

## The complaint

Mr A complains about a used car he acquired through a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway. The car has suffered catastrophic engine damage and Mr A believes this is due to the car having previously been mapped.

## What happened

Around the end of June 2022, Mr A acquired a used car using finance obtained through Moneyway. The car was around eight and a half years old, had travelled almost 88,000 miles and cost £9,995. Mr A was required to repay the amount borrowed at £277.77 over 59 months.

Mr A had some problems with the car shortly after taking possession of it and around the end of September 2022 Mr A started to have more significant problems with the car. The car has ultimately suffered a catastrophic engine failure and now requires a replacement engine. Mr A believes the car was previously mapped and this is what's led to the damage and ultimate failure of the engine. After complaining to Moneyway, Mr A referred his complaint to our service, where it was considered by an investigator. They found the car was likely to have been previously mapped and was not of satisfactory quality. Amongst other things, they recommended the car be repaired.

Moneyway did not accept the investigator's conclusions, so the complaint has been referred to me for consideration. On 12 December 2023 I issued my provisional decision setting out why I considered Mr A's complaint should be upheld and what Moneyway should now do to put things right. My provisional decision set out the following:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In cases when it is not clear what happened or where the evidence is incomplete or inconclusive, I base my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence.*

*It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. I'm very aware that I have summarised in much less detail what has been submitted by the parties in this complaint. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr A or Moneyway but reflects the informal nature of our service, its remit and my role in it.*

*Mr A acquired the used car through a hire purchase agreement with Moneyway. The hire purchase agreement is a regulated consumer credit agreement and because of that our service is able to consider complaints about the agreement. As the provider of the hire purchase agreement Moneyway is also the supplier of the car to Mr A. As the supplier of the car, Moneyway is responsible for the quality of the car and the Consumer Rights Act implies terms into the hire purchase agreement requiring the car to be of satisfactory quality. Exactly what is satisfactory quality will depend on the specific circumstances of any given case. In this instance, where the complaint relates to a car, I think it reasonable that when*

*considering whether the car is of satisfactory quality the car's age and mileage at the time it was supplied are all key considerations. Mr A acquired a used car that was approximately eight and a half years old and had travelled almost 90,000 miles. The price of the car was £9,995. I accept that it is reasonable for a used car of this age and mileage to show signs of wear and tear and this will be reflected in the price of the used car, when compared to how much it would have cost new.*

*The Consumer Rights Act also refers to goods being considered to be satisfactory if they meet the standard a reasonable person would consider satisfactory, taking account of, amongst other things, any description of the goods. This is of particular relevance in this case as the description of the car, particularly around whether it was previously mapped, is key here.*

*There appears to be no dispute the car has a significant engine problem that has resulted in its failure and need of replacement. It is however the likely cause of that engine failure that is in dispute.*

*The garage that has done some investigative work has identified an issue with one of the cylinders. It refers to possible injector damage or remapping as a likely cause of the issue. Mr A has paid £80 for an inspection from a local garage, that I understand came out and checked the car. This inspection invoice, of 21 February 2023, refers to a scan and copy of the car's ECU and finds the 'Car has a non standard performance stage 3 map on ECU'. My understanding of this is that it shows the car has evidence of being previously mapped. Mr A has referred to various components having been swapped out of the car when the mapping was removed and I understand a stage 3 map would usually require replacement components. So it is possible the car was mapped, components changed and then removed when the car mapping was removed. In isolation, I am not convinced the reference to engine, and other, components being changed is clear evidence of the car having been mapped. However, this along with the other evidence from the two garages is more significant in my view.*

*While I cannot be completely sure if the car was previously mapped, two independent garages refer to the car having possibly been previously mapped. And the check on the car's ECU is significant evidence of likely prior mapping, in my view. Having considered the circumstances of the complaint, I'm satisfied on balance that the car supplied to Mr A was previously mapped and this was then likely removed at some point prior to Mr A acquiring the car.*

*It is commonly known, mapping a car is typically done to increase the performance of the car. But this is usually against the manufacturer's recommendations, will often invalidate the manufacturer's warranty and will require the owner to declare on their insurance. The increased or enhanced performance of the car means the car is performing above that originally intended by the manufacturer and will therefore be likely to cause additional strain and wear on a car's components.*

*There is no conclusive evidence to show the car having been previously mapped has caused more wear and tear on the components to what one would usually expect for a car of this age and mileage. But it is of course possible and in my view likely the car has experienced more wear and tear, and this is what has led to the catastrophic failure of the engine.*

*It is therefore for these reasons that a car being previously mapped is something that would reasonably be expected to be made clear when the car is being supplied, as it will likely impact on any decision to acquire the car. I have not seen anything to indicate that this was brought to Mr A's attention before acquiring the car and I think it is unlikely he would have*

