

The complaint

Ms R is unhappy that a car supplied to her by Startline Motor Finance Limited was not of satisfactory quality. She complains about the way in which Startline dealt with her concerns.

What happened

In October 2022 Ms R acquired a used car through a hire-purchase agreement with Startline. The car was around eight years old and carried a cash price of £9,699. Ms R paid £1,000 deposit with Startline providing finance for the remaining balance. As I understand it, the car had covered around 47,000 miles when it was supplied to Ms R.

Shortly after collecting the car Ms R began to experience problems with it. Although the initial issues with tyres and the service light were rectified by the dealer that sold the car, a more serious failure happened when the vehicle lost coolant and broke down. A blown head gasket was diagnosed and an invoice produced for repair work carried out.

However, a few months later the car failed again. An independent inspection carried out by a third party "S" found evidence the car had been suffering from a long-term cooling system issue that had led to head gasket failure. S could find no evidence to support any recent work carried out on the head gasket. It concluded that the problems were most likely present at point of supply.

Ms R had by this stage lost faith in the car and stopped making payments, leading to arrears developing on the account. She sought to exercise her right under the Consumer Rights Act 2015 ("CRA") to reject the vehicle. Startline wasn't willing to agree to this. It disputed that S's report had concluded the problem with the car was present or developing when supplied.

Startline added that the dealer had told it the car had not been brought back for repair. It went on to conclude that on the balance of probabilities, the problems with the car were not its responsibility, saying that it wasn't liable for wear and tear. It did, however, propose to pay Ms R £200 in recognition of delays in addressing matters. Startline has since repossessed the car and sold it at auction, leaving an outstanding balance on the account, which it is seeking to recover from Ms R.

Our investigator felt the available evidence pointed towards a serious fault with the car, and one that it was reasonable to assume was present from the outset, such that the car hadn't been of satisfactory quality when supplied to Ms R. In support of this position the investigator referenced S's report and evidence from the garage in relation to the repairs it said were carried out in February 2023.

The investigator wasn't persuaded that Startline had dealt fairly with Ms R, either in its handling of her claim or in holding her liable for the outstanding finance balance. She considered the appropriate way to resolve matters was for Startline to rework Ms R's account as if she'd been permitted to reject the car after the breakdown in July 2023. That would mean Ms R would have nothing further to pay under the hire-purchase agreement, that she should receive a refund – with interest – of all payments made since July 2023, and that Startline should return in full the deposit Ms R paid when she acquired the car.

Startline didn't accept our investigator's conclusions and has asked for this review.

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.

Before I set out my findings, I think it's important I make the following observation. In March 2024 our investigator provided Startline with her assessment and recommended resolution, setting a time limit for response. Although Startline expressed the intention to make further submissions and said it would do so by 3 May 2024, it has not done so. I'm satisfied it has had ample time and as continued delay is likely to be detrimental to Ms R's position (I'm aware Startline's agents continue to contact her about the account balance), I consider it appropriate to proceed with my final decision. In doing so I remind Startline of the following provision in our rules

"DISP 3.5.14R

If a respondent fails to comply with a time limit, the ombudsman may:

(1) proceed with consideration of the complaint; and

(2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make"

The hire-purchase agreement in this case is a regulated consumer credit agreement, which means that complaints arising from it are covered by our service. As our investigator noted, Startline is the supplier of the car under this type of agreement and carries responsibility for matters such as whether it was of satisfactory quality.

For clarity, the CRA says that a contract to supply goods to a consumer is to be taken as including a term that the quality of the goods is satisfactory. Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability.

Ms R's claim is that the car Startline supplied to her failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality. I'm conscious that the car was far from new and that a reasonable person wouldn't expect the car to be in perfect condition. But the mileage wasn't particularly high for the car's age, and while it would have been subject to the ordinary wear and tear and general deterioration that comes with vehicles as they get older, I haven't seen anything to support Startline's assertion that on balance of probabilities it couldn't be liable for the problems that happened with the car.

