

## **The complaint**

Mr M is unhappy that a car supplied to him under a hire purchase agreement with Startline Motor Finance Limited was of an unsatisfactory quality.

Mr M is being represented in this complaint by Ms M. However, for ease of reference, I'll refer to any comments made, or actions taken, by either Mr M or Ms M, as being made/done by Mr M.

## **What happened**

In March 2022, Mr M was supplied with a used car through a hire purchase agreement with Startline. The agreement was for £12,314 over 60 months; with 59 monthly payments of £314.05 and a final payment of £324.05. At the time of supply the car was almost six years old and had done 68,158 miles.

Mr M says that the car's dashboard indicated there was a drive chain fault soon after he picked it up. He spoke to the supplying dealership, and they changed the fuel filter. However, Mr M said the fault persisted, and he asked to reject the car within 14 days of it being supplied to him. Which the dealership didn't agree to.

Mr M says he then took the car to an independent garage, who said the warning message displayed in the car could be an indication of a fault with the clutch. As the dealership weren't responding to his messages, Mr M continued to use the car, and the clutch failed in early June 2022. It was recovered to his home address, where it remained, unused.

Mr M complained to Startline about the issues with the car on 4 September 2022. They arranged to have the car inspected by an independent engineer. The engineer said there was a fault with the clutch that was present when the car was supplied. In their final complaint response letter dated 25 January 2023, Startline said they would arrange for the car to be collected and repaired by the dealership. However, Mr M was unhappy with this response, as he'd lost confidence in the dealership being able to repair the car. So, he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Startline had the opportunity to repair the car, and they'd agreed to do this. He thought this was reasonable in the circumstances, and he didn't think that Mr M should be allowed to reject the car.

Mr M didn't agree with the investigator. He said the car has been undriveable since June 2022, which has affected his ability to work. This has caused him significant financial hardship and he's been unable to keep up payments on the car. He also said that he didn't trust the dealership to repair the car, as they'd sold him a car that wasn't fit for purpose, and this is the only option Startline have given him. To resolve the complaint, Mr M wanted Startline to allow him to reject the car, and to pay him compensation.

The investigator explained why Mr M's comments, and the evidence he'd sent relating to a later safety recall on the car due to an exhaust issue, didn't change his mind.

Mr M said the car had been undrivable for months, so he didn't think Startline's offer just to repair the car was fair. However, on 10 May 2023, he consented to Startline recovering and repairing the car. But he said Startline said they were no longer willing to do this and wanted to repossess the car for non-payment instead.

The investigator reissued their view, saying that Mr M made Startline aware of the issues with the car in September 2022, but they didn't offer a solution until January 2023. And Mr M didn't have use of the car during this period. So, the investigator said Startline should not only recover and repair the car, but they should also refund Mr M the payments he'd made between September 2022 and January 2023, plus statutory interest. The investigator also said that Startline could apply this refund against Mr M's arrears, and any surplus should be paid to Mr M.

Mr M agreed with the investigator, but Startline didn't. They said they'd initially offered to contribute towards the cost of the repairs on 30 November 2022, and Mr M had rejected this offer on 5 December 2022, asking to reject the car instead. Because of this, they thought that Mr M had caused the delays so, while they were prepared to repair the car, they didn't agree that any payments should be refunded.

Startline collected the car for repair on 28 June 2023. However, instead of repairing it as agreed, they terminated the agreement and sold the car at auction. And they've asked Mr M to pay the shortfall.

I issued a provisional view on 14 September 2023, where I explained my intention to uphold the complaint. In that decision I said:

*In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.*

*The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Startline are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.*

*The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Startline can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr M to show it was present when the car was supplied.*

*So, if I thought the car was faulty when Mr M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Startline to put this right.*

*The car was supplied to Mr M on 30 March 2022. Mr M has provided evidence that there was a fault with the car shortly after it was supplied to him. The supplying dealership attempted a repair by replacing the fuel filter, and the car was returned to Mr M on 6 April 2022. Mr M has also provided evidence that the fault reoccurred on 7 April 2022, and that, on 11 April 2022, he was told it was probably clutch related.*

*I've also seen a copy of the independent engineer's report, dated 8 November 2022. In this report, the engineer concluded there was a fault with the clutch, and "the fault codes that were identified and around the date of purchase did suggest that the clutch was approaching end of its in-service life that point and therefore the grounds of durability the sales agent should be responsible for contribution towards its repair."*

*The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.*

*Given what I've seen, I'm satisfied there was a fault with the car and that this fault made the car not of a satisfactory quality when it was supplied to Mr M.*

*Mr M has said he asked to reject the car within 14-days of supply, and the dealership refused to allow him to do this. While the investigator has referred to a 14-day cooling off period, and that this related to the finance agreement only, there doesn't seem to have been a full consideration of the CRA. And the CRA allows Mr M a 30-day short-term right to reject if the goods aren't of a satisfactory quality (as was the case here). While Mr M hasn't provided any evidence that he asked the dealership to reject the car within 30-days, given what I have seen I don't doubt this was the case.*

