

The complaint

Mr G is unhappy that a car supplied to him under a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway was of an unsatisfactory quality.

What happened

In May 2023, Mr G was supplied with a used car through a hire purchase agreement with Moneyway. He paid a £500 deposit and the agreement was for £10,294 over 60 months; with 59 monthly payments of £253.06 and a final payment of £263.06. At the time of supply, the car was almost six years old, and had done 80,158 miles (according to the MOT record for 24 May 2023 – the day the car was supplied to Mr G).

Within a few weeks of Mr G being supplied with the car, an engine warning light appeared on the dashboard. He reported this to the supplying dealership, who told him to take the car to a local garage to get the car fixed, and then they would look to pay for this. Mr G obtained a diagnostic report for the car and sent this to the dealership. However, they never responded to him. So, on 19 October 2023, he complained to Moneyway.

In their complaint response letter, Moneyway confirmed that Mr G had complained to the dealership in June 2023. However, as Mr G hadn't been able to show that the fault with the car was present or developing when the car was supplied to him, and because he'd driven around 7,000 miles since being supplied with the car (which they say may have caused additional damage), they didn't uphold the complaint.

Unhappy with Moneyway's response, Mr G brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Mr G had reported a fault within a few weeks of the car being supplied to him, so it was Moneyway's responsibility to show that the fault wasn't present or developing when the car was supplied. As they had failed to do this, the investigator said that Mr G should be allowed to reject the car, receive a refund of the deposit he paid, be reimbursed for the diagnostic test he'd had done, and that Moneyway should also pay him £200 compensation for the distress and inconvenience he'd been caused.

Moneyway didn't agree with the investigator's view. They said they were aware there was an issue with the car within the first two weeks of it being supplied to Mr G, but they'd asked him to liaise with the dealership about this. As Mr G didn't come back to them for another three months, they thought it *"was fair to assume that it was resolved."*

Moneyway also said that, by the time Mr G provided them with another diagnosis in November 2023, *"the customer had completed nearly 8000 miles ... it was difficult to establish what faults were inherent or not at the time of sale [and] the dealer was claiming wear and tear and unsupportive."* So, they asked for this matter to be passed to an ombudsman to decide.

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 the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – 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 (if appropriate) what I consider was good industry practice at the time. Mr G 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, Moneyway 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 Moneyway can show otherwise. So, if I thought the car was faulty when Mr G 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 Moneyway to put this right.

Based on the evidence I've seen; I'm satisfied that Mr G reported a fault with the car in June 2023 – within a few weeks of it being supplied to him – and that Moneyway were aware of this. Mr G provided the dealership with a diagnostic report on the car which, according to Moneyway's comments, the dealership dismissed as the faults with the car being down to normal wear and tear. I've not seen a copy of this diagnostic report as it was sent to the dealership, and they haven't sent a copy to Moneyway as part of this investigation. As such, it's not possible for me to know exactly what this report said.

After asking him to deal directly with the dealership, I think it was reasonable that Moneyway initially assumed the matter had been resolved. However, when Mr G complained to them in October 2023 – which was within six months of the car being supplied to him – Moneyway were then aware the matter had not been resolved and the fault with the car remained.

As I've explained above, as the fault with the car occurred within the first six months, something that Moneyway were aware of, the CRA implies the fault was present or developing when the car was supplied unless Moneyway can show otherwise. Mr G provided them with a second diagnostic report, this one dated 25 November 2023, which cost him £45. At the time of this report, the car had travelled 86,968 miles – 6,810 miles since being supplied to Mr G.

The diagnostic report shows fault codes relating to the transmission control, and the torque convertor was stuck off. While Moneyway said that this didn't show the faults were present or developing when the car was supplied to Mr G, it was for them to prove they weren't and

not for Mr G to prove they were. As such, I don't think Moneyway acted fairly by dismissing Mr G's complaint. Instead, I would've expected them to have arranged for the car to be independently inspected by a qualified automotive engineer to establish (a) if any of the faults were present or developing at the point of supply, and (b) if there had been any drive-on damage caused by Mr G continuing to use the car.

By failing to take this action, Moneyway have failed to sufficiently evidence that the car was of a satisfactory quality when it was supplied to Mr G. So, as the car developed a fault shortly after supply, and the evidence shows a fault still remains, I'm satisfied it's reasonable for me to conclude that the car wasn't of a satisfactory quality when it was supplied to Mr G. And Moneyway need to do something to put things right.

Putting things right

Section 23(2) 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 Moneyway have failed to take reasonable steps to establish whether the faults with the car were present or developing at the point of supply, and go on to arrange for repair if they were, it's arguable that they have failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr G should be able to reject the car.

Mr G has been able to use the car while it's been in his possession. Because of this, I think it's only fair that he pays for this usage. So, I won't be asking Moneyway to refund any of the payments he's made.

Mr G has provided evidence of the costs he's incurred in having the car inspected. Given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Moneyway reimburse these costs.

Finally, I think Mr G should be compensated for the distress and inconvenience he was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator recommended Moneyway pay Mr G an additional £200, to recognise the distress and inconvenience he'd been caused. Having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mr G would've felt by having to arrange for the car to be diagnosed on multiple occasions, and by having to drive a faulty car with the worry this may fail at any given moment. So, this is a payment I'm directing Moneyway to make

Therefore, Moneyway should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr G;
- remove any adverse entries relating to this agreement from Mr G's credit file;

- refund the deposit Mr G paid (if any part of this deposit is made up of funds paid through a dealer contribution, Moneyway is entitled to retain that proportion of the deposit);
- reimburse Mr G for the £45 diagnostic report he paid for on 25 November 2023;
- apply 8% simple yearly interest on the refund/reimbursement, calculated from the date Mr G made the payments to the date of the refund[†]; and
- pay Mr G an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (Moneyway must pay this compensation within 28 days of the date on which we tell them Mr G accepts my final decision. If they pay later than this date, Moneyway must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires Moneyway to take off tax from this interest, Moneyway must give Mr G 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 G's complaint about Secure Trust Bank Plc trading as Moneyway. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 January 2025.

Andrew Burford
Ombudsman