

The complaint

Mr D complains about the quality of a car he has been financing through an agreement with Secure Trust Bank Plc, trading as Moneyway and who I'll call "Secure Trust".

What happened

I issued my provisional decision on this complaint in April 2023. An extract from that provisional decision is set out below.

I know it will disappoint Secure Trust, but I think this car hasn't been of satisfactory quality and I'm expecting to tell them to allow Mr D to reject it.

The redress I'm currently inclined to order considers some issues our investigator didn't when he provided his view on this complaint. So, I'm issuing a provisional decision in order for Mr D and Secure Trust to provide any additional comments they may wish me to take on board.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr D acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Secure Trust, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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.

There's no dispute here that the car has a fault. The engine needs rebuilding because there's been bore damage.

Secure Trust are only responsible for the quality of the car when it was supplied to Mr D. They say that as the car failed after Mr D had been in possession of it for three years and as Mr D had, by then, completed almost 38,000 additional miles, any underlying issues would have been picked up. In support of that opinion, they've explained that the car passed an MOT in Feb 2020 with no advisories.

In April 2019, only a couple of months after Mr D took receipt of this car, Mr D reported an engine fault to the dealership. In an email to him early the next month they explained:

“the likely outcome is the vehicle will require a new engine, or failing that an extensive engine repair”.

That repair was never completed but job cards and emails provided by Mr D demonstrate that he continued to experience issues with the engine. Spark plugs were replaced in May 2019 and an engine management light was reported in October 2020 and spark plugs were replaced again along with the coils. The same issue was reported in February 2021 and a further spark plug was replaced. I’m persuaded, on balance, that these were signs the engine was failing and I think the fault had been developing on the car since inception as the 2019 fault reports suggest.

I’m not persuaded that because the car passed an MOT in February 2020 it would demonstrate the engine wasn’t deteriorating. I don’t think the MOT would have considered the engine performance and I’m persuaded by the evidence provided from before, and after the MOT, that problems existed at that time, albeit problems that wouldn’t make the car unroadworthy under an MOT.

The relevant legislation gives the business one opportunity to repair a fault present at the point of supply. But as there have been several repairs that have failed I think Secure Trust should now allow Mr D to reject the car and end his agreement with them.

Putting things right

Secure Trust should collect the car at no cost to Mr D and they should end the finance agreement.

They’ll need to refund any deposit or part exchange that Mr D has paid. Mr D has explained that he traded in a Vauxhall Astra but there’s nothing listed on the finance agreement or on the invoice. Mr D will therefore need to provide evidence of the part exchange if Secure Trust are to refund it. And, as he’s been deprived of that money, Secure Trust will need to add interest to that refund.

I can see that many, if not all, of the engine repairs (spark plugs/coils) have been carried out without charge. If there are repairs relating to this issue that Mr D has had to pay for and that he can evidence, Secure Trust will need to refund the cost of those repairs, with interest. For clarity, however, I can see that catalytic converter/s and a lambda sensor were replaced in May 2021. I’m not persuaded that they were related to the engine fault. Given the time Mr D had been in possession of the car at that point I think it’s likely those issues were related to wear and tear, and it wouldn’t therefore be fair to tell Secure Trust to refund those costs.

In an email to the dealership in April 2019 Mr D explained that he’d had the car recovered as it had broken down with an engine fault. I think the cost of that recovery was therefore incurred as a consequence of the car not being of satisfactory quality. If Mr D can provide a receipt for that recovery Secure Trust will need to refund it, with interest.

Mr D hasn’t always been provided with courtesy cars whilst his car has been in for repairs to the engine. Where Mr D can evidence the cost of hire cars, Secure Trust should refund those costs as they were incurred to keep Mr D mobile whilst he was paying for a car he wasn’t able to use.

On 15 October 2021 Mr D understandably stopped using the car because of the problems with the engine. It’s not fair for him to have been paying for a car he has been unable to use. So, Secure Trust should refund any finance instalments he’s paid since 15 October 2021 or waive them if they were due and haven’t been paid.

Mr D has also experienced some distress and inconvenience as a result of this issue. He's had to take the car back to the garage, has been left without it, and has had to escalate his complaint to this service when I think it could have been resolved earlier. In those circumstances I think Secure Trust should pay him £200 in compensation.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and tell Secure Trust Limited to:

- *Allow Mr D to reject the car and end the finance agreement.*
- *Collect the car at no cost to Mr D.*
- *Refund any deposit or part exchange that has been paid and can be evidenced by Mr D. Add 8% simple interest per year from the date of payment to the date of settlement*.*
- *Refund any finance instalments paid from, and including, 15 October 2021, in respect of the loss of use Mr D has had from the car. Waive any that were due but haven't been paid. Add 8% simple interest per year from the date of payment to the date of settlement*.*
- *Refund the cost Mr D incurred having the car recovered to the garage in April 2019 if Mr D can provide a receipt. Add 8% simple interest per year from the date of payment to the date of settlement*.*
- *Refund the cost of any repair work completed to the car and relating to the engine failure, on provision of receipts from Mr D. Add 8% simple interest per year from the date of payment to the date of settlement*.*
- *Refund the cost of car hire Mr D incurred when the car was undergoing repairs relating to the engine problem if Mr D can provide receipts. Add 8% simple interest per year from the date of payment to the date of settlement*.*
- *Pay Mr D £200 to compensate him for the distress and inconvenience he's experienced.*
- *Remove any adverse reports they may have made to Mr D's credit file in relation to this issue.*

**If HM Revenue & Customs requires Secure Trust to take off tax from this interest. they must give Mr D a certificate showing how much tax it's taken off if Mr D asks for one.*

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.

Mr D accepted my provisional decision and Secure Trust didn't respond to it. So I've seen no reason to change that decision.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Secure Trust Limited to:

- Allow Mr D to reject the car and end the finance agreement.
- Collect the car at no cost to Mr D.
- Refund any deposit or part exchange that has been paid and can be evidenced by Mr D. Add 8% simple interest per year from the date of payment to the date of settlement*.
- Refund any finance instalments paid from, and including, 15 October 2021, in respect of the loss of use Mr D has had from the car. Waive any that were due but haven't been paid. Add 8% simple interest per year from the date of payment to the date of settlement*.
- Refund the cost Mr D incurred having the car recovered to the garage in April 2019 if Mr D can provide a receipt. Add 8% simple interest per year from the date of payment to the date of settlement*.
- Refund the cost of any repair work completed to the car and relating to the engine failure, on provision of receipts from Mr D. Add 8% simple interest per year from the date of payment to the date of settlement*.
- Refund the cost of car hire Mr D incurred when the car was undergoing repairs relating to the engine problem if Mr D can provide receipts. Add 8% simple interest per year from the date of payment to the date of settlement*.
- Pay Mr D £200 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to Mr D's credit file in relation to this issue.

*If HM Revenue & Customs requires Secure Trust to take off tax from this interest. they must give Mr D a certificate showing how much tax it's taken off if Mr D asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 June 2023.

Phillip McMahon
Ombudsman