

## **The complaint**

Mr T has complained about the quality of a car he acquired under a hire purchase agreement with Secure Trust Bank PLC trading as V12 Vehicle Finance (V12).

## **What happened**

On 20 April 2022 Mr T acquired a used hybrid car under a hire purchase agreement with V12. The car cost around £21,000 and after a part exchange vehicle was taken into account Mr T borrowed around £17,000 under the agreement. It was to be paid back over five years with payments of around £375 per month. The mileage was around 104,000 and the car was around five and half years old.

Mr T says that on the way home from picking the car up he noticed excessive fuel consumption and a warning about the battery. He tells us he charged the hybrid battery, but it drained from 100% to under 10% within a few minutes. He says there were warnings about the battery, the drive train and the electronics. And he tells us those warnings came on intermittently.

Mr T says he called the dealer to return the car the next day but didn't get any help. He says six days after picking up the car he contacted the broker because of the issues. Mr T says the broker directed him back to the dealer. Mr T says the dealer continued to refuse to help him. And that he visited the dealer twice but the person he was dealing with wasn't available. I can see Mr T asked to replace the car on 4 May 2022. He also made enquiries with other garages.

Mr T says he took the car to another garage in June 2022 for a service which cost around £300. I can see Mr T tried contacting the dealer again in July because he wasn't receiving a response about his issues with the battery.

Mr T complained to V12 in November 2022. It acknowledged the evidence submitted by Mr T, but it said the evidence was insufficient in proving the issues Mr T was having were to do with the hybrid battery. And it needed to see this, along with information to evidence the issue was present or developing at the point of supply. However, it said the dealer had agreed to cover the cost of the £300 service. Mr T says the repair to the battery was around £5,000.

Unhappy with the response, Mr T brought his complaint to our service to consider.

One of our investigators looked into things but didn't think there was sufficient evidence to uphold the complaint. She didn't think there was enough evidence the car wasn't of satisfactory quality at the point of supply taking into account its age and mileage. And thought the issue was likely down to the battery reaching the end of its usual lifespan.

Mr T didn't agree. He said he'd done enough to show the problems were there at the point of supply. He says he can't understand why he wasn't able to hand the car back on this basis.

After stopping payments towards the agreement and declaring the car off road, Mr T said he paid around £200 for a report from a manufacturer approved garage. This report said the battery was defective. And it said *Cell module 1 in High voltage battery internally faulty*. The report said both items require replacement and further testing could be required. And that further diagnosis and repairs might be required.

I issued a provisional decision that said:

*I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr T and V12 that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Mr T acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.*

*The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr T entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. V12 is the "trader" for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.*

*The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.*

*In Mr T's case, the car supplied was used and had covered around 104,000 miles. There'd be different expectations than if it was a brand-new car. But it's worth pointing out the car cost around £21,000. I don't think he'd have expected it to have any major issues immediately (that weren't brought to his attention).*

*I think there's enough evidence to demonstrate there are faults with the car. Mr T has shown us evidence of fault codes, warnings on the dash, and he's recently obtained a vehicle health check, the results of which I've set out above.*

*Like our investigator pointed out, it would have been helpful to have something like a job card or health check from the point Mr T acquired the car. But we've not been provided that. I also haven't seen documentary evidence that Mr T validly sought to reject the car – although I appreciate he tells us he tried to do that. However, I think weight has to be put on the messages Mr T has shown us, and his testimony. He's shown us he complained to the broker about the battery within a few days. He's mentioned it didn't hold its charge and that he was using a lot of fuel. He's been consistent throughout that this has been an issue. I can also see he booked the car in with a manufacturer approved garage on 4 May 2022 (a couple of weeks after acquisition). The service comments say Car consuming too much fuel and hybrid electric battery draining too fast. I think this was likely what Mr T had explained to the garage, rather than a formal diagnostic. But it shows Mr T has been complaining about the battery since he acquired the car. And he's also shown us that he did request a replacement car at the beginning of May 2022 as well – within a month of acquisition.*

*Moreover, the recent evidence Mr T has shown us explains there is a fault with the battery. And even though Mr T covered around 4,000 miles in the car, on balance, I think there's been an issue with the battery throughout the time he's been in possession of it.*

