

## **The complaint**

Mr H complains about the quality of a car he acquired under a hire purchase agreement with STARTLINE MOTOR FINANCE LIMITED (Startline).

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

## **What happened**

In July 2022, Mr H entered into a hire purchase agreement with Startline to acquire a used car first registered in January 2017. At the time Mr H acquired the car it had travelled approximately 27,460 miles. The total cash price of the car was approximately £11,185. There was a deposit of £3,700. The total amount payable under the finance agreement was approximately £16,641. The first repayment was around £216 followed by 58 monthly repayments of about £216 and a final repayment was approximately £226.

Mr H said that, at the time of purchase, there was a receipt from a garage which showed low engine pressure issues in December 2021. He said that the supplying dealer assured him these issues had been rectified. But, within a week of owning the car, Mr H said that the engine management light appeared on the dashboard. So, he raised this with the supplying dealership and with Startline, who asked him to get a diagnostic done. Mr H provided a diagnostic that showed multiple codes.

Mr H said that the supplying dealer told him to get these issues fixed through the warranty company. But Mr H said that the warranty company provided a report that these were old issues and that the car had no faults when he raised this with them. Mr H said that in December 2022 the engine light came back on again and again and the supplying dealership told him to contact the warranty company, who in turn again said that the issues were previous and that there was nothing wrong with the car. Mr H said that again in February 2023, the engine management light showed up on the dashboard, this time with a low oil pressure warning and engine power reduced warning and the car went into limp mode and became undrivable. Startline told Mr H to provide a diagnostic. This report showed multiple error codes again, notably an error code for the oil sensor, the pistons, and the oil solenoid.

Startline wrote to Mr H in March 2023. In this correspondence they said that they are not upholding his complaint. They said that an independent inspection which was instructed by them in February 2023, determined the current engine damage had been induced by driver error caused due to the car having been run with insufficient oil in the sump.

Mr H told Startline that the engineer told him that the issues were almost certainly there at point of sale, so in May 2023 Startline issued another response on Mr H's complaint. They said that, as Mr H challenged the claim from the previous inspection, the supplying dealership commissioned another independent inspection. In this correspondence Startline again said that they are not upholding Mr H's complaint because this second report concluded that the car had been in service for approximately six months to the reported fail

date and had covered approximately 10,000 miles. As such, they would not consider the reported faults with the car to have been present or developing at the point of inception.

Mr H was unhappy with this response, so he referred his complaint to our service.

An investigator at our service was of the opinion that the car was not of satisfactory quality when supplied. The investigator thought that a reasonable person would expect the piston rings in an engine to last longer than they did. So, he thought that Startline should repair the faults if these can be completed in a reasonable time and without significant inconvenience to Mr H. If this isn't possible, the investigator thought, that Mr H should be able to reject the car. He also thought that Startline should refund any repayments from 6 February 2023 until the date the car is returned to Mr H, and they should refund him the £171.98 he paid to arrange the diagnostics.

Startline disagreed with the investigator. So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 22 November 2023. In the provisional decision I said:

***“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.*

*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.*

*In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr H 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.*

*The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr H entered into. Under this 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 and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*In Mr H’s case the car was used, with a total cash price of approximately £11,185. It had covered around 27,460 miles and was around five years old when he acquired it. So, I’d have different expectations of it compared to a brand-new car. As with any car, there’s an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time and it’s reasonable to expect that these may need to be replaced. And with second-hand cars, it’s more likely that parts will need to be replaced sooner or be worn faster than with a brand-new car. So, Startline would not generally be responsible for anything that was due to normal wear and tear whilst the car was in Mr H’s possession. But given the age, mileage and price paid, I think it’s fair to say that a*

reasonable person wouldn't expect anything significant to be wrong shortly after it was acquired.

The independent report, which was carried out in February 2023, indicates that there are faults with the car. The report indicated that the car's ECU was scanned and the following fault codes were present:

"P0011 Intake camshaft position system performance.  
P016 Crankshaft position not plausible.  
P0300 Engine misfire detected.  
P06DE Engine oil pressure valve stuck on."

The report also said that, when the engine was started, a rattling noise was present initially, then the engine started misfiring and the "engine power reduced" message appeared on the dashboard. Also, there is no dispute between the two parties that there are faults present with the car, so I've gone on to consider if the car was of satisfactory quality when supplied.

Startline believes that the faults the car was experiencing were not developing at the point of sale or finance inception. They are basing their opinion on the two independent reports that were commissioned.

