

The complaint

Mrs H complains about a car she acquired using a hire purchase agreement provided by Startline Motor Finance Limited. She says the car had issues shortly after she got it which reoccurred a few months later.

What happened

In February 2021 Mrs H acquired a used car. The cash price of the car was £16,240. Mrs H paid a deposit of £59.24 and the rest was funded with a hire purchase agreement through Startline.

The car was around three years and four months old, and the mileage was recorded on the agreement as 32,788.

Mrs H says the car displayed warning lights after she got it and in May 2021 she had a diagnostic which showed several fault codes. She contacted the dealer for a repair. Mrs H says the dealer cleared the codes and said it couldn't find a fault, but said the car might have had a misfire.

At the end of June 2021 Mrs H says the warning lights came back on and she took it to a manufacturers' garage at the beginning of July. At this point the cars mileage was recorded as 36,509. This garage said there was a problem with the oil pressure and the car needed immediate attention. Mrs H says she was told not to drive the car and so stopped doing so at this point. She then complained to Startline.

Startline began to investigate and it arranged for an independent inspection of the car. In summary, this said the car had an oil pressure warning displaying and a fault code stored. But it said this would not have been present or developing at the point Mrs H got the car.

Mrs H referred her complaint to our service. She said she was having to pay tax, insurance and parking fees for a car she couldn't drive. And she said this had caused her a lot of stress and upset, along with issues travelling. She said she wanted to reject the car.

In December 2021 Startline issued its final response. This said, in summary, that as the independent inspection concluded that the fault wasn't present at the point of supply, it was not upholding the complaint. Mrs H remained unhappy with this and our service began to investigate.

Our investigator issued an opinion and explained she thought the complaint should be upheld. She said, in summary, that she thought the later fault with the car was likely the same as the earlier one. She thought this meant the car was not of satisfactory quality when it was supplied. So, she said as the dealer had the opportunity to repair this, she thought Mrs H should now be allowed to reject the car.

She said Mrs H should be reimbursed for her insurance, tax and parking permit. She thought Mrs H should also be reimbursed for the diagnostic she paid for and she said Startline should pay £150 to reflect the distress and inconvenience caused.

Startline didn't respond to the investigator's opinion. So the case was prepared for an ombudsman's decision.

In February 2022 Mrs H let us know she had declared the car SORN. And in March 2022 Mrs H told us the car had been towed away as the parking spots outside her home had been suspended. Mrs H received a fixed penalty notice for this. She said the car had then gone into 'tow mode' and she was worried about being able to lock it.

In April 2022 Mrs H let us know the DVLA had clamped and then taken the car. She showed us a letter saying this was because it was neither taxed nor SORN. She says she has appealed this and the car is being returned to her – but she has had to pay £555 for this.

I sent Mrs H and Startline a provisional decision on 5 May 2022. My findings from this decision were as follows:

Mrs H complains about a car supplied under a hire purchase agreement. Entering into consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mrs H's complaint against Startline.

When considering what's fair and reasonable, I have regard to relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This says under a contract to supply goods, the supplier – Startline here – needs to make sure the goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

Relevant factors in a case involving a car would seem to me to be things including, but not limited to, the car's age, price, mileage and description.

I'll consider that Mrs H's car was over three years old and had covered over 30,000 miles. So, I think a reasonable person would not expect it to be in the same condition as a new car. But, that being said, I'll consider that Mrs H paid over £16,000 for the car. So, I think a reasonable person would've still expected it to be in good condition and would've expected trouble free motoring for a fair amount of time.

So, what I need to consider in this case is whether the car supplied to Mrs H was of satisfactory quality or not. If it wasn't, I need to think about what would be fair and reasonable to put things right.

It doesn't seem to be in dispute here that the car had a fault with it. I say this as Startline acknowledged this in its final response. And the independent report said:

"An oil pressure fault "turn off engine" message was illuminated in red on the dashboard display. At this point we turned the engine off".

The key thing I need to consider here is whether this issue was present or developing at the point of supply. Startline relied on the independent report, which noted in relation to this:

"Based on the evidence that is available at the time of our inspection and on engineering facts it is our opinion that the faults displayed would not have been present or developing at the point of sale".

I've carefully thought about this. Mrs H says the car showed warning lights shortly after she got it and this was raised with the dealer in May 2021, around three months after she got the car. She says these were the same lights that came on when the car later broke down. I've

also considered that the fault code "P1034" which was noted on the independent inspection was also noted by Mrs H when she text the dealer about the initial issues.

We attempted to get further information about what happened at the dealer, but Startline hasn't been able to provide any. In the absence of other evidence, such as job sheets, based on the above I think it's most likely the earlier issue Mrs H had was linked to the later one. Given this, I'm not persuaded by the independent report's conclusion that the fault wasn't potentially developing at the point of sale. But, either way, I would still reach the conclusion the car wasn't of satisfactory quality. I'll explain why.

When considering satisfactory quality, the CRA says the durability of goods should be considered. So, I've thought about what mileage the car had covered when it first developed issues. I don't have job sheets to show this exactly, but the diagnostic shows the mileage as 36,480 in July 2021. The mileage of the car is shown on the agreement as 32,788. Working out the average, this means the car would've covered around 2,600 miles at the time Mrs H was texting the dealer about the initial problems. And it's quite possible from what Mrs H said that the warnings were appearing earlier than this.