*The CRA also allows for one chance at repair. And it's clear from the evidence that the dealership attempted this repair in early April 2022, and the repair attempt was unsuccessful. Where a repair attempt has been unsuccessful, the CRA allows for the goods to be rejected.*

*The investigator has argued that it was the dealership, not Startline, who attempted the repair, so Startline should be allowed a chance at repair. However, as it's clear that Startline would only agree to a repair if this was carried out by the dealership, I'm not in agreement with this argument, and I'm satisfied the single chance at repair took place in April 2022.*

*Notwithstanding this, Startline did agree to repair the car, and Mr M consented to this repair taking place. But I think the timeline for this is important.*

*While the car broke down and was undrivable from early June 2022, Mr M didn't raise this matter with Startline until 4 September 2022. As such, I agree that Mr M was responsible for this three-month delay in the matter being resolved.*

*However, Startline didn't respond to Mr M's complaint until 30 November 2022, and then this was through a third-party. Their response was that they were prepared to contribute towards the costs of repair, but only if Mr M had the car recovered to a garage, who could then quote for the repair costs. Given Mr M's financial circumstances at the time, he was unable to cover the costs of this recovery. As such, he asked to be able to reject the car.*

*Startline replied with another complaint response on 25 January 2023. And they offered to have the car recovered to the dealership and cover all the repair costs.*

*Startline have argued that, because Mr M asked to reject the car in December 2022, after the offer to contribute to the repair costs, he was responsible for all the delays. And he therefore shouldn't be refunded any payments he'd made.*

*I disagree with this view. Startline took three-months to make an offer that wasn't in line with the CRA, and almost two further months to make an offer that was. And Mr M's rejection of the first offer (which Startline would reasonably know was less than he was entitled to under the CRA) doesn't mean the three-months it took them to make this offer was Mr M's fault. What's more, the engineer didn't inspect the car until two-months after the complaint had*

*been raised, despite the car being in a single location and available for inspection the entire period.*

*As such, I'm satisfied that any delays in dealing with this matter from September 2022 to January 2023 were entirely down to Startline.*

*Section 23 of the CRA states:*

*If the consumer requires the trader to repair or replace the goods, the trader must –  
(a) do so within a reasonable time and without significant inconvenience to the consumer*

*Given that it took Startline from 4 September 2022 to 25 January 2023 to make an offer in line with the remedies allowable under the CRA, during which time Mr M was without transportation, and this was causing him significant financial hardship; it's arguable Startline failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr M should be able to reject the car.*

*It wasn't until 10 May 2023 that Mr M agreed to have the car repaired. So, under normal circumstances, I would say that he was responsible for the payments to Startline during the period of delay he caused – June to August 2022 and February to April 2023. However, these are not normal circumstances.*

*I say this because Startline delayed in collecting the car until 28 June 2023. And then, instead of repairing it as agreed, it's my understanding they terminated the agreement and sold the car at auction. And they are now pursuing Mr M for the shortfall of around £12,000.*

*For any of the reasons given above – the request to reject the car within 30-days, the failed repair in April 2022, and Startline's potential breach of section 23 of the CRA – I think Mr M had the right to reject the car. And, instead of repairing the car as agreed, Startline instead decided to repossess the car and terminate the agreement. In doing so, they waived any right they had to complete a (second) repair on the car. So, given this, I'm satisfied that Mr M's right to reject the car now applies. And Startline need to do something to put things right.*

*For the reasons already given, this agreement should be treated as Mr M rejecting the car. Mr M was also significantly inconvenienced by what had happened and has suffered financial hardship as a result.*

*So, I think Startline should:*

- treat the agreement as the car being rejected and end it on this basis;*
- remove any adverse entries relating to this agreement from Mr M's credit file;*
- refund all the payments Mr M paid;*
- apply 8% simple yearly interest on the refund, calculated from the date Mr M made the payments to the date of the refund †; and*
- pay Mr M an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality, and the financial hardship this caused.*

*†HM Revenue & Customs requires Startline to take off tax from this interest. Startline must give Mr M a certificate showing how much tax they've taken off if he asks for one.*

## **Responses**

Mr M agreed with my provisional view, but Startline didn't respond.

## **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.

As Startline haven't said anything to the contrary, I'm taking their comments to mean they don't object to my provisional view.

As such, the comments I've received don't change my view about that Mr M should be allowed to reject the car. And, given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

## **Putting things right**

For the reasons already given, this agreement should be treated as Mr M rejecting the car. Mr M was also significantly inconvenienced by what had happened and has suffered financial hardship as a result.

Therefore, Startline should:

- treat the agreement as the car being rejected and end it on this basis;
- remove any adverse entries relating to this agreement from Mr M's credit file;
- refund all the payments Mr M paid;
- apply 8% simple yearly interest on the refund, calculated from the date Mr M made the payments to the date of the refund <sup>†</sup>; and
- pay Mr M an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality, and the financial hardship this caused.

<sup>†</sup>HM Revenue & Customs requires Startline to take off tax from this interest. Startline must give Mr M a certificate showing how much tax they've taken off if he asks for one.

## **My final decision**

For the reasons explained, I uphold Mr M's complaint about Startline Motor Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 November 2023.

Andrew Burford  
**Ombudsman**