

The complaint

Mr T complains that a car he acquired via a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway wasn't of satisfactory quality.

What happened

In July 2021 Mr T entered into a 42 month hire purchase agreement with Moneyway for a used car. The car was around seven and half years and had a mileage of around 88,500.

In August 2021 Mr T contacted Moneyway and complained that the car had broken down as it had a water leak, an oil leak and the air con didn't work. He also said that the car had failed its MOT due to a defective headlamp. In a later call to Moneyway, Mr T said that the dealer had agreed to pay £100 towards repairing the headlight but this wouldn't cover the full costs of repairs even though he had tried to source a second-hand part.

Although Mr T had at first told Moneyway that he would like the car repaired, he later said he would like to reject it because of the way the supplying dealership had dealt with his complaints about the car.

Moneyway arranged for the car to be inspected by an independent engineer. This inspection took place in October 2021. The engineer reported that they found the following faults with the car:

- That the radiator was leaking coolant
- That there was an oil leak in the engine
- That the vehicle wasn't holding any pressure within the coolant system
- That the air con was inoperable.

However, the independent engineer also said that in their opinion these faults hadn't been present or developing at the point of supply as Mr T had been able to drive around 2,500 miles in the car since he'd acquired it. The engineer said they thought these issues would have become noticeable after the car had been driven around 1,000 to 1,500 miles. The engineer said they thought the car had been durable as the faults with the car weren't major ones and Mr T had covered in excess of the average mileage which was around 500 to 800 miles per month before they'd developed.

Moneyway didn't uphold Mr T's complaint and said the car had been fit for purpose when it had been supplied. Moneyway offered as a gesture of goodwill to contribute £750 towards the cost of the repairs and said the supplying dealer had also offered to pay £250 making a total of £1,000. Mr T declined the offer and complained to this service.

Mr T said the car had broken down around three weeks after he'd acquired it and he

strongly disagreed that the car had been of satisfactory quality. He said he wanted to reject the car and cancel the agreement.

Our investigator didn't recommend Mr T's complaint should be upheld. She said that she was satisfied on the independent engineer's evidence the faults with the car hadn't been present or developing at the point of supply. Our investigator also said she thought that the faults were due to a reasonable level of fair wear and tear when looking at the mileage undertaken by Mr T in the car. She said she thought Moneyway's goodwill gesture was fair and she wouldn't ask it to do more.

Mr T disagreed with the view of our investigator. He said he didn't accept that a car developing a fault three weeks after it had been supplied meant it could be of satisfactory quality.

As the parties weren't able to reach an agreement, the complaint was passed to me. I issued a provisional decision along the following lines.

Under the Consumer Rights Act 2015 ("CRA") there is an implied term that goods supplied are of satisfactory quality. And satisfactory quality is what a reasonable person would accept as reasonable when taking into account all the relevant factors which, when looking at cars, would include things like its age and mileage. When I'm looking at whether a car was of satisfactory quality, I'll look at whether the car was fit for purpose, free from minor defects, durable and safe.

Here, the car was around seven and half years old and had a mileage of about 88,500. So, I would have expected it to have some wear and tear already and need maintenance more often than a new car which I would expect to be fault free.

Mr T said that when he acquired the car, he was told by the supplying dealer that it had had an oil leak which had been fixed. However, he said that around three weeks later the car broke down due to an oil and water leak. Mr T also raised other defects such as the air con and headlamp not working. I'd seen that he'd raised these issues with Moneyway and sought to reject the car around 41 days after the inception of the agreement.

I didn't know what was said by the supplying dealer regarding any past oil leak or whether there had been earlier repairs. I didn't think I had enough evidence that there was a recurrent fault with the car. And I'd seen that the car had passed its MOT without any advisories in both November 2020 and July 2021. I'd also seen that the independent engineer's view was that had the car been supplied to Mr T with the faults they'd found when inspecting it in October 2021, then he wouldn't have been able to achieve the mileage that he had. They said these faults would have become evident far sooner than they had. Looking at the evidence, I thought it was reasonable to say it was more likely than not that the faults developed after the car had been supplied to Mr T.

However, I then needed to consider whether the car had been as durable as a reasonable person would have reasonably expected. As set out above, some wear and tear was to be expected in a car of this age and mileage. But I disagreed with the independent's engineer's view that this car would have been considered durable. The car had broken down around one month after Mr T had acquired it. And although he'd driven around 2,500 miles in it during that time, I didn't think that could be considered to be such excessive use that maintenance and repairs would reasonably be expected. I thought a reasonable person would have expected Mr T to have been able to use the car for longer and driven it further before the need for repairs would arise.

The independent engineer had described the faults as not being "*major defects*" but I

hadn't seen that the cause of the radiator leaking or of the oil leak had actually been identified. I accepted that the headlamp fault was likely to be a wear and tear issue. However, even if the leaks might not be "*major*" I thought it was fair to describe them as more than minor since I'd seen the independent engineer had said the car should not be used until repairs had been carried out.

So, I was satisfied on the evidence that I'd seen that the car wasn't of satisfactory quality at the point of supply as it was not as durable as would have been reasonably expected.

