DRN-4216872

The complaint

Miss W has complained about the quality of a car she acquired under a hire purchase agreement with Secure Trust Bank PLC, trading as V12 Vehicle Finance (V12).

What happened

The circumstances of the complaint are known to both parties. So I'm not going to go over everything again in detail. But in summary, Miss W acquired a used car under a hire purchase agreement with V12 in October 2022. The car was around eight years old and had covered around 116,000 miles. It cost around £9,700 and was to be paid back over five years with payments of around £200 per month and a £500 deposit.

Miss W said that when she took the car home her partner noticed things he didn't like the look of. Miss W says she tried to return the car because she thought she had a 7-day cooling off period, but this was declined. Miss W contacted the supplying dealer because she says the car was leaking water and oil. She's supplied an invoice from November 2022 from a garage that said it found suspected oil leaks. It also said there was oil in the cooling system. The invoice said the garage topped up the coolant but the fault required further investigation. Miss W says she wanted to reject the car. The supplying dealer sent Miss W details of the warranty she had.

Miss W says she contacted V12 for help and the car was booked in for testing with the supplying dealer in December 2022. Miss W says before she booked the car in the engine management light came on. She says the supplying dealer had the car for a few days and completed diagnostics and a coolant flush. Miss W says the car had further problems when it was returned. She says there was a warning the coolant needed topping up, it was juddering and it wasn't starting.

V12 arranged an independent inspection in February 2023. The mileage at this point was around 117,300. This report said there was oil contamination in the cooling system and the symptoms have returned. It also said there were exhaust fumes in the coolant. It said those symptoms were consistent with a breach of the cylinder head gasket and it said, given the circumstances, the responsibility would lie with the supplier. It said the initial repairs had failed.

Miss W brought her complaint to our service to consider. The supplying dealer said Miss W returned the car to it. It said the car started first time after the battery was boosted, indicating the problem with the starting was down to the battery. But it said it would replace the battery as a gesture of goodwill. It said it pumped up the tyres because the pressure warning light was on. It also said there was no sign of oil in the coolant. It noted there was some by the tank ring but this couldn't have come from the engine. It said it completed another coolant flush. It said it suspected oil had been put in from the coolant cap hole and this wouldn't be possible if there was a head gasket failure. The supplying dealer said it completed a compression test for the head gasket and results were normal. It also completed checks on the pipes. In summary, the supplying dealer said it thought oil had been placed in the coolant tank by hand and that it wasn't responsible for negligence.

Another independent report was completed in April 2023. This said there was a top up coolant warning message on the dashboard, but the levels were correct. It said this might indicate a sensor fault. It noted some other unrelated fault codes and said these would need to be cleared to see if they re-establish themselves. It carried out tests and said the car performed as expected so it was of satisfactory quality.

V12 sent a final response to say it wasn't upholding the complaint. One of our investigators looked into things and decided to uphold it. He said he thought Miss W had provided evidence of the initial fault. And he thought that by replacing the coolant and possibly adding an additive before the second independent inspection, this might've temporarily masked the issue. Ultimately our investigator thought the car did have a fault that made it of unsatisfactory quality. He thought the supplying dealer had the opportunity to repair it but the repair didn't bring the contract back to conformity. So he recommended V12 allow Miss W to reject the goods. He says Miss W should receive a full refund of payments from March 2023 when she stopped using the car. He said she should receive 10% back of her payments from November to February to reflect the impaired use of the car. And he said she should be paid £150 in compensation.

Miss W accepted the recommendations, but V12 didn't. The supplying dealer replied to say its own report and the second independent inspection didn't note the faults our investigator highlighted. It said it took it to another garage that also said it found no oil and water mixing in the header tank. It said it carried out a head gasket pressure test and results concluded no issues with the head gasket. It said the engine didn't overheat and the radiators were working correctly. In summary, the supplying dealer said there were more garages to show there isn't an issue. So V12, via the supplying dealer didn't accept the investigator's recommendations.

As things couldn't be resolved, the complaint has been passed to me to make a decision.

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 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 Miss W 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.

Miss W 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 Miss W 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 Miss W's case, the car supplied was used and had covered around 116,000 miles. There'd be different expectations than if it was a brand-new car. But it's worth pointing out the car cost nearly £10,000.

On the one hand, Miss W has supplied evidence that indicates there was an issue with the car shortly after acquiring it. V12 decided to obtain a report off the back of that, which highlights the fault. So I think this gives a strong indication there was a fault, and having spent £9,700 on the car, I don't think Miss W (or a reasonable person) would have expected a fault like this that could have significant repair costs to manifest straight away. Moreover, the supplying dealer had the chance to put things right before the first independent inspection.

