

The complaint

Mr C complains that a car acquired under a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway (Moneyway) wasn't of satisfactory quality.

Mr C has been represented throughout this complaint by his partner. But for ease of reading I'll refer to Mr C only within this decision.

What happened

In May 2022 Mr C acquired a used car from Moneyway under a hire purchase agreement. The car was collected by Mr C from a dealership, who I'll refer to as V. The car was around six years old and had covered almost 95,000 miles when the agreement started. The agreement was for 60 months, and the cash price of the car £20,500. The car came with a three-month warranty from V.

A few days after collecting the car Mr C noticed a problem with it. He took it to a garage, and it was found that the front suspension arm needed to be replaced. He got in touch with V, and they agreed to pay for the replacement under warranty.

A couple of months later Mr C noticed more problems with the car. The dashboard was showing the car had incorrect fluid. Mr C took the car to a garage again, and this time the AdBlue tank had to be drained, refilled, and reset. V covered this under warranty too.

A day or two after the tank repair, the engine management light (EML) came on. Again, Mr C took the car to a garage and a diagnostic report identified various fault codes with the car. The car had covered approximately 100,500 miles at this point.

At this point Mr C got in touch with V as he was concerned the car wasn't of satisfactory quality. V referred Mr C to Moneyway, so he got in contact with them to discuss his options. In early October 2022 Moneyway confirmed to Mr C that they would be allowing him to reject the car, and they would be unwinding the agreement. Mr C stopped using the car at this point.

Because Mr C and his partner needed a car to transport their young family around, and Mr C only had a work van, him and his partner decided they needed to try and acquire another car, in anticipation of the car acquired in May 2022 being collected by Moneyway. As Mr C had one live finance agreement in his name, he couldn't arrange an agreement for another car – so his partner arranged one for them to use. The new car and agreement came into force shortly after Moneyway had confirmed the vehicle that was subject to their hire purchase agreement would be collected.

However, a month after telling Mr C that the car would be rejected Moneyway confirmed this wouldn't now be the case. They couldn't agree a collection with V and decided they wanted an independent report to confirm if the faults with the car would have been present at the point it was supplied. Mr C didn't agree to this and raised a complaint with Moneyway. At this point he also complained that a late payment marker had been recorded on his credit file, and he thought the APR on the original agreement was too high.

Moneyway responded. They continued to say they had reversed their decision to allow the car to be rejected as they couldn't come to an arrangement with V. They confirmed that Mr C had made his August 2022 payment late, so the late payment marker had been added to his credit file correctly, and they said the APR was confirmed on all the pre-contract information provided to Mr C before he entered the agreement, and it had been agreed to.

Mr C brought his complaint to our service. After a lot of investigation and more evidence was provided, our investigator upheld it. He said he was satisfied the car wasn't of satisfactory quality when it was supplied to Mr C, and he was satisfied Moneyway had accepted the car could be rejected. He also said Mr C and his partner acted reasonably by arranging a new finance agreement for another car once Moneyway had confirmed the original car was being rejected. He said Moneyway were the owners of the car under the agreement so it's for them to accept rejection, irrespective of any communication they're having with the dealership, and he didn't think they'd acted fairly by rescinding their offer and asking Mr C for an independent inspection. He told Moneyway to:

- End the agreement with nothing further for Mr C to pay.
- Arrange to collect the car at no further cost to Mr C.
- Refund Mr C's deposit contribution of £500.
- Refund any monthly repayments Mr C had made from October 2022 to the date of settlement.
- Refund Mr C's road tax payments of £28.95 from October 2022 to the date of settlement.
- Refund any insurance premiums Mr C had paid (subject to proof of insurance and payment) from October 2022 to the date of settlement.
- Pay Mr C £350 compensation for the distress caused by the car not being of satisfactory quality and the miscommunication about rejection of it.
- Remove any adverse information from Mr C's credit file from October 2022 in relation to this agreement.

Mr C accepted this. Moneyway haven't responded.

As Moneyway haven't responded, it's been passed to me to decide.

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.

Let me start by addressing Mr C's complaint points about the APR charged on the agreement and the late payment marker recorded on his credit file. In both respects, I'm satisfied Moneyway have acted reasonably here. The APR was confirmed to Mr C prior to accepting and entering the agreement in May 2022 – so I can't say he wasn't aware of it or didn't have the opportunity to discuss it with Moneyway prior to the agreement starting. In respect of the late payment marker, Mr C made his August 2022 repayment late. At the time, the repayment date had been set for the first of every month, but in August 2022 Mr C didn't repay it until later in the month. Moneyway have a responsibility to report fair and accurate information to the credit reference agencies, confirming how Mr C has adhered to the agreement. In this case, although the repayment had been made in the same month it was due, it had been made late in line with the agreement – so I'm satisfied Moneyway have acted fairly by reporting it to the credit reference agencies on this occasion.

