

The complaint

Mrs R is unhappy that the car supplied to her under a hire purchase agreement with Startline Motor Finance Limited ('Startline') was of an unsatisfactory quality.

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

What happened

In August 2022, Mrs R was supplied with a used car through a hire purchase agreement with Startline. The total cash price of the goods was £18,934, which included the cost of an extended warranty, service plan, and GAP insurance. She paid a deposit of £839.49, leaving £18,094.51 to pay over 49 months. The agreement was for 48 monthly payments of £406.01, and an optional final payment of £6,980.20. At the time of supply, the car was a little over four years old and had done 41,367 miles.

Mrs R noticed an engine fault soon after she got the car. She took it back to the dealership. It was in for repair for three weeks and, when it was returned to her, Mrs R was happy that the fault had been fixed.

In November 2022, Mrs R took the car back to the dealership for repair again, this time because water was leaking into the car through the casing of the rear-view mirror. After work on the leak was completed, the car was returned to her. However, Mrs R found that water still poured into her car every time she turned corners after heavy rainfall. In total, she returned the car for repair on six occasions during the first year, but the leak repair was unsuccessful on each occasion. The garage confirmed it couldn't fix it.

Mrs R told Startline she wanted to reject the car because it was of unsatisfactory quality. She said the leak would've been there right from the day she got the car.

Startline arranged for an independent inspection, which was carried out in October 2023. In summary, the report said there was no evidence of a leak or water damage, but it recommended that Mrs R arrange to clean the sunroof drains and scuttle panel. The recommended cleaning was described as general maintenance.

Mrs R said Startline had ignored her comment about the circumstances under which the water leaked into her car. So the inspection would never have identified the fault unless the same conditions were present.

Startline issued its final response to Mrs R explaining that it had met its obligations and it didn't think the leak entitled Mrs R to reject the car.

Mrs R was unhappy with this response, so she referred her complaint to our service.

One of our investigators asked for more information about the leak. Mrs R provided photos showing water on the front passenger seat and centre console, and a video of approximately

two and a half minutes long showing the water pouring through the rear-view mirror casing when she turned a corner during rainfall.

Our investigator shared the photos and video with Startline and she said the evidence suggested the fault had been present when Mrs R first got the car. As numerous attempts to repair the fault had been unsuccessful, she said Startline should:

- allow Mrs R to reject the car and collect it at no cost to her
- end the hire purchase agreement with nothing further to pay
- refund the deposit along with 8% simple interest
- pay £150 compensation for the inconvenience of returning her car for repair on numerous occasions, and
- cover any costs should Mrs R incur any in cancelling her GAP insurance

Startline didn't agree with the investigator. It said:

- the independent report concluded that the sunroof was totally satisfactory and that the overall condition of the car was reasonable and consistent with age and mileage;
- its one opportunity to repair was successful, and
- the car passed an MOT after the date of sale, so there was no responsibility for the sales agent to cover repair costs.

Because Startline didn't agree, this matter was passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is a fair outcome. Where evidence is incomplete or contradictory, I've reached my view based on what I think is most likely to have happened given the available evidence and wider circumstances.

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 what I consider was good industry practice at the time. Mrs R was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mrs R 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, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mrs R 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.

In summary, Startline disagreed with our investigator's view because it didn't think the evidence in the independent report was given sufficient weight. I'll address this first.

Independent Engineer's Report

I've seen a copy of the report, dated 18 October 2023, within which the engineer concluded that the sunroof was totally satisfactory, and the overall condition of the car was reasonable and consistent with age and mileage. Startline restated this view. 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 I can reasonably rely upon on this report.

However, I've thought about Mrs R's description of the conditions that brought on the leak, which her video evidence supports, and about which she told Startline before the inspection. The report doesn't say that it recreated those conditions, so I think it's fair to conclude the inspection itself wasn't sufficient to identify the reported fault. That is, the report seems to be a fair reflection of the car's quality as far as the investigation went, but I can't fairly say it adequately assessed or ruled out the fault Mrs R described.

