

The complaint

Mr S complains Secure Trust Bank Plc trading as Moneyway (STBP) supplied him with an unsatisfactory car that has repeatedly failed. He asks for satisfactory repairs to be carried out or that he be allowed to reject the vehicle.

What happened

I set out the background to this complaint in an earlier provisional decision. For clarity, I repeat it here.

On 23 January 2019, Mr S entered a hire purchase agreement with STBP. Within a week Mr S says he began having problems with the car and reported them to the finance company. He says he was very concerned and discussed rejecting the car at this time. He says STBP asked him to allow the dealership to rectify any problems, to which Mr S agreed. On 9 Feb 2019, the car was taken for repair at a main dealership. The mileage was recorded as 49,831. The job card shows repairs were undertaken to the all-wheel drive (AWD) under warranty.

On 11 June 2019, Mr S says he contacted STBP as he was still having problems with the car. He says he was informed it would raise a complaint, but it suggested Mr S contacted the dealership to discuss the matter.

On 19 June 2019 the car was inspected by another garage. It produced an estimated invoice for the repairs needed. It identified several fault codes and repairs were needed to supply and fit a new oil pressure pump, new DPF filter, new DPF pressure sensor, new air filter, new interior heater unit and new heated mirror. The estimated costs for parts and labour amounted to £3,603.86.

On 11 July 2019, Mr S contacted STBP again as he says the issues were ongoing and the dealership had refused to undertake any further repairs. He says the dashboard showed a warning light reporting a failure of the all-wheel drive (AWD) system which was previously repaired by the dealership. He also says he was encountering issues with the vehicles diesel particulate filter (DPF), electrical issues and the automatic headlights would illuminate unexpectedly.

On 1 August 2019, an independent report which was carried out by Automotive Consulting Engineers Limited (ACE). The mileage was recorded as 57,135. It said:

“there was an engine management lamp immediately illuminated on the dashboard and remained statically illuminated with engine malfunction highlighted on the information display.”

The report identified a number of issues with the DPF and the reverse camera failing intermittently to transmit an image to the display board.

It went on to say:

- further investigation of the DPF system would now be recommended
- in relation to the oil pump, there was no evidence of any engine running defects or other concerns often associated with this.
- a diagnostic interrogation carried out at the time of our inspection did reveal two fault codes within the vehicle ECU memory. However, in our opinion the vehicle would like benefit from a full ford diagnostic interrogation with dealer level equipment. This would also access the DPFS own data such as regeneration attempts, the overall soot content and life span remaining, if any, of the DPF system.

At this stage there is however no sufficient evidence to confirm that the conditions would have been present at the point of policy inception in light of the time elapsed since that point. It is unlikely the vehicle would remain in service use in this condition for the period.

On 13 August 2019, STBP issued its final response. It didn't uphold Mr S's complaint. It said, based on the ACE report, the first fault had been successfully repaired and the subsequent faults were not linked to the first repair. It said there was no evidence the faults were present at the point of supply and as such it didn't agree to carry out any further repairs or allow Mr S to reject the car.

Dissatisfied Mr S brought his complaint to this service.

An investigator looked into things for Mr S. She concluded that although Mr S contacted STBP almost straight away to return the vehicle in January 2019, a repair was carried and accepted in February 2019. Whilst she was able to evidence issues with the car connected to the DPF and reverse camera, she was unable to evidence the previous repair with the AWD failed. She sympathised with the monies Mr S says he has paid out to repair the car but noted she had no evidence to support any additional repairs and as such she was unable to uphold his complaint.

Mr S disagreed. He says the faults kept arising even after they have been cleared. He says he can't evidence the repairs to the car as he has carried them out himself. He says the car will run but has intermittent fault codes coming up now. He says this matter has caused him a great deal of trouble and upset. He hasn't been able to properly use the car as it wouldn't go above 30 miles per hour. The nature of his occupation means he needs a reliable car and his wife has had to take out finance they can ill-afford for a reliable vehicle. He asked for an ombudsman review.

I explained, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No courtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. In considering what is fair and reasonable, I said I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider having been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement – so we can consider a complaint relating to it. STBP is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Credit Act 1974 and also the Consumer Rights Act 2015 are relevant to this complaint. The CRA says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”. To be considered “satisfactory”, the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle’s history. The quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

STBP supplied Mr S with a car that was nearly 7 years old and had travelled around 49,000 miles. And the price of the car was lower than it would have been if it had been supplied new.