However, on the other hand, the supplying dealer has said it carried out its own inspection. It said the second independent inspection didn't find the fault Miss W complained about. And that it took the car to another garage which couldn't find the fault either. From the supplying dealer's point of view it says more garages have not found the fault than have found it. And it suspects Miss W might've been the cause of the oil in the coolant.

Where the evidence is inconclusive of incomplete I base my decision on the balance of probabilities.

The supplying dealer seems to be saying there's no fault with the car, and/or that the issue might've been caused by negligence, or Miss W doing something intentionally to show oil mixing with the coolant. It also says other garages, and independent experts couldn't find the fault. Of course it's possible that Miss W complained about an oil leak that didn't exist or was unrelated; did something to the car that made a third party garage diagnose a likely oil leak and oil in the coolant; and then did something to persuade the independent technician to say there was oil in the coolant expansion tank and exhaust fumes present in the coolant during the head gasket test (after it had already been returned to the supplying dealer for inspection). Unlike a court, I'm unable to take sworn evidence from the parties. But based on what I've seen, on balance, I don't consider those above events together just mentioned to be the most likely thing to have happened. Moreover, I think it's important to note, unlike the allegations about the oil, no one has explained how Miss W would have been able to do something that would have showed exhaust fumes present in the coolant.

I find there likely was a fault manifesting and the most persuasive evidence, from the time, indicates it was with the head gasket. And given the signs of it happened within a few days of Miss W taking possession of the car I think the fault made the car of unsatisfactory quality. It's a potentially significant and costly issue that could lead to further problems. After acquiring the car for nearly £10,000 even given its age and mileage I don't think a reasonable person would expect to have this sort of inherent fault. So I think there was a breach of contract.

V12 and the supplying dealer had the opportunity to put things right (before the first independent inspection). From what I've been told, the supplying dealer carried out diagnostics and changed the coolant before it gave the car back to Miss W. The initial independent inspection found the fault. And Miss W wanted to reject the goods off the back of that. Given there'd been the one allowed repair attempt as per the CRA, I think V12 should have allowed her to do that – at that point in time.

I've also thought about the more recent evidence submitted by V12 and the supplying dealer – including a second independent report. I don't know why the supplying dealer's inspection, the second independent report, and the more recent third-party garage didn't pick up the faults that the initial inspection found. It's possible that the fault has been repaired. Or it's possible that there's been some sort of temporary fix when carrying out the flush of the

coolant system. I don't have enough evidence to reach conclusions on this point. But based on the sequence of events, it seems unlikely that the underlying fault simply disappeared or was never there in the first place. Like I've said above, there's no explanation about exhaust fumes being present in the coolant. Again, I'm unable to take sworn evidence. But I think the key thing here is that after the initial independent inspection, on balance, I think Miss W had the grounds to reject the car, and I think V12 should have allowed her to do that then.

Therefore, I'm going to direct V12 to carry out what our investigator recommended. I think rejecting the car seems fair along with receiving a refund of the deposit. I don't think it's fair for Miss W to have to keep it, even if it's now been repaired because I think she validly asked to reject it. I agree that she should receive all payments back from March 2023 for the time she stopped using the car. I also think a 10% refund for impaired use from November to February and £150 for distress and inconvenience are broadly fair too. I can't hold V12 responsible for the ongoing customer service of the supplying dealer.

Finally, I'm not sure if Miss W paid for or has received a refund for the initial inspection she had carried out by the garage. She received an invoice for £77.99 for this on 18 November 2022. She should also receive this back if she's paid it and she's not already received a refund. I say this because I think this cost looks to be as a direct consequence of the breach of contract.

Putting things right

To put things right Secure Trust Bank PLC, trading as V12 Vehicle Finance must:

1. end the agreement with nothing further to pay;
2. collect the car (if this has not been done already) at no further cost to Miss W;
3. refund Miss W's deposit contribution of £500;
4. refund Miss W all rentals for the period from 1 March 2023 to the date of settlement as she reasonably stopped using the car at this point;
5. refund Miss W 10% of the other rentals as directed above to cover any impaired use of the car because of the inherent quality issues;
6. refund Miss W £77.99 for the diagnostics she had carried out on 18 November 2022, upon receipt of evidence this has been paid by her and not already refunded.
7. pay 8% simple yearly interest* on all refunded amounts from the date of payment until the date of settlement;
8. pay a further £150 for any distress and inconvenience that's been caused due to the faulty car;
9. remove any adverse information from Miss W's credit file in relation to the agreement.

*If V12 considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss W how much tax it's taken off. It should also give Miss W a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold the 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 Miss W to accept or reject my decision before 10 October 2023.

Simon Wingfield
Ombudsman