Single Chance at Repair

Startline said its one opportunity to repair was successful.

Section 24(5) of the CRA says:

a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.

This is known as the single chance of repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, then the customer has the right of rejection.

The engine repair was successful – that's not disputed. But it's not clear whether Startline is referring to that as its one chance to repair being successful, or whether it believes the leak repair was successful because it was deemed to be a routine maintenance matter. Regardless of which repair Startline meant, it's clear from the video evidence and the dealership's comments to Startline that the leak repair was not successful. And as Mrs R returned the car on at least four more occasions, it's difficult to conclude that Startline's claim that the single opportunity to repair was successful.

On balance, I can't agree that Startline met its obligation under the CRA in respect of the single chance at repair. Therefore, I'm satisfied it was reasonable for Mrs R to seek to reject the car.

MOT

Startline said the car passed an MOT after the sale, so it must've been of a satisfactory quality at the point of sale. I don't agree. An MOT checks for adherence to a specific set of standards. To the best of my knowledge, that doesn't include checking whether water leaks from the sunroof through the rear-view mirror casing during heavy rainfall when turning

corners. Therefore, I haven't relied on this as evidence to support Startline's view that the fault wasn't present at the point of sale.

Compensation

In her evidence, Mrs R described the inconvenience of taking her car back for repairs, and I can understand the loss of faith she had in the repair being successful. As the fault was so specific, she wouldn't necessarily have known immediately whether the repair was successful. Mrs R would've only known once the conditions were present again, so I can understand why she felt let down.

Our investigator thought Startline should pay £150 compensation. Having considered all the evidence, I'm satisfied that it's a fair and reasonable sum to compensate Mrs R for the trouble and upset caused.

In summary, I'm persuaded that the fault Mrs R described was, more likely than not, present when she first got the car. That's because the evidence, and in particular the video evidence, shows that water leaked through the rear-view mirror casing into the car. And I don't think a reasonable person would expect a four-year-old car of this mileage to let water pour through the roof during rainfall. As the fault couldn't be repaired, I can't agree with Startline's conclusion that the fault was a routine maintenance matter. Therefore, I'm satisfied that Mrs R made a reasonable request to reject the car in line with the CRA.

Putting things right

Mrs R has been able to use the car between repairs, or a courtesy car while it was in for repair. Because of this, I think it's fair that she pays for her usage.

I've noted Mrs R's loss of faith in the likely success of the repairs, and her uncertainty about whether water would still leak through when it rained. Therefore, I'm satisfied that her use of the car was impaired. That said, I haven't seen anything in the evidence to suggest that the water itself caused any damage. So, I won't be asking Startline to refund any of the payments she's made. Instead, I've taken this into consideration when deciding on a fair level of compensation.

Mrs R took out GAP insurance when she got the car. As the insurance is a separate policy to the hire purchase agreement, she'd need to arrange to cancel that directly with the insurer. If she incurs any cancellation charges, Startline should cover those costs.

As a final point, it appears that Mrs R has private plates on the car. She'll need to transfer them on to whichever car she buys next, which she otherwise wouldn't have needed to if the car was of satisfactory quality. I consider this a consequential loss. Therefore, I think it's reasonable for Startline to refund the cost of changing her private number plates, should she incur any.

My final decision

For the reasons explained, I uphold Mrs R's complaint, and Startline Motor Finance Limited must:

- end the hire purchase agreement with nothing more to pay;
- collect the car at no cost to Mrs R;
- refund the £839.49 deposit Mrs R paid (if any part of this deposit is made up of funds paid through a dealer contribution, Startline is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest* on the refund, calculated from the date Mrs R made the payment to the date of the refund;
- refund to Mrs R any costs incurred for transferring her private plates to her next car;
- refund to Mrs R any costs incurred for the cancellation of the GAP insurance, and
- pay Mrs R £150 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

*If Startline Motor Finance Limited considers that tax should be deducted from the interest element of my award, it should provide Mrs R with a certificate showing how much it has 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 R to accept or reject my decision before 11 September 2024.

Debra Vaughan
Ombudsman