So, I said I thought it fair to say that a reasonable person would expect that parts of the car might have already suffered some wear and tear. And there’s a greater risk this car might need repair and/or maintenance

The relevant law still says a used car should’ve been of satisfactory quality when supplied. If it wasn’t then STBP is responsible. I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the car was faulty, and so not of satisfactory quality when supplied, I’d think it fair and reasonable to ask STBP to put this right. The question is though was the car faulty when supplied?

I considered the timeline of events. Mr S acquired a car that had travelled around 49,000 miles on 23 January 2019. He reported problems with the car on 28 January 2019 and asked if he could return it. The finance company asked him to allow the dealership an opportunity to put things right.

On 9 February 2019, repairs were carried out on the car. The mileage at this point was 49,831. The invoice for that repair reads:

All wheel drive fault message changed oil & filter on aldex on diff – co ids checked for AWD fault, confirm DTC B2477 module configuration failure – tried to re-install module (data error) suspect possible pump failure.

Notes:

*Stage 1 repair, new AWD module required and test for further issues with haldex (**must stress stage 1 of repair**)*

DIAG TRANS FAULT – Control Unit

Notes

*Replaced Haldex module and attempted to install module “insufficient data fault”, cleared DTCS and attempted second module re-install – **same fault dtcs for programme failure and canbus error** – carried our blank module install – road tested all ok.*

I said the invoice itself gives cause for concern. It indicates firstly that a partial repair may have been undertaken and secondly the fault lights kept occurring, even after the repair. The dealership said this fault was fully repaired without issue. But on 11 June 2019, Mr S contacted STBP to say he is still experiencing issues with the car. This is within a few months of the repair being carried out.

On 19 June 2019, Mr S had the car inspected by a third-party garage. It found several fault codes present and provided an invoice for required repairs. This included parts and labour for supplying and fitting a new oil pump, a new DPF filter, a DPF pressure sensor, an air filter, an interior heat unit and a heated mirror. The cost of the repairs was £3,603.86. I said I was persuaded Mr S's testimony that there were repeated problems with the car were found to be supported by the inspection by this independent garage.

On 11 July 2019, Mr S contacted STBP again as the dealership refused to carry out the repairs. He again reported issues with AWD fault light and various other fault codes. All the issues Mr S raised were within 6 months of ownership. The first within 5 days and then within 5 months. I understand the dealership says the fault codes following the first repair were due to them not being cleared. But in that case why did Mr S continue to report problems with the car. If it was indeed just uncleared fault codes, why would he still be experiencing issues?

So, I went on to consider the ACE report carried out on 1 August 2019. The first thing of note was that the engineer was asked to consider the DPF/heater unit and oil pump. It was not asked to consider the AWD unit.

The report says:

*...we proceeded with a physical examination of the car, starting the vehicle from a cold start. We can confirm the **engine management** illuminated on the dashboard and remained statically illuminated with **engine malfunction** highlighted on the information display.*

It goes on to say:

A diagnostic interrogation revealed fault codes B1242 recirculation circuit failure and U1900 communication canbus fault.

The “canbus” fault is the same as that described in the first invoice dated 19 February 2019. The engineer reported the road test found the vehicle power delivery and response to be abnormal. It did not appear to be in limp mode. The report suggested it could be due to a blockage in the DPF but there was not abnormal or excessive smoke emissions consistent with a DPF blockage.

The report indicated further investigation of both the DPF and a full analysis of the fault codes by a manufacture dealership was required to identify the issues. It went on to say at this stage, there isn't sufficient evidence to suggest the faults were inherent at the point of sale.

I listened to the telephone calls between Mr S and our investigator. Mr S describes the car as being in limp mode, failing to drive properly and in his opinion safely. He described the AWD light coming on intermittently. He said even when he had use of the car it “wasn't running right”.

This seems to be supported by the ACE report. It clearly identified both fault codes and engine management issues. The engineer reported a similar issue to that which Mr S described, reduced power and an abnormal response when driving. The further investigation it suggested was not, to my knowledge, carried out and so I said I don't agree the ACE report can be seen as conclusive evidence that the faults described were not present or developing at the point of sale. STBP says that there's no evidence of the fault Mr S complains about. It says there isn't anything wrong with the car. But because Mr S says the problem happens now and again, I said it stands to reason that it might be difficult to replicate.

Based on the evidence I have from both parties, I said it seems likely there is a fault with the car, although occurring intermittently. I said this because the first problems were identified within one week of acquiring the car and it was in the garage for a repair within a month. The problems continued and Mr S has been complaining of issues ever since.