The second report, which was commissioned in May 2023, said that the car had been in service for approximately six months to the reported fail date and had covered approximately 10,000 miles. So based on this, it concluded that faults with the car weren't present or developing at the point of sale. But the engineer conducting this report wasn't able to turn on the car and do a full inspection, as the car's electrics were totally discharged. So I've taken this into consideration but I've also looked at the first report which was carried out on 22 February 2023. This report concluded that Mr H has ran the car with insufficient oil in the sump, so he should be responsible for the repair costs. The engineer who wrote this report indicated that he'd added one litre of engine oil which resulted in the oil level showing on the minimum on the dip stick, leading them to conclude that the car has been ran with insufficient oil in the sump to maintain proper oil pressure.

I've taken the above into consideration, but I can see that the car had an oil service in October 2022. At the time the car had travelled around 30,498 miles. This type of car holds approximately four litres of oil, so I think this would've been the amount that was most likely added as part of the service at the time. And I think that, based on the car's normal oil consumption, and taking into consideration its age and mileage, I think it's most likely it shouldn't have used up most of that oil in about 4 months and after having travelled around 7,000 miles in total. So, I think it's most likely there were other issues with the car that caused so much oil to be used.

The job card from December 2021, which Mr H received as part of the car's maintenance record, shows that there was an engine code – engine misfire – and the compression diagnostic showed that the compression in one of the cylinders was over 50% down. This was about seven months before Mr H acquired the car and at the time the car had travelled 27,125 miles. The job card also indicates that the spark plugs were replaced, but that the car needed to have top grade fuel added and to be taken for a good long run to see if the low compression improves. The job card also said that if things don't improve, then further investigation will be required. Since this job card, the car had only travelled about 335 miles before Mr H took possession of it, and it is unknown if any further repairs were carried out to the head gasket or the pistons. I understand that typically, a failed head gasket or worn piston rings are the main cause of a loss of compression. The December 2021 job card states that the oil level was low and that there was a leak from the rocker cover. There's no indication that the engine had or was overheating which is a typical reason for head gasket

failure. And the independent report carried out in February 2023 indicated that there was seepage noted, so most likely the gasket was not replaced since the December 2021 job card.

The job card doesn't state if the oil was topped up, but it's likely the oil was topped up prior to sale, as checking the levels is common when inspecting a new purchase. I understand that piston rings seal the piston and the cylinder to aid with compression and typically fail due to poor lubrication or normal wear and tear but are unlikely to fail on a car that has only travelled about 30,000 miles. And, whilst there are gaps for the rings to expand (metal expands when heated), this is extremely minimal and most likely wouldn't cause a 50% compression loss. Most engines burn oil when in use, which is why all manufacturers recommend checking the oil level regularly but if the piston rings aren't able to sufficiently seal the cylinder, the oil can make its way through them and be burnt in the cylinder, rapidly increasing oil consumption.

The oil was changed at 30,498 miles and found to be below the minimum at 37,468 miles during the independent inspection. And, like I mentioned before, I think it's most likely that the car shouldn't have used up most of that oil in about 4 months and having travelled around 7,000 miles in total. And, based on the December 2021 job card, I think the piston rings in one of the cylinders, most likely, already have had excessive wear due to the loss of compression evidenced. I know the independent report from February 2023 indicated that the compression loss was minimal when looking at the job card from December 2021, but I wouldn't consider more than 50% to be minimal. Overall, most likely, the car had a fault to do with the piston rings, which most likely made the compression gradually worse, likely to a point where it caused the engine to misfire. Or where it's lowered the oil level causing the engine to be insufficiently lubricated, in turn causing the timing to jump. But neither of these faults would be expected on a car that has travelled less than 40,000 miles. I think most likely a reasonable person wouldn't considered the car to experience such significant issues with the engine on a car that is approximately five years old and has travelled less than 40,000 miles. So, I don't think the car was of satisfactory quality when supplied.

The CRA sets out that Mr H has a short term right to reject the car within the first 30 days if the car is of unsatisfactory quality, however, he would need to ask for rejection within that time. I can see that on 11 August 2022, within 30 days of acquiring the car, Mr H emailed in and said: "the engine management light came on. Then, the 'check service esc' warning came on. I contacted the garage who told me to give the car a good long run and it should be fine, but to also check with [the manufacturer] if I was worried. The problem continued. I've taken this to [the manufacturer] who have confirmed that this is a common issue with this model [of car] which requires an engine rebuild. Obviously I'm within my 14 day period and would like to exercise my right to return the car. As my broker, can you please arrange with the garage to collect the car from me and for a refund to be made". So, I'm satisfied that Mr H has asked to reject the car within the required time. But I've also considered that the supplying dealer told Mr H to get these issues fixed through the warranty company. But Mr H said that the warranty company provided a report that these were old issues and that the car had no faults when he raised this with them. Mr H said that in December 2022 the engine light came back on again, and again the supplying dealership told him to contact the warranty company, who in turn again said that the issues were previous and that there was nothing wrong with the car. Hence, it could also be argued that Mr H exercised an attempt at repair and the faults weren't fixed. So, I've considered that Startline has been allowed sufficient time to resolve the fault with the car, and I think now the most fair and reasonable option is for Mr H to be allowed to reject the car.