*I've next thought about what our investigator said about the lifespan of the battery. There's lots of different opinions on how long a battery is meant to retain its charge for the particular model Mr T acquired. A number of factors can impact the lifespan. I'm not sure if the car was supplied with the original battery or with a replacement. I've thought about whether it's fair to say that because the car had covered 104,000 miles and that it was over five years old that any issue with the battery is simply to be expected. And so Mr T ought to have borne the cost of the replacement, and that the fault didn't make the car of unsatisfactory quality.*

*The issue I have with taking that view is that it seems the battery was hardly retaining any charge when the car was supplied to Mr T. Mr T's evidence has been consistent on this point. I've not been shown any evidence this car was sold as requiring a new battery straight away. And just because it's a part that would need replacing at the end of its life doesn't necessarily mean it's fair the car was sold with it like that if Mr T wasn't made aware. So, while I'd like to have seen some more information, on balance, I think I'm minded to say the car wasn't of satisfactory quality when it was supplied to Mr T. I don't think a reasonable person would have expected the battery to fail to hold a reasonable amount of charge immediately when the car cost around £21,000. The main reason for Mr T buying the car was that it was hybrid and so he could save money on fuel costs. So I also don't think the car wasn't fit for the particular purpose Mr T bought it for.*

*One thing to bear in mind is that the complaint here is against V12, and not the dealer. So I can't hold V12 responsible for the dealer's action after it sold the car. But I think it's important to note it looks like Mr T was trying to sort things out with the dealer but wasn't getting anywhere. It's quite usual for the customer to go back to the dealer first in these scenarios. Mr T says he made various attempts to contact the dealer, and that he even visited its premises on occasion, but wasn't given any help.*

*All things considered, based on the evidence I've seen, I think the dealer had the opportunity to help Mr T but didn't. I can understand why V12 came to its decision. But on balance I think there was a breach of contract relating to fitness and quality. I also think there's a strong case to argue that had Mr T shown he'd taken the steps to validly exercise his short term right to reject the goods it would have been successful.*

*I've next thought about how it would be best to put things right. I could recommend a repair is carried out. But I'm conscious that I'm not sure if this will resolve everything based on the recent health check that's been carried out. I'm also conscious any repairs should be carried out within a reasonable amount of time. So having considered everything, I think the fairest thing now would be to allow Mr T to reject the car. So I'm intending to direct V12 to end the agreement and remove any adverse information about it from Mr T's credit file. I think Mr T's deposit/part exchange value should be refunded. V12 should refund all payments from April 2023 when he declared the car off road.*

*I've also thought about the issues Mr T experienced while he had use of the car. He was able to cover 4,000 miles in the car from what I can see. But it looks as though his use was impaired for that time due to the issues with the battery and the related warnings. There's no exact scientific formula for me to use to cover the impaired use. But I'm minded to say he should receive 25% back of his payments up until March 2023. Mr T has shown he had various warning lights appear and his fuel costs would have been higher than they would have been had the battery been working more in line with what ought to have been expected.*

*I think the matter has no doubt caused Mr T some distress and inconvenience as a result of being supplied a car that I don't think was of satisfactory quality and wasn't fit for the particular purpose it was bought for. I think a lot of this was made worse by the alleged lack of support he received from the dealer. But for the reasons given above, I can't hold V12*

*responsible for that. However, I'm mindful that there's some direct inconvenience caused by the supply of the goods such as the trips to the dealer he tells us he made, and the calls and contact he's been put to in trying to resolve things. So I think V12 should also pay Mr T a further £150 in recognition of that.*

*Finally, I've thought about other costs Mr T has incurred. I don't have evidence of everything. It looks like he has been reimbursed the cost of the service. I think he should also receive a refund of the cost of the recent health check he had carried out. And he should let us know, with evidence of the actual payment being made, of any other costs he's incurred in relation to the car in response to this provisional decision.*

We've not received a substantive response from V12 despite chasing it, but Mr T responded and broadly seemed to accept the provisional decision. He supplied a list of other costs he says he incurred. Our investigator asked for further evidence Mr T had paid certain costs, such as card receipts or bank statements showing payments that were made.