Mr S has given this service details of his occupation and the fact that he relies on his car for work. He wasn't in a position to pay for the repairs and so he told us he replaced the air filter and the airflow sensor to see if that would help. He said although he had some use of the car it still wasn't running correctly and had intermittent fault lights coming up. He felt it to be unsafe to drive and so it has been on his driveway since. His wife took out further finance for a second car to allow him to carry on working.

Having spoken to STBP, it confirmed Mr S VT'd his agreement on 11 March 2020, and it recovered the car on 26 March 2020. It sold the car at auction on 30 May 2020 for £7906.50. It did this in the full knowledge there was an ongoing complaint and investigation by this service. The difficulty here is there is no longer a car available for a further inspection or to carry out the recommendations in the ACE report to determine the root cause of the problem.

I'm not in agreement that the AWD unit, the first repair, was completed successfully. Mr S's testimony has been consistent, and he reports the warning light presenting intermittently after the repair. The presentation of the car at the ACE inspection also confirms engine malfunction issues, but the engineer wasn't asked to consider the AWD unit. This could have been rectified if Mr S had paid £85 for a diagnostic test at the time. But he was reluctant to do so and could ill afford further costs associated with the car. It could also have been resolved if STBP had undertaken the further recommendations for diagnostics, but that wasn't carried out either.

STBP says it accepts a fault was identified within a week, but it was repaired and Mr S accepted that repair. It says the subsequent faults that arose were not connected to the first fault and as such it doesn't agree they were present at the point of supply.

I said I wasn't persuaded the first repair was successful. I'm satisfied all the issues Mr S experienced with the car were in the first six months and having taken account of the relevant law, I said I'm persuaded it would have permitted Mr S to reject the car in these circumstances. That legislation does allow for rejection of faulty goods. Further, even if I am mistaken in law, I said I thought it fair and reasonable that Mr S can reject the car in the circumstances. I said this because, the car had travelled less than 50,000 miles when Mr S acquired it and even given it is a used car and one would expect a reasonable degree of wear and tear. I don't find it reasonable that the number of repairs and the nature of those repairs, would have presented within six months unless they were present or developing at the point of sale. I appreciate Mr S has had use of the car and has travelled around 6,500 miles in the 8 months between the ACE report and the return of the car in March 2020. But an intermittent fault that allows some use doesn't mean the car was fit for purpose or that faults weren't present at the point of sale, indeed the evidence suggest otherwise so I said I'm going to ask STBP to put things right.

I said my starting point is to put Mr S back in the position as though he hadn't taken out the agreement. Mr S traded in his old car as the deposit which should be refunded. Mr S does however confirm that although he stopped using the car and acquired another on finance, he also stopped making his finance payments which means I'm not able to ask STBP to refund any payments to him. Up to the point he stopped making the payment he did have some use of the car and so I won't be asking STBP to refund any of the payments he made either. I can see that this matter has caused Mr S a great deal of trouble and upset and so I intend to ask STBP to pay Mr S £200 in recognition of this.

For the reasons I said I intended to direct Secure Trust Bank Plc trading as Moneyway to:

- refund the deposit of £800 plus 8% statutory interest
- write off the outstanding finance balance of £5171.05
- remove any adverse information from Mr S's credit file
- pay £200 for the trouble and upset this matter has caused

STBP must pay the total compensation within 28 days of the date on which Mr S accepts my final decision. If it pays later than this, it must also pay interest on the £200 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr S can reclaim the tax if she is able to. Mr S should refer back to STBP if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

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 thank Mr S for confirming he received my provisional decision.

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reviewed the complete file again and revisited my provisional decision. Mr S has accepted the findings of my provisional decision. STBP hasn't taken the opportunity to comment on my provisional decision or to supply any new information. I think it has had a fair chance to do this, if it had wanted to do so. It follows, given that there is no further evidence that I need to consider, that I have reached the same conclusions as I did in my provisional decision and for the same reasons.

My final decision

For the reasons I have given I direct Secure Trust Bank Plc trading as Moneyway to:

- refund the deposit of £800 plus 8% statutory interest
- write off the outstanding finance balance of £5171.05
- remove any adverse information from Mr S's credit file
- pay £200 for the trouble and upset this matter has caused

STBP must pay the total compensation within 28 days of the date on which Mr S accepts my final decision. If it pays later than this, it must also pay interest on the £200 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr S can reclaim the tax if she is able to. Mr S should refer to STBP if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 February 2021.

Wendy Steele
Ombudsman