Overall, I find Startline's response to Ms R, in which it declined to meet her claim, rather disappointing. I don't consider it took a fair approach to its reading of S's report, particularly when it said S had *"determined that there is no evidence to suggest the faults identified were a result of any evidenced previous repairs, nor present or developing at the point of sale."*

The report, as reproduced in Startline's response, said:

"Please note that sometimes the head gasket takes multiple thousands of miles to develop, in this case the vehicle has evidence of long-term coolant staining. This is in conjunction with the background evidence provided and the vehicle owner statement at time of inspection that the vehicle has been having issues with the cooling system

almost since the date of purchase. This would lead us to conclusion that the sales agent should be responsible for the repair costs.

Noting at this point we cannot state the vehicle has suffered from a previous failed repair to the cooling system, as there was no evidence of any previous repairs having been completed.”

I can't see that what was said in S's report supports Startline's position that there was no evidence to suggest the faults weren't present or developing at the point of supply. In producing the report S was asked to state, among other things, what the position was likely to have been at point of supply and whether the supplier would be liable. S provided a clear statement indicating that the evidence pointed towards failures almost from the date of purchase and that responsibility rested with the supplier. It's unclear to me why Startline decided to reach the different conclusion it says was based on the balance of probabilities.

I'm satisfied it is reasonable to place reliance on S's findings. They speak to the problems with the car and to the core issue of whether the car was of satisfactory quality when supplied. S's report calls into question whether the dealer actually carried out the head gasket repair it says it did in February 2023. But it isn't inconsistent with Ms R's evidence that she returned the car for repair at that time, supported by the invoice and subsequent verification by our investigator.

After careful consideration, I've reached broadly the same conclusion as our investigator. That is, that the available evidence supports that the car Startline supplied to Ms R did not meet the CRA requirements in respect of satisfactory quality, and that the condition has persisted despite an attempt at repair.

While I note that Startline did not itself attempt that repair, I'm satisfied it had the opportunity to do so when the problem manifested again in July 2023, but declined that opportunity by concluding – for reasons that remain unclear – that the car was of satisfactory quality when supplied despite the clear evidence in S's report. I don't consider that Startline dealt with Ms R's concerns fairly, and in light of all of this I'm satisfied that the appropriate way to address this is to uphold Ms R's complaint and award redress along similar lines to that proposed by our investigator in her original assessment.

I now return to the matter of whether Startline's failure to meet the time limits our investigator set has caused any material distress or material inconvenience such that it would be appropriate for me to include this in my award. It is more than three months since the expiry of the investigator's time limit, and two months since the date Startline set itself for its further submissions. During that time Ms R has received demands for payment from Startline's agents and from the DVLA, which have added to her concern and distress. I find that Startline's failure to respond within given time limits and its lack of subsequent engagement with the complaint mean I should include an amount in recognition of the clear distress this has caused Ms R.

Putting things right

To settle this complaint, I require Startline Motor Finance Limited to take the following steps, which it should do within 28 days of receiving Ms R's acceptance of my decision (“the notification date”):

1. If it has not already done so, pay Ms R the £200 it proposed in recognition of the delays it set out in its final response letter;

2. terminate the hire-purchase agreement effective from July 2023, when Ms R became unable to use the car due to the breakdown, ensuring she has nothing further to pay;
3. amend any information recorded on Ms R's credit file in relation to the agreement so that it shows the account as fully settled in July 2023;
4. refund the £1,000 deposit Ms R paid, again effective from July 2023, with 8% simple interest per year from that point until the date it pays this settlement;
5. refund any monthly payments Ms R made during the period from July 2023 to the date it pays this settlement. Startline should pay 8% simple interest per year on each monthly payment from the date Ms R paid each amount until the date of settlement;
6. pay Ms R a further £200 in recognition of the additional distress and inconvenience she's been caused by the prolonged nature of the dispute due to Startline's failure to comply with our time limits; and
7. if Startline fails to pay within the timescale I've set out, it will also need to pay interest on the total amount, calculated daily at 8% simple per year from the notification date

If Startline deducts tax from any interest element of this award, it should provide Ms R with the appropriate tax certificate if she asks for one.

My final decision

My final decision is that I uphold this complaint and direct Startline Motor Finance Limited to take the above steps in full and final settlement of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 30 July 2024.

Niall Taylor
Ombudsman