Having looked at the evidence and speaking to me, our investigator contacted the parties to say she thought V12 should refund Mr T:

- £148.40 to reflect 50% of the service costs carried out in June 2022.
- £35 for diagnostics carried out in January 2023, (there was a typographical error saying this was 2022)
- £550 in relation to vehicle recovery, service/repair costs in May 2023.
- £198 for the May 2023 health check as per the provisional decision.

Mr T queried some of the costs that weren't included. And our investigator spoke to him about what I was intending on directing V12 to do, and why. Mr T didn't raise further objections or supply further evidence for me to consider.

## **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've considered the further submissions. I've not seen anything that leads me to change my mind with regards to the quality of the car, or that it wasn't fit for the purpose Mr T acquired it for. So, for the reasons already given, I'm not going to depart from the conclusions I reached regarding the rejection of the car.

The main thing left in dispute is the losses that Mr T is claiming for. Our investigator explained to Mr T that we needed to see evidence of costs having been paid. He's sent us in some documents, but I'm only going to direct V12 to refund Mr T for losses he's claiming for that I can see he's incurred and paid.

I'm not going to direct V12 to pay for the travel costs Mr T has shown us. He's receiving a full refund for payments made from April 2023 as I think he stopped using the car then. Refunding any travel costs after this would lead to double recovery. He's receiving 25% of his payments up until March 2023, and £150 for the inconvenience caused, and I think this is broadly fair in all the circumstances given he was able to use the car during this period.

Seeing as though Mr T used the car for nearly a year afterwards (albeit that use was impaired) I felt that a 50% refund of the service he had carried out in 2022 was fair in the round. There's no exact scientific formula to use in these situations, but he had some benefit

of the service which is why I didn't think a full refund was fair. If he's already received a refund for this (as was previously offered) this amount can be offset.

Mr T arranged diagnostics in January 2023 for £35 due to the issues. He also had to arrange recovery and work on the car when it was due its MOT in 2023. He's supplied an invoice for £550 and shown us his bank statements that indicate he paid £410 by bank transfer, and he says he paid £40 in cash. Mr T was put in a difficult position because he didn't want to use the car, but he needed to have it taxed and MOTd because he was worried it would be clamped if he didn't. He was also trying to supply evidence to V12 about the faults. I think this goes to explain why there were costs incurred after he sought rejection. I think it's fair he receives a refund for these costs as well given he wouldn't have incurred them had V12 allowed him to hand the car back or had it repaired when I think it should have done.

I previously set out in my provisional decision that Mr T should be refunded for the vehicle health check in May 2023. So I won't go over that again.

Therefore, all things considered, I remain of the view that Mr T should be able to reject the car and received back his part exchange allowance. And I also think it's fair he receives back those reasonably foreseeable losses he's shown he incurred, and that I think were flowing from the breach of contract.

### **Putting things right**

To the extent it (or a third party) has not done so already, Secure Trust Bank PLC trading as V12 Vehicle Finance should:

1. End the agreement with nothing further to pay.
2. Collect the car at no cost to Mr T.
3. Refund the part exchange allowance of £4,039.20.
4. Refund all payments from April 2023.
5. Refund 25% of payments from inception to March 2023.
6. Refund Mr T £148.40 in relation to 50% of the June 2022 service.
7. Refund Mr T £35 for the diagnostics carried out in January 2023
8. Refund Mr T £550 for the May 2023 recovery, MOT, service/repair costs.
9. Refund Mr T £198 in relation to the vehicle health check he paid for on 31 May 2023.
10. Pay Mr T £150 compensation.
11. Remove any adverse information about the agreement from Mr T's credit file.

\*Interest should be added to the refunded amounts set out above, calculated at a rate of 8% per year simple, from the date payment was made to the date of settlement.

If V12 considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much tax it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

V12 can also offset any refunds already given.

### **My final decision**

My final decision is that I uphold this complaint and direct Secure Trust Bank PLC trading as V12 Vehicle Finance to put things right in the way I've set out above:

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 November 2023.

Simon Wingfield  
**Ombudsman**