*agreed to acquire the car had he known it was previously mapped.*

*I consider it reasonable where a car has been mapped, or previously mapped, to expect this to be made clear to a prospective purchaser. It should feature in the description of the car, so the buyer is fully informed about this. I have seen nothing here to indicate the car being previously mapped did feature in any description of the goods and when considering the overall circumstances of this complaint I'm not persuaded the car was actually of satisfactory quality when it was supplied to Mr A.*

### **Putting things right**

*Having found that the car supplied to Mr A was not of satisfactory quality, I've now considered what is required to put things right. The Consumer Rights Act sets out a number of remedies where goods are found to have been not of satisfactory quality and while I am not bound by those set out in the act, I am mindful of them when considering what is fair and reasonable in the circumstances of Mr A's complaint.*

*A car's engine is of course a significant part of the car and whether being repaired or replaced, this is a major job that comes at great expense. The repair quote already provided is for approaching £6,000, which when considering the price Mr A paid for the car and its current likely value (even when repaired) makes this in my view an uneconomical repair. I also note the car has been sitting around for considerable time now and having considered the specific circumstances here, Moneyway should now arrange to take back the car and end Mr A's hire purchase agreement with nothing further owed.*

*Mr A did have use of the car up until it broke down so it would in my view be reasonable to expect Mr A to pay for that use through the monthly repayments that would have been due during that time. It would not be reasonable however to expect Mr A to be required to make the repayments for a car he has not had the use of since it failed. The exact fail date is not clear, but I understand it was in late October 2022 so Mr A should not be liable for any repayments to the hire purchase agreement after October 2022.*

*If Moneyway has recorded any adverse information on Mr A's credit file because of non-payment of the monthly instalments after October 2022, this should be removed so that no adverse information is showing on Mr A's credit file since October 2022.*

*Costs were incurred in stripping down the car's engine to establish the problem and I think it is unreasonable to expect Mr A to be liable for these costs. Storage costs may also now be due to the garage and I again find it unreasonable to expect Mr A to be responsible for these. These costs would not have been incurred by Mr A if Moneyway had supplied a car that was of satisfactory quality and it is for this reason that Moneyway should be responsible for settling any amounts now due with the garage. Mr A should not be responsible for these amounts or any ongoing costs with the garage.*

*I understand Mr A incurred an £80 cost for a separate vehicle inspection (which identified the mapping through the ECU) and this amount should be refunded to Mr A.*

*Mr A also says that he incurred a £170 recovery cost but he does not however have evidence of this as he paid cash for this. Considering the damage to the engine and that the car would have had to be transported to the garage for repair, I consider it plausible that Mr A would have incurred some recovery costs. The amount of £170 doesn't seem excessive in my view and while I note Mr A doesn't have a receipt, I think it more likely than not that he did incur this cost. This should also therefore be refunded to Mr A.*

*Interest at 8% simple per year should be added to each of the refunded items from the date*

*of payment until the date of settlement. If it is unclear exactly when the recovery costs were incurred, it would be reasonable to assume a date of 31 October 2022 as the date it was incurred, as this was I understand the approximate date of the breakdown.*

*I note that Mr A did incur other costs associated with the car, but these appear from what I have seen to have more likely been more general wear and tear costs, which I would not consider Moneyway to be liable for.*

*Finally, I consider Mr A has been put through a certain amount of trouble and upset as a result of being supplied the car that was not of satisfactory quality. He has had the inconvenience of arranging diagnostics and repairs. And he has also been without use of the car and had to make alternative arrangements. All of this has I'm sure been a challenging time for Mr A and in view of this Moneyway should make an additional payment of £300 to Mr A for this.*

### **My provisional decision**

*My provisional decision is that for the reasons set out above, I uphold Mr A's complaint against Secure Trust Bank Plc trading as Moneyway and direct it to settle the complaint in accordance with what I have set out in the putting things right section above.*

Mr A responded to my provisional decision to say that he had nothing further to add. I received no response from Moneyway.

### **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.

In the absence of any further submissions from either Mr A or Moneyway, I see no reason to depart from the findings set out above from my provisional decision. I am still satisfied, again for the reasons set out above, that Mr A's complaint should be upheld.

### **My final decision**

My final decision is that I uphold Mr A's complaint against Secure Trust Bank Plc trading as Moneyway. Secure Trust Bank Plc trading as Moneyway should now settle the complaint in accordance with what I have set out above.

Settlement should be made within 28 days of Mr A accepting this final decision. If settlement is not made within this time, Moneyway should also add interest to the £300 payment, at the same rate of 8% simple per year, from the date of this decision until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 February 2024.

Mark Hollands  
**Ombudsman**