The CRA sets out the remedies for when goods aren't of satisfactory quality. Firstly, there's a short-term right to reject goods that applies within the first 30 days. I'd seen Mr T said the faults with the car arose within three weeks, but I hadn't seen any evidence he'd asked to reject the car straight away. There appeared to have been some dialogue with the supplying dealer over the headlamp and later on the about the oil and water leaks. But I hadn't seen any evidence that Mr T had asked to reject the car at that point.

Looking at the contact notes kept by Moneyway, Mr T had made contact around one month after taking the car and said he would like to have the car repaired and keep it. It was only in a later call around a week later that he raised rejecting the car due to finding the supplying dealer unhelpful. I didn't think I could reasonably say that Mr T had tried to use his short term right to reject the car.

After the first 30 days, the retailer has a right to repair and it's only if this is not possible or unsuccessful that Mr T would be entitled to reject the car. I'd seen that Moneyway and the supplying dealer had both made offers of contributing towards the repairs which Mr T had rejected. I hadn't been supplied with any evidence as to the actual costs of the repairs, but as the gesture was described as a "*contribution*" then I thought it was fair to assume that it had been accepted the repairs would cost over £1,000.

I'd seen that Mr T had returned the car to the supplying dealer during this complaint as he said he couldn't afford to keep it any longer when he was unable to use it. I also understood that there was some concern as to the condition of the car's bodywork which the supplying dealer said was now poor. Mr T did not appear to have provided any paperwork for the car when he'd left it and the supplying dealer said it had been unable to make contact with him.

While I accepted that under the CRA the retailer (and so Moneyway) should have an opportunity to undertake repairs I didn't think this was a workable option here in the circumstances. I thought it would be fair and reasonable for the agreement to be cancelled with nothing further to pay for Mr T and for Moneyway to collect the car.

However, under the agreement Mr T was responsible for keeping the car in a good condition until either he had fully paid for it or until Moneyway had taken re-possession of it. And although I could understand why he had handed the car back, he appeared to have done so without contacting Moneyway or the supplying dealer. In light of that, I thought it was fair that Mr T remained liable for any damage to the bodywork that was beyond fair wear and tear for a car of that age and mileage. So, after the car has been collected and inspected it will be for Moneyway to decide whether it wishes to invoice Mr T for any damage found to its bodywork. And if it does take that action, and Mr T disagrees with that invoice, then he may raise that as a separate complaint should he wish to do so.

I'd seen that Mr T had made two payments under the agreement for the months of August and September 2021. I'd also seen that he was able to drive the car around an

additional 2,500 miles. I thought it was fair that Mr T paid for the usage he had from the car, so I was not going to ask for any reimbursements to be made to him by Moneyway.

In light of way Mr T had returned the car to the supplying dealer, and the total number of miles he'd driven in it, I didn't think it was appropriate or fair for Moneyway to pay compensation to Mr T.

Moneyway should remove any adverse information about this agreement from Mr T's credit file. However, should there be any end of contract charges for the car's bodywork and Mr T then doesn't pay those as requested and/or agreed, then Moneyway could report that matter to the credit reference agencies.

For the reasons given above I intended to uphold Mr T's complaint. I asked Moneyway to do the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Mr T.
- Remove any adverse information about this agreement from Mr T's credit file.

Mr T has agreed with my provisional decision and Moneyway has confirmed it has nothing else to add.

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 neither party has asked me to reconsider any parts of my provisional decision, I have looked again at the conclusions I've reached and the reasons for doing so. I haven't changed my view. I'm satisfied that the car wasn't of satisfactory quality at the point of supply as it wasn't as durable as would reasonably be expected. And I'm upholding Mr T's complaint.

For the reasons given, I think it would be fair for Mr T to now reject the car and have the agreement cancelled. But, as explained above, I don't think Moneyway should pay Mr T compensation for having to deal with the faulty car. I also think that as he has had use of the car he should pay for that. So, I'm not asking for any payments made by Mr T under the agreement to be repaid to him by Moneyway.

However, when looking at how the car was handed back to the supplying dealer by Mr T, I think it's fair that should any damage be found to the car's bodywork, that is considered beyond fair and wear when collected by Moneyway, that Mr T is liable for that. Any end of contract invoice for any damage will be a matter for Moneyway. And if Mr T receives an invoice and is unhappy as to its contents then he can raise that should he wish to do so.

Putting things right

I'm asking Moneyway to do the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Mr T.

- Remove any adverse information about this agreement from Mr T's credit file.

Moneyway is entitled to send Mr T an end of contract invoice if damage is found to the car's bodywork that is considered beyond fair wear and tear. And, should there be any end of contract charges for the car's bodywork and should Mr T then not pay those as requested and/or agreed, then Moneyway may report that to the credit reference agencies.

My final decision

For the reasons given above I'm upholding Mr T's complaint. I'm asking Secure Trust Bank Plc trading as Moneyway to do the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Mr T.
- Remove adverse information about this agreement from Mr T's credit file.

Moneyway is entitled to send Mr T an end of contract invoice if damage is found to the car's bodywork that is considered beyond fair wear and tear. And, should there be any end of contract charges for the car's bodywork and should Mr T then not pay those as requested and/or agreed, then Moneyway may report that to the credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 March 2022.

Jocelyn Griffith
Ombudsman