

The complaint

Mr A complains that Secure Trust Bank Plc didn't cancel his agreement when he asked it to. He's unhappy that the car was repaired and returned to him and that a default has been registered on his credit file.

What happened

In February 2019 Mr A was supplied with a car and entered into a hire-purchase agreement with Secure Trust Bank. Within the first few days Mr A experienced issues with the car cutting out. He also discovered a chip on the windscreen.

In March 2019 Mr A contacted Secure Trust and asked to cancel the agreement because the car wasn't fit for purpose. Mr A subsequently arranged for the car to be returned to the supplying dealer.

The supplying dealer had the car for around 3 weeks during which time it carried out repairs. It then returned the car to Mr A.

Mr A contacted Secure Trust at the end of March 2019. He complained that the repairs which had been carried out weren't satisfactory and said he was unhappy that he'd been asked to make the contractual payment which had fallen due whilst the car was in for repair.

Secure Trust investigated and decided that the repairs had been carried out successfully by the supplying dealer. It told Mr A it considered the matter resolved.

Mr A remained unhappy and complained to this service. He said he'd cancelled the agreement and the supplying dealer had carried out repairs despite his request to reject the car.

Secure Trust reviewed the complaint. It acknowledged that it was unreasonable to expect Mr A to pay the contractual payments which had fallen due whilst the car was being repaired and refunded one months payment to the account. In relation to the other complaint points, Secure Trust said it didn't consider Mr A had the right to reject the car because there was no evidence that the repairs had been unsuccessful. It also said Mr A hadn't made any payments to the account since he acquired the car and that the agreement had been terminated in July 2019, but that it hadn't been able to locate the car in order to recover it.

In relation to Mr A's request to cancel the agreement Secure Trust said the request was incorrectly processed when received. It said if it had been processed correctly, Mr A would have been given 30 days to repay the loan plus accrued interest. It said it was prepared to give effect to the request to withdraw from the agreement retrospectively.

Our investigator didn't uphold the complaint. She was satisfied that there had been an issue with the car but didn't think there was enough evidence to show that the repairs had failed. She said it was unreasonable for Secure Trust to ask Mr A to make payment for the period when the car was being repaired and felt that the offer to refund one months payment was fair. The investigator said that because Mr A hadn't made any payments, it was reasonable

for Secure Trust to terminate the agreement. She said if Mr A didn't accept the offer to withdraw from the agreement then he would need to return the car, and take responsibility for any shortfall under the agreement.

Mr A didn't agree. He said he'd asked for the agreement to be cancelled within the first 14 days.

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 can see that Mr A asked Secure Trust to cancel the agreement within the first 14 days. The agreement says that Mr A has the right to withdraw from the agreement within 14 days of inception. It also sets out what Mr A must do within 30 days of giving notice of withdrawal, which includes repaying the amount of credit plus accrued interest. If Mr A had done this he would've become the owner of the car.

Mr A didn't repay the credit within 30 days (or at all) so to the extent that his email to Secure Trust can be said to be a request to withdraw from the agreement, it wasn't effective because no payment was made.

Looking at Mr A's email to Secure Trust, and taking into account what he's said subsequently to Secure Trust and this service, I think there's been some confusion between a request to withdraw from the agreement and a request to reject the car. Mr A has said that the reason he wanted to cancel the agreement was because he didn't think the car was fit for purpose. He's said that the car should have been kept by the dealership and his deposit should have been returned to him. He's also said he wasn't happy that the supplying dealer carried out repairs because as far as he was concerned he'd rejected the car already.

On balance, I think Mr A was asking to reject the car, rather than asking to withdraw from the agreement. So I've looked at whether there were grounds for Mr A to reject the car.

Because Secure Trust supplied the car under a hire-purchase agreement, there's an implied term that the car is of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all the relevant circumstances such as, amongst other things, the age and mileage of the car and the price paid.

Where a fault occurs within the first 30 days, a consumer has a short term right to reject the car if it isn't of satisfactory quality. This means there has to be something fundamentally wrong with the car. The supplying dealer must agree to the rejection.

After 30 days but within the first 6 months, if a fault occurs there's a presumption that it was present at the point of supply unless the business can show otherwise. The business is allowed one opportunity to repair the fault. If the repair isn't successful the consumer can reject the car. After 6 months the burden of proof is reversed and it's up to the consumer to show that the car had a fault at the point of supply.

I've thought about whether Mr A exercised his short term right to reject. However, even if his email to Secure Trust was treated as a request to reject then I can't see that the supplying dealer accepted the request. The situation is made more complicated by the fact that Mr A subsequently returned the car to the supplying dealer for repairs. I don't think it's likely that Mr A would have allowed the garage to repair the car if he intended to reject it. In his initial complaint to Secure Trust, Mr A said he was unhappy about the length of time the

repairs had taken and the quality of those repairs. He said he was also unhappy that he'd been asked to pay his monthly payment whilst the car was being repaired. This isn't consistent with rejection.

On balance, I don't think Mr A successfully exercised his short term right to reject. I'm satisfied that he accepted repairs to the car.

Mr A has said he's unhappy with the repairs which were carried out. I've looked at whether the repairs were successful. Based on the available information, repairs were carried out to the exhaust system. Mr A has said the repairs were unsatisfactory because the DPF was removed to resolve the issues he was experiencing. Mr A has said that a colleague of his who is a mechanic has told him this.

I haven't seen any evidence that the repairs weren't successful, such as (for instance) a further complaint by Mr A to the supplying dealer, or a report or invoice for further remedial work from a third party garage. I can see that the car passed an MOT in February 2020. Despite what Mr A's colleague told him, I don't think it's likely that the DPF was removed from the car, because it's illegal to drive a car which has had the DPF removed and the absence of the DPF would've been identified at the MOT as part of the emissions test.

On balance, I've not seen enough evidence to persuade me that the repairs were unsuccessful.

I've taken into account Mr A's concerns about his credit file. However, I can see that Mr A hasn't made any payments under the agreement since inception. I don't think Secure Trust has acted unfairly by terminating the agreement in those circumstances. Secure Trust is under a duty to report accurate information about Mr A's account to the credit reference agencies. So I'm unable to say that the default has been incorrectly registered on Mr A's credit file.

Taking everything into consideration, I'm of the view that there was confusion whether Mr A intended to withdraw from the agreement or reject the car. Mr A has said he wanted to reject the car and receive his deposit back, so I think it's more likely that he wanted to reject the car. However, the request to reject wasn't accepted by the dealership and as I've explained above, Mr A subsequently accepted repairs to the car, which I think have been successful. Because of this, I don't think there are grounds for Mr A to reject the car.

Notwithstanding that there has been some confusion, I think Secure Trust should have acknowledged Mr E's email in March. Secure Trust has acknowledged that it wasn't processed and, to the extent that the email constitutes a request to withdraw from the agreement, has offered to do so retrospectively. I think this is a fair and reasonable offer should Mr A wish to take it up. I won't be asking Secure Trust to do anything further.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 July 2020.

Emma Davy
Ombudsman