 at a recoded mileage of 24,814. The engineer concluded that the images supplied show that both brake discs are not pitted or scored, so he said that this suggest that the rear brake callipers have been removed at some stage, since the 23 of September 2020, to replace the rear brake discs and possibly the brake pads. He was of the opinion that during this repair the rear brake callipers weren't refitted correctly with all four locking bolts being left loose at the time of refitting. This, over time, caused the bolts to become loose subsequently becoming detached from the calliper support brackets, and eventually causing both callipers to fall off the support brackets. The engineer said that the brake pads have also become detached and both rear brakes have failed, resulting in total brake failure. In the engineer's opinion there was an MOT that was carried out two weeks prior to the point of sale, so this would suggest the brake callipers would still have been located sufficiently to allow effective brake operation. His report states that this can still be the case if the calliper bolts are loose. The report also explains that the MOT test centre is responsible to check the brake pads' condition if visible. As both rear callipers are visible on this car, their condition is therefore visible to the MOT tester who has not reported any issues. So, the report concludes that the fault would have been present at the point of sale, unless the brakes had been removed since the point of sale.

Based on the above, I think most likely the brakes had work done to them before Mrs S took possession of the car as the car passed its MOT in November 2021. And, considering that Mrs S has only travelled about 3,000 miles in the car, I think it's most likely these faults were present or developing at the point of supply. From all the evidence available, I've seen how significant these faults were and taking everything into account – including the price paid, the age, the usage of the car, and the faults in question (including the fact that this was a safety issue) – I'm not persuaded that the car was of satisfactory quality when Mrs S took delivery. Given the age, mileage, and the price paid, I think it's fair to say that a reasonable person wouldn't expect to have such a brake failure occur after only traveling in the car for about 3,000 miles.

The CRA sets out that, where the supplied goods are not of satisfactory quality, the consumer can require the supplier (Startline in this case) to fix the faults. After the car was

recovered, it was taken to a local repair shop that fixed the faults with the brakes. So, I think it's fair and reasonable that Mrs S gets reimbursed for these costs. Also, I think it's fair that she gets reimbursed for the independent report that Startline asked her to get, because she wouldn't have to have these expenses had she been supplied with a car of satisfactory quality.

I know that Mrs S has mentioned that this situation has also had impact on her husband. But in this decision, I can only consider the impact this situation had on Mrs S, so I can't consider the impact this had on him. But I have considered that this matter has caused her distress and inconvenience while trying to resolve it. Mrs S had to take the car back for repairs and she had to correspond with the dealership and Startline, as well as arrange the independent inspection that was carried out on the car. Which, I think, she would not have had to do had Startline supplied her with a car that was of a satisfactory quality. So, I think Startline should pay her £100 in compensation to reflect the distress and inconvenience caused.

Mrs S said that, as a resolution to her complaint, she would like Startline to refund her three months' payment she made from October to December 2022, and she would like the car to be checked by one of the car's manufacturer's service departments. And if these requests can't be fulfilled, then she would like to return the car and have Startline refund her deposit plus the above costs she incurred. But there are no reasonable grounds to ask Startline to refund the monthly instalments as there is no evidence that once she got the car fixed, it was unsafe to drive. Also, the car passed its MOT on 5 November 2022 with no advisories, so I don't think it would be fair and reasonable to ask Startline to refund her the monthly payments or to have the car checked by one of the car's manufacturer's service departments.

Having considered all the above, I think the resolution I'm proposing in this decision is fair and reasonable, considering all the circumstances of this complaint.

My final decision

For the reasons given above, I uphold this complaint and direct Startline Motor Finance Limited to:

1. Refund Mrs S £638.45 she paid for the car repairs;
2. Refund Mrs S £199 she paid for the independent report;
3. Add 8% simple interest per year to all of the above points above from the date of each payment to the date of settlement;
4. Pay Mrs S £100 for the distress and inconvenience caused.

If Startline Motor Finance Limited considers tax should be deducted from the interest element of my award, they should provide Mrs S with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 13 November 2023.

Mike Kozbial
Ombudsman