I've carefully thought about this. I don't think a reasonable person would expect a car that cost over £16,000 to develop a fault like this after only around 15 weeks and 2,600 miles. It follows that I don't think the car supplied was durable. And I'm satisfied this means it was not of satisfactory quality when it was supplied to Mrs H.

So, I've then gone on to consider what would be fair and reasonable to put things right. Mrs H has asked to reject the car. Given the dealer had an opportunity to repair the issue, and I'm satisfied this wasn't successful, I agree with our investigator here that Mrs H has a right under the CRA to reject the car.

Mrs H says she stopped driving the car on 2 July 2021. I have no reason to doubt this. So, I think it's fair all of the repayments towards the agreement are reimbursed from this time. Mrs H has shown she has been paying insurance on the car which I think should be reimbursed. She has also shown the cost of taxing the car up to the point it was declared SORN.

Mrs H has had to pay for a parking space to store the car, which I think should be reimbursed from the point she couldn't drive it.

I think it's fair Mrs H should be reimbursed £72 for the cost of the diagnostic in July 2021.

I've very carefully thought about the later charges incurred by Mrs H. I appreciate the difficulty having the parking space taken out of use must have caused her. But, I need to consider whether she took reasonable steps to mitigate any losses here. And, considering everything, I don't think she did, as the car was left somewhere it presumably shouldn't have been. So, I don't think Startline needs to reimburse her for the penalty notice and costs from having her car towed at this point.

I've also carefully thought about the later issue Mrs H had when the DVLA took the car. I again need to consider if she took reasonable steps here to mitigate any losses. I should make it clear that I am making no finding if the DVLA acted correctly here. But, if it didn't, then Mrs H will need to appeal this issue with the DVLA directly. And if it did take the car correctly, then I don't think Mrs H mitigated any losses here. So, thinking about all the information I have, I don't think Startline needs to reimburse this cost to Mrs H.

Finally, I'm satisfied Mrs H has been caused distress and inconvenience because of what happened here. In addition to the stress caused by having to deal with the general situation,

Mrs H has told us she was classed as high risk from COVID-19 and has provided evidence to show this. But, because of the issues with the car, she says she had to take public transport during the pandemic which she found very stressful and upsetting. Our investigator said she thought Startline should pay £150 to reflect this. But, under the circumstances I think it would be fair and reasonable to increase this to £300.

On the same day the provisional decision was issued, I sent a follow up to Mrs H and Startline explaining that I also thought Startline should also remove any adverse information about the agreement from Mrs H's credit file in addition to the other remedies in my provisional decision.

I gave both parties until 19 May 2022 to come back with any further comments or evidence.

Startline didn't respond. Mrs H came back and made some further points.

Mrs H explained she'd continued to pay for her insurance until 18 May 2022. She also explained she had continued to pay for her parking space until 19 April 2022. And she said once the car was back after being towed, she had to pay to keep it off the road at a cost of £70 per week.

I then got in touch with Startline and explained, given the above, that I would likely add these additional costs to the redress I recommended. I gave them a further deadline until 3 June 2022 to respond with any comments. Startline did not reply.

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.

I've carefully thought about what Mrs H said in response to my provisional decision. Thinking about the parking space, Mrs H has said this was kept until the car was towed in April 2022. So, I think it's fair the period I recommended in my provisional decision for this to be reimbursed is extended.

I also think it would be reasonable to further cover the insurance costs Mrs H told us about given she says she continued to insure the car.

Mrs H has also provided a contract for a parking space on a driveway. This appears to be on private land. I think it's fair and reasonable Mrs H took this action to mitigate any further losses given the SORN status of the car – so it follows I think it's fair and reasonable for Startline to reimburse these costs.

Having thought about all of the other information about this case again, I still think it should be upheld. This is due to the same reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint. I instruct Startline Motor Finance Limited to put things right by doing the following:

- Collect the car at a time and date suitable for Mrs H at no cost to her
- End the agreement with nothing further to pay

- Reimburse the deposit of £59.24*
- Reimburse all repayments towards the agreement from 2 July 2021 until the point of settlement*
- Reimburse Mrs H the cost of the diagnostic - £72 – from 2 July 2021*
- Reimburse the pro rata cost of taxing the car - £13.12 per month – from 2 July 2021 until Mrs H says she declared the car SORN – 5 February 2022*
- Reimburse the pro rata cost of insuring the car - £585.05 per year - from 2 July 2021 until 18 May 2022*
- Reimburse Mrs H the pro rata cost of the initial parking space - £12.67 per month - from 2 July 2021 until 19 April 2022*
- Reimburse Mrs H the pro rata cost of the later parking space - £70 a week - from 22 April 2022 to the date the car is collected*
- Pay Mrs H £300 to reflect the distress and inconvenience caused
- Remove any adverse information from Mrs H's credit file in relation to this agreement

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Startline considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs H how much it's taken off. It should also give Mrs H a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 July 2022.

John Bower
Ombudsman