As such, the hire purchase agreement should be cancelled with nothing further to pay. Startline should remove any adverse information from Mr H's credit file. The credit

*agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.*

*As the car wasn't of satisfactory quality, Mr H has not used it since February 2023. So I think Startline should refund all payments he has made from this date to the date of settlement. Mr H has also paid £171.98 to have the diagnostics carried out due to being supplied with a car that wasn't of satisfactory quality, so I think these costs should also be refunded to him. Startline should also refund him the amount it will cost Mr H to have his private plate transferred to another car, as he wouldn't have needed to incur this cost, had they provided him with a car that was of satisfactory quality.*

*The car wasn't of satisfactory quality since February 2023 so, when the MOT on the car expired, Mr H had the car SORN which I don't think is unreasonable as he couldn't use the car. Since the car was SORN, Mr H had to pay for storage of the car as he had no off-road place to store it. So, I think that it is fair and reasonable that Startline should refund all payments Mr H made for storage of the car, on production of a valid receipts or invoices as he wouldn't have needed to incur these cost, had they provided him with a car that was of satisfactory quality.*

*I've considered that this matter has caused Mr H distress and inconvenience while trying to resolve it. Mr H had to take the car for diagnostics, as well as make time for the two inspections that were carried out on the car. Which, I think, he wouldn't have had to do had Startline supplied him with a car that was of a satisfactory quality. So, I think Startline should pay him £200 in compensation to reflect the distress and inconvenience caused.*

*Mr H said that he purchased new tyres, paid for services and oil changes. So I've considered these costs, but as he has had use of the car and done about 10,000 miles, I don't think it would be reasonable to ask Startline to refund him these cost.*

### ***My provisional decision***

*For the reasons given above, I intend to uphold this complaint and direct STARTLINE MOTOR FINANCE LIMITED to:*

- 1. Cancel the hire purchase agreement with nothing further to pay;*
- 2. Collect the car at no cost to Mr H;*
- 3. Refund the hire purchase payments he has made from February 2023 to date of settlement;*
- 4. Refund to Mr H the deposit he made of £3,700;*
- 5. Refund to Mr H the £171.98 he paid for diagnostics to be carried out and refund Mr H the amount it will cost him to have his private plate transferred to another car;*
- 6. Refund all payments Mr H made for storage of the car, on production of a valid receipts or invoices;*
- 7. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;*
- 8. Pay Mr H £200 for the distress and inconvenience caused;*
- 9. Remove any adverse information recorded on Mr H's credit file in relation to this credit agreement, and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.*

*If STARTLINE MOTOR FINANCE LIMITED considers tax should be deducted from the interest element of my award, they should provide Mr H with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so."*

I asked both parties to provide me with any additional comments or information they would like me to consider by 6 December 2023.

Startline responded to confirm they received my provisional decision but they didn't provide any further comments.

Mr H responded and said he had nothing further to add.

### **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 and considering neither Mr H nor Startline had any further comments to make I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

### **My final decision**

For the reasons given above and in my provisional decision I uphold this complaint and direct STARTLINE MOTOR FINANCE LIMITED to:

1. Cancel the hire purchase agreement with nothing further to pay;
2. Collect the car at no cost to Mr H;
3. Refund the hire purchase payments he has made from February 2023 to date of settlement;
4. Refund to Mr H the deposit he made of £3,700;
5. Refund to Mr H the £171.98 he paid for diagnostics to be carried out and refund Mr H the amount it will cost him to have his private plate transferred to another car;
6. Refund all payments Mr H made for storage of the car, on production of a valid receipts or invoices;
7. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;
8. Pay Mr H £200 for the distress and inconvenience caused;
9. Remove any adverse information recorded on Mr H's credit file in relation to this credit agreement, and the credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

If STARTLINE MOTOR FINANCE LIMITED considers tax should be deducted from the interest element of my award, they should provide Mr H with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 January 2024.

Mike Kozbial  
**Ombudsman**