

The complaint

Mr U complains that a car acquired with finance from Startline Motor Finance Limited ("SMF") wasn't of satisfactory quality.

What happened

In May 2022 Mr U was supplied with a car and entered into a hire purchase agreement with SMF. At the point of supply the car was around 6 years old and had covered around 54,000 miles.

In August 2022 the car failed to start. Mr U took the car to a local garage who advised him that they believed the fault to be with the injectors and that it would cost around £450 to repair.

Mr U contacted SMF to report the fault. SMF advised Mr U to contact the supplying dealer.

Mr U contacted the supplying dealer who said it would look at the car if Mr U brought it to them. Mr U wasn't able to do this because the car wouldn't start, and the supplying dealer was located too far away for the car to be towed there. Unable to resolve things with the supplying dealer, Mr U decided to have the car repaired at his local garage.

The local garage kept the car until late November 2022. The spark plugs were replaced but the car still wouldn't start, and the garage couldn't diagnose the fault. It asked Mr U to collect the car.

Mr U contacted the supplying dealer again. It said that because the six month warranty had now expired it wasn't willing to assist.

Mr U contacted SMF again. SMF arranged an independent inspection of the car.

The independent inspection found that the engine wouldn't fire and said further inspection and / or a diagnostic check at a main dealer was needed to establish the cause of the fault. The report said it was inconclusive whether the injectors had failed because the injectors fired as expected and there was a spark, so the engine should've started.

A second inspection report was provided due to the lack of clarity in the first report. The second report stated that it couldn't say what was causing the non-starting issue but that it was possibly software related. The report said that the car had only covered 4066 miles since the point of supply and the fact that the injectors had been replaced led to a conclusion that the supplying dealer should be responsible for repairs on the grounds of durability.

In its final response, SMF said it wasn't upholding the complaint because Mr U had carried out unauthorised repairs at a third party garage and it couldn't hold the supplying dealer responsible for unauthorised failed repairs.

Mr U wasn't happy with the response and brought his complaint to this service.

Our investigator upheld the complaint. He said there was no dispute that the car had a fault

and said it was reasonable that Mr U had arranged for repairs to be carried out at his local garage because it was practicable to transport the car to the supplying dealer and the supplying dealer hadn't been willing to assist with this. The investigator said that based on the independent inspection report the car wasn't of satisfactory quality because it wasn't sufficiently durable. The investigator said that because there had already been one attempt at repair Mr U should now be able to reject the car.

SMF didn't agree. It said that the supplying dealer had requested that the vehicle be brought to them, but Mr U had refused. It said that Mr U hadn't provide evidence of a fault within the first 6 months and said that a fuel injector could fail at any time. SMF said that the fact that the car had been able to cover 4000 miles since the point of supply showed that it was fit for purpose.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general state and condition as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr U was around 6 years old and had covered around 54,000 miles. So it's reasonable to expect that parts of the car would have a degree of wear and tear and that it was likely to require repairs sooner than, say, a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs within the first six months, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car.

After six months the burden of proof is reversed and it's up to the consumer to show that the fault was present or developing at the point of supply.

I've reviewed the available information about the issues which Mr U experienced with the car. Based on what I've seen, I'm satisfied that the car has a fault. I say this because the independent inspection report dated January 2023 states that the engine won't start. This supports Mr U's testimony that the car failed to start in August 2022 and that he hasn't been able to drive it since then.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

SMF has said that Mr U hasn't provided evidence of a fault within the first six months. It has also said that an injector fault can occur at any time and was more likely to occur in a second hand car.

I've already said that I'm satisfied that there is a fault with the car. Mr U reported the fault to SMF in September 2022 and the evidence shows that repairs were attempted in October/November 2022. The independent inspection identifies the same fault as Mr U reported to SMF in September 2022 (engine not starting). Based on what I've seen, I don't agree with SMF when it says that Mr U has failed to show that the fault occurred within the first six months.

I agree that a fault can occur at any time with a second hand car. However, in this case, the independent inspection report isn't conclusive with regards to why the engine fails to start. There's no evidence that this is an injector fault, and the independent report specifically states that the injectors have been replaced and appear to be functioning.

I've carefully reviewed the independent inspection report. This is persuasive, because it is expert evidence. Although the report doesn't establish the exact cause of the fault, it states that the fact that Mr U was only able to cover 4000 since the point of supply before the fault occurred leads to the conclusion that the car wasn't sufficiently durable. So although SMF has said that the car was fit for purpose because Mr U was able to cover 4000 miles, the inspection report reaches a different conclusion and states that a fault of this type after only 4000 miles renders the car not sufficiently durable and therefore not of satisfactory quality.

I understand that repairs were attempted in November 2022. SMF has said that these repairs were unauthorised. The evidence suggests that Mr U asked the supplying dealer for help but that the supplying dealer told Mr U that he was responsible for getting the car to them. I don't think it was reasonable for the supplying dealer to expect Mr U to transport the car to them. The fault had occurred in the first six months and the car wouldn't start. The supplying dealer was located around 55 miles away from Mr U's home. In the circumstances I think it would've been reasonable for the supplying dealer to arrange for the car to be recovered to them at no cost to Mr U in order for the car to be inspected and repaired. As against that background I don't think it was unreasonable for Mr U to arrange to have the car repaired locally. I'm not persuaded that the repairs were unauthorised.

SMF has said that in order to bring this matter to a resolution, it would be happy to review quotes to complete the necessary repairs to the car. It has said that rejection isn't a fair outcome.

Under the relevant legislation, the business is allowed one opportunity to repair the fault. I'm of the view that the supplying dealer had a reasonable opportunity to repair the fault in September 2022 when Mr U first contacted them. I don't think it's fair to allow any further opportunities to repair the fault given the time that has now passed. I'm persuaded that the car isn't sufficiently durable and therefore isn't of satisfactory quality. Repairs have been attempted and have failed. Mr U should be allowed to reject the car.

Putting things right

I've already explained why I think Mr U should be allowed to reject the car.

Mr U has told this service that he hasn't been able to use the car since August 2022. I've no reason to doubt what he says about this. His testimony is supported by the fact that the car wouldn't start at the independent inspection and the mileage on the odometer hasn't increased since the fault first occurred.

I don't think it's fair that Mr U has had to pay for a car he's unable to use. I'm therefore asking SMF to refund all rentals from August 2022 to the date of settlement.

Mr U has described the impact that this has had on him. He's told this service that he's spent a lot of time trying to resolve matters with the supplying dealer and with SMF. It's clear that Mr U has been caused distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. I think it's fair to ask SMF to pay compensation for this.

I'm aware that Mr U has paid £450 to his local garage for repairs. I don't think it's fair that Mr U should have to bear these costs, because the repair was the responsibility of the supplying dealer, and as I've already said, I think the supplying dealer should've arranged for recovery

of the car so it could carry out repairs when the fault was first reported. I'm therefore asking SMF to refund the cost of these repairs.

My final decision

My final decision is that I uphold the complaint. Startline Motor Finance Limited must:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mr U

Refund all rentals from August 2022 to the date of settlement

Refund the cost of repairs (upon Mr U providing a receipted invoice)

Pay 8% simple interest on all sums refunded from the date of payment to the date of settlement

Pay £150 for distress and inconvenience

Remove any adverse information from Mr U's credit file in relation to this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 26 March 2024.

Emma Davy
Ombudsman