

The complaint

Miss J complains about the quality of a used car that was supplied through a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway (STB).

Miss J has been represented on this complaint. But to keep things simple I'll only refer to Miss J in my decision.

What happened

In January 2023, Miss J acquired a used car through a hire purchase agreement with STB. The car was about six years old and had travelled 106,562 miles when it was supplied to Miss J. No deposit was paid, so the total amount financed on the agreement was £13,200 payable over 60 months.

Miss J said within a couple weeks of getting the car she experienced issues with the clutch pedal, and later with the diesel particulate filter (DPF). She said she paid for some DPF regenerations to be carried out, but as the problems with it continued, she then contacted the dealership who told her it was a common fault that would be classed as wear and tear. Miss J said she didn't believe this to be the case as she'd only had the car for around two weeks before the problems started.

Miss J said she complained to STB in March 2023 and that since then she's had to go back and forth with the dealership to arrange repairs. Miss J also raised queries about the mileage recorded when she acquired the car.

STB arranged for an independent inspection to be carried out. This was done on 24 May 2023, the mileage at that point was 111,791. The inspection report noted that during a road test, issues with the clutch and engine were identified.

However, the report concluded that, although no issue could be identified with the DPF, further investigation was required to determine the specific issue with an engine management light (EML) that was likely to be associated with the timing chain tensioner.

Miss J said she hasn't been able to use the car since April 2023, and that this has impacted her ability to take her kids places, as well as her commute to work. Miss J said she was waiting for confirmation of whether the car will be repaired or returned.

In August 2023 STB issued their final response to Miss J's complaint which they upheld. The response focussed on the issues raised in the independent inspection report. STB contributed £691.85 for a hired car whilst the car was in for repairs. However, the response confirmed that Miss J reported the car going into limp mode soon after the repairs were carried out, which they've placed the onus on Miss J to evidence that the cause of the limp mode was a result of failed repairs or that there were new issues that were present or developing at the point of supply.

Unhappy with their decision, Miss J brought her complaint to our service for investigation.

STB advised they were reviewing a further complaint from Miss J based on the current issues following the repair. They arranged for a second independent inspection of the car. The second inspection was completed on 9 November 2023. The report confirmed the mileage as 112,885. It concluded there were several DPF warning lights on the dashboard, the clutch pedal was sticking in a down position and the engine made a rattling noise which it believed would be a result of the timing chain assemblies. The report advised the car needed urgent repairs and referred to the recommendations made in their first report.

In light of the findings, STB concluded that the steps from the first report needed to be followed through rather than considering a failed repaired had occurred. So, they confirmed they reached out to the dealership to consider the repairs required.

Having reviewed the information on file, one of our investigators recommended that Miss J's complaint should not be upheld. They concluded that the car was of satisfactory quality when it was supplied and that the issues with it were a result of in-service wear and tear and consistent with a car of its age and mileage.

Miss J responded to say that she disagreed with the investigator's view and asked that her complaint be referred to an ombudsman for a final decision.

In January and February 2024, my colleague reached out to Miss J for some further information. Specifically, he asked for:

- Any evidence of when any issues were initially reported to the dealer
- Invoices or job sheets for the initial DPF regenerations
- Any evidence of the car's mileage when it was acquired

Miss J told my colleague she would provide some information; however, it wasn't forthcoming. So, in consideration of the time that's passed since the information was requested, I've assumed there's no further evidence to provide.

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 considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

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.

Miss J complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Miss J's complaint about STB. STB is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory, fit for*

purpose and as described". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that STB supplied Miss J with a used vehicle that had travelled 106,562 miles. I acknowledge there has been some dispute over the mileage at the point of supply.

On the MOT dated 17 January 2023, it has a recorded mileage of 106,562, however the vehicle's invoice at the point of supply states 97,224. Miss J hasn't provided any further information to evidence the car's mileage when she acquired it; in addition, I note the mileage recorded on the MOT in March 2022 was 96,224.

On the assumption the car had some use in the year prior to Miss J acquiring it, I consider 1,000 miles to be considerably below average usage. So, in the circumstances, I'm persuaded the mileage as recorded on the MOT history is correct.

With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage, which may impact its overall quality and reliability, so there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle.

From the information provided I'm satisfied there was a fault with the car. This is apparent from the independent inspection report from May 2023 which confirmed:

- *The clutch pedal failed to fully return after selecting gears.*
- *There was a loud rattle from the engine when starting and as the engine was decelerating.*
- *The EM Light came back on with the same defect code*

A diagnostic invoice from an independent garage in September 2023 confirmed issues with:

- The clutch and flywheel
- Noise from the engine
- DPF and EML warning lights

The second independent inspection report also concluded the vehicle required imminent repairs sighting the following issues:

- DPF warning light
- Clutch pedal sticking
- Abnormal engine noises

Having considered the car had some faults, I've considered whether it was of satisfactory quality at the time of supply.

STB system notes confirm that Miss J contacted them in March 2023 to raise the issues with the clutch and DPF.

The inspection report published in May 2023 advised it was unable to find any issues with the DPF. So, the first piece of expert evidence I've seen advising of an issue with the DPF

was in September 2023 from the independent garage and again on the second inspection report which was carried out in November 2023.

I don't doubt what Miss J has said, and I think it's likely the DPF and the clutch pedal was presenting her with problems, however I don't necessarily think this makes the car of unsatisfactory quality.

Research shows the performance of the DPF can be impacted by different things, such as engine temperature, vehicle speed and revolutions per minute (RPM). Driving conditions are also a common cause for DPF failure. I've also considered that Miss J was able to travel over 6,000 miles in the car. I think it's likely the DPF or clutch and their associated components would have failed sooner had there been inherent faults with them at the point of supply. I'm persuaded their failure is most likely a result of in-service wear and tear.

The second independent inspection report said:

'The vehicles overall general condition is in line with a vehicle that has covered well over a hundred thousand miles'.

In addition, the car had passed its MOT in January 2023 which is when Miss J acquired the car. So, I'm satisfied it was in a condition that was considered road worthy. I acknowledge the report says that the noise from the engine is a result of the timing chain and associated components, but again I'm not persuaded this means the car was of unsatisfactory quality when it was supplied. I think had the timing chain, clutch or DPF been inherently faulty at the point of supply, I think it's unlikely Miss J would have been able to travel over 6,000 miles.

Had the car been newer, with less mileage the failure of these components would have been more questionable, for example, it's likely their durability would be brought into question. However, in the circumstances of this complaint, I think the condition of the car is reflective of the price, which, although not insignificant, I'm satisfied would have been considerably higher if the car was new or had significantly less mileage.

As I've concluded that the car was of satisfactory quality at the point it was supplied, I don't require STB to take any action in respect of this complaint.

Following the second inspection report, STB confirmed to us in December 2023 they'd made enquiries about repairing the car with the dealership and were awaiting an update. I leave it to Miss J to decide if on reflection she would like to discuss these repairs with STB.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Miss J's complaint about Secure Trust Bank Plc trading as Moneyway.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 23 April 2024.

Benjamin John
Ombudsman