

The complaint

Mr R's complaint is that a car supplied to him under a hire purchase agreement ('HPA') with Secure Trust Bank Plc trading as V12 Vehicle Finance ('STB') had a mileage discrepancy that was not disclosed to him at the time of supply. Mr R says that had he known about this at the time of supply he would not have entered into the HPA; he also says that the discrepancy has a significant impact of the value of the car. He has asked to be 'fairly compensated' by STB or to be paid £1,000.00 and for the car to be returned.

What happened

The background to this complaint was set out in my provisional decision of 16 October 2024. I have set out below in italics what I provisionally decided and why. This forms part of my final decision.

"In December 2022, Mr R was supplied with a used car through a HPA with STB. The cash price for the car was £3,000.00. Under the HPA, the amount of credit provided was £3,000.00 with interest of £1,426.20 and an option to purchase fee of £10.00 due under it. This meant the total charge for credit was £1,436.20, with a total amount payable of £4,436.20. which sum was to be paid via 59 monthly payments of £73.77 and a final payment of £83.77. At the time of supply, the car was over 9 years old, and had had a number of owners.

Mr R says on or before the time of supply he asked the broker if STB would undertake an HPI check and that he was assured that they would. He also says he was told the HPI check was clear with no issues and on this basis, he entered into the HPA.

In December 2023, Mr R took the car to a dealer who made him aware of a mileage discrepancy relating to it. A report dated 2 January 2024 under the heading "Certificate of Vehicle History" described the result of the check as a "Fail", with "Significant Issues Found" related to mileage, with the car's odometer reading reduced by 11,934 miles on 13 May 2019.

Mr R complained to STB in December 2023 and provided details. STB acknowledged the discrepancy but rejected his complaint. In its final response letter dated 11 January 2024 STB said that there was insufficient evidence for it: "...to consider any foul play and take this matter further, without any evidence to corroborate the claims of amending the mileage".

In a further letter dated 26 January 2024, STB said that its position had not changed, that at the time of supply it had undertaken an HPI check that did not: "...show mileage...". STB also said that:

"....[there].... is insufficient evidence to suggest that the mileage had been tampered with; given that the figures are input, we would suggest that it was human error."

Mr R was unhappy with this response, so he referred his complaint to our Service for investigation.

Our investigator partially upheld Mr R's complaint and said that STB should pay him £100.00 for any inconvenience caused by the fact that the mileage discrepancy was not highlighted to him when he took out the HPA. She acknowledged that this error had caused inconvenience but did not consider that the magnitude of the error entitled Mr R to any further compensation. And she also said that the mileage discrepancy was likely due to human error and would not have had a significant impact on the value of the car. STB agreed with the investigator's decision to offer Mr R £100.00 for inconvenience. Mr R did not agree with this and so this matter has been referred to me for final determination.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where evidence has been incomplete or contradictory, I've reached my provisional 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 also 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. In this case, Mr R was supplied with a car under a hire purchase agreement, which is a regulated consumer credit agreement which means this Service can consider this complaint.

FCA Handbook Principles for Businesses (the 'Principles').

Under the Principles applicable at the time of supply, STB was required amongst other things to pay due regard to Mr R's interests and to treat him fairly (Principle 6); and, to pay due regard to Mr R's information needs and to communicate information to him in a way which is clear, fair and not misleading (Principle 7). I think there was a failure in this regard. I'll explain why.

The purpose of an HPI search is to check the history of a car. It is common practice to commission an HPI report before purchase or supply. And it would be reasonable in my view to expect that an HPI report would cover a car's mileage and MOT details, and if it did not do so, I think it would also be fair and reasonable to make this clear.

Mr R has said before the time of supply he asked if an HPI report had or would be undertaken by the lender and whether there were any issues.

STB commissioned an HPI report on 23rd December 2022. The HPI report confirmed that MOT details and NMR details relating to the car were not checked. This report was not given to Mr R; nevertheless, it was confirmed to him that there were no issues to report relating to the car and I think it was reasonable for him to rely on that assurance before entering into the HPA.

Had STB provided the report to Mr R, or had they advised him that it did not cover mileage or MOT history, he could have made an informed decision on how to proceed. In summary, I think that the failure to bring the shortcomings of the December 2022 HPI report relating to mileage and MOT history to Mr R's attention at the time of supply constituted a breach by STB of Principles 6 and 7 of the FCA Handbook.

Therefore, for the reasons explained I intend to uphold this complaint.

Putting things right

What is the effect of all this? There has been some discussion as to whether the mileage discrepancy was human error or arose due to foul play. There is no evidence of foul play one way or another, but that does not mean that there is no diminution in the value of the car. It is also possible that if this was an administrative error it could be corrected, but neither STB nor Mr R has pursued this, and of course there can be no guarantee that even if the discrepancy was an administrative error, that it would be corrected.

Our investigator asked Mr R to provide proof of how the mileage discrepancy has directly impacted the value of the car. In response Mr R provided a letter from a dealership which said that the value of the car without the mileage discrepancy was £1,300.00; and £1,000.00 with the discrepancy. But they also said that:

“As explained, this isn’t a [sic] accurate figure, this is on the basis of your vehicle being in top condition and has only been provided as an example.”

This indicates a diminution in value of £300.00. However, this valuation is subject to the caveats noted above. Any actual loss would depend on the circumstances at the time of sale or trade in. So, I think on balance there is likely to be some diminution in value of the car. I’ve taken this into account as part of any award for distress and inconvenience this matter has caused.

Distress and inconvenience

It’s clear that this matter has caused Mr R a significant amount of distress and inconvenience which would have been avoided had STB paid due regard to its duties under the Principles.

I think that a ‘goodwill’ gesture of £100.00 suggested by our investigator is insufficient, because I don’t think it fairly reflects the magnitude of the distress caused. As the January 2024 HPI report said, the discrepancy is a “significant issue” with the car failing the HPI check. Finding this out would also have added to Mr R’s distress.

So, to be fair, taking everything into consideration, I think STB should pay Mr R a total of £300.00 in compensation. I’m satisfied this fairly reflects the distress and inconvenience that’s been caused in this complaint.”

Both Mr R and STB responded to my provisional decision. Mr R didn’t expressly disagree with my provisional decision, but he did not agree to it either. He said he had hoped that STB would take the car back and: “...*deal with it themselves*...”. STB accepted my provisional 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.

Although Mr R didn’t agree with my provisional decision, I have not received any further information that would lead me to change it. Whilst I consider that STB clearly breached the applicable Principles, given the circumstances of this case I do not consider it would be appropriate or proportionate to allow Mr R to return the car. In conclusion, therefore, I uphold this complaint, and STB is responsible for putting things right.

Putting things right

To settle this complaint STB should now pay Mr R a total of £300.00 in compensation, to fairly reflect the distress and inconvenience that's been caused to Mr R.

My final decision

For the reasons explained, my final decision is that I uphold Mr R's complaint, and direct Secure Trust Bank Plc trading as V12 Vehicle Finance to settle this complaint in accordance with the putting things right section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 December 2024.

Michael Hoggan
Ombudsman