As the hire purchase agreement entered by Mr C is a regulated consumer credit agreement this service is able to consider complaints relating to it. Moneyway are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr C entered. Because Moneyway supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mr C's case, the car was used and had covered approximately 95,000 miles when he acquired it. So, I'd have different expectations of it compared to a brand-new car. Having said that, the car's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage and price.

Our investigator has said that he doesn't think the car was of satisfactory quality at the point it was supplied to Mr C. I agree with him here. I'll explain why.

The evidence provided clearly shows there have been some significant faults with the car from very soon after it was supplied. The front suspension arm had to be replaced within a few days of the car's collection – at a cost in excess of £700. Shortly after that, the AdBlue tank needed draining, refilling and resetting, and the EML came on a few days later. This remained on until Moneyway agreed to allow Mr C to reject the vehicle in early October 2022. Whilst it might be expected that a car of this age and mileage will show some faults sooner than a brand-new car, I'm not satisfied the magnitude of these faults should have been expected – and certainly not within a couple of months of the car being supplied.

Moneyway haven't explicitly said they agree the car was of unsatisfactory quality. But, importantly, they have agreed to allow Mr C to reject the car, which implies that they accept the goods weren't of satisfactory quality. And they were given an opportunity to repair the car, and it didn't conform to the contract after those repairs. Because of that, I'm satisfied the option to reject the car is a valid right Mr C has. It follows that Moneyway should now move forward with the rejection and collection of the car and bring the agreement to a close with nothing further for Mr C to pay.

The other main issue here is Moneyway's decision to rescind their offer of rejection over a month after it had originally been agreed with Mr C and whether it was reasonable of them to do so. I'm not satisfied it was. I've listened to telephone conversations between Mr C's partner and Moneyway in October 2022. Those telephone calls were all to do with the rejection of the car and when it could be expected to happen – and at no point during those conversations did Moneyway explain that the offer might be rescinded. More so, Moneyway are the owner of the car under the agreement and it's a decision for them to make about rejection and is their responsibility. I'm not satisfied with the reason they gave to rescind the offer – they said that V weren't willing to arrange a collection date and there was a disagreement over the price of the car. That isn't anything to do with Mr C in this case – Moneyway had already explained that the car could be rejected, and I'm satisfied they should have taken care of that. By not doing so, I think they put Mr C in an awkward position.

As Mr C and his partner needed a reliable car to enable them to transport their young family around, they arranged a new hire purchase agreement in October 2022 following Moneyway's confirmation that the original agreement would be unwound, and the car would be collected. I'm satisfied that was a reasonable thing to do. The only other method of transport they had was Mr C's work van, which wasn't suitable for them and their young family to take journeys in. I'm also satisfied that Mr C stopped using the original car at this point. The mileage in October 2022 was 102,386. When Mr C took the car in for an MOT in February 2023, it had covered a further three miles – and that was travelling to the garage for the MOT to take place.

By not following through with their commitment to allow rejection, Moneyway have placed Mr C under severe financial burden, and he has had to maintain two agreements for several months. Not only that, he has also continued to make sure the car remained taxed and insured, alongside his ongoing commitments under the new agreement. I'm satisfied it's fair that Moneyway reimburse Mr C for the payments he's had to make since October 2022 to keep the car taxed and insured. In order for Moneyway to consider the insurance payments, Mr C will need to provide the proof of insurance and payment history to them.

I'm also awarding Mr C compensation of £350 for the distress he's been caused by Moneyway's decision not to progress with the rejection of the car and the ending of the agreement. As a family they have had to maintain two finance agreements, and the communication and indecision from Moneyway has put Mr C in an undesirable position financially.

My final decision

For the reasons above, I uphold this complaint. Secure Trust Bank Plc trading as Moneyway must:

- End this agreement with nothing further for Mr C to pay.
- Arrange to collect the car at no further cost to Mr C.
- Refund the deposit/part exchange contribution of £500.
- Refund all monthly repayments made by Mr C from 7 October 2022 to now. If Mr C hasn't made some or all of those payments, Moneyway shouldn't ask for them.
- Pay 8% simple interest on any monthly repayments refunded to Mr C, from the date they were paid until the date they are settled*.
- Refund £28.95 per month from October 2022 to the date of settlement to cover the road tax payments Mr C has continued to make.
- Refund all insurance premiums paid by Mr C from October 2022 to now (subject to Mr C providing proof of that insurance and the payments made to Moneyway).
- Pay Mr C £350 for the distress he's been caused due to the unsatisfactory quality of the car and the communication he's had with Moneyway about rejecting it.
- Remove any adverse information from Mr C's credit file in relation to the agreement from 7 October 2022 onwards.

*If Secure Trust Bank Plc trading as Moneyway consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they've taken off. They should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 July 2023.

Kevin Parmenter
Ombudsman