

The complaint

Mr R complains about the quality of a car he has been financing through an agreement with Secure Trust Bank Plc, trading as V12 Vehicle Finance ("V12").

What happened

Mr R took receipt of a used car on 3 December 2022. He financed the deal through a hire purchase agreement with V12 that was signed on 10 November 2022.

Before the car was supplied to Mr R there were repairs completed to the cylinders and injectors.

On 30 December 2022 after an Engine Management Light had illuminated Mr R contacted V12 to complain. While there were discussions about rejecting the car V12's system logs suggest that by 19 January 2023 Mr R agreed to allow the car to be repaired again. A fuel filter was replaced, injectors were fitted, and the fuel system was flushed.

In September 2023 Mr R experienced further problems. A third-party garage diagnosed the fault and explained that a blanking plate had been fitted that had caused the turbo and Diesel Particulate Filter (DPF) to soot up. The car has not been used since.

V12 didn't uphold Mr R's complaint as they didn't think there was evidence the fault was present when the car was supplied to him. Our investigator thought it more likely than not that the blanking plate had been fitted during the January 2023 repair. He thought the complaint should be upheld for that reason. He also considered a concern that Mr R had raised about the car's mileage being clocked but he could find no evidence that was the case. V12 disagreed with our investigator's opinion so the complaint has been passed to me, an ombudsman, for a final 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 know it will disappoint V12, but I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

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.

Mr R acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

Was there a misrepresentation?

Section 56 of the Consumer Credit Act (1974) explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier before the consumer takes out the credit agreement. If Mr R was given false information about the car's mileage by the supplier before he took out the credit agreement, and if that false information induced him to enter into a deal he wouldn't otherwise have entered into, I may think the car and the related finance agreement had been misrepresented to him.

Mr R says when he acquired the car he believed the mileage was 20,000 but when discussing this with the warranty company he was told it should've been 32,000. The invoice explains that the car had completed 32,000 miles when it was sold to Mr R. So, I'm not persuaded that Mr R was given false information about the car's mileage that would suggest it was misrepresented to him.

Were the goods of satisfactory quality?

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then V12, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr R. The car here was about three years old and had already completed about 32,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

The relevant legislation gave Mr R the short term right to reject the car if it was of unsatisfactory quality and if he made that request within 30 days of taking receipt of it. I've reviewed V12's system notes and I'm satisfied that Mr R waived those rights and chose to have the car repaired instead.

However, there's no dispute here that the car failed in September 2023 because the turbo had become blocked with soot as a result of a blanking plate being fitted over the Exhaust Gas Recirculation (EGR) valve. It seems that such a plate may be fitted to improve a car's performance. The question is whether Mr R fitted the plate after he took receipt of the car or whether it's more likely that the plate was fitted at some time before he took receipt of the vehicle or when it was previously repaired.

V12 say that the car wouldn't have passed the MOT completed on 2 December 2022 if a blanking plate was fitted because "*Removal of the EGR valve or blanking of the EGR may now constitute an MOT fail under Euro 6 Emissions Standards.*" And the dealer says they didn't fit the blanking plate when they repaired the car.

On the other hand, Mr R says he didn't fit the blanking plate either, and that he wouldn't have asked a third-party garage to diagnose the problem had he have known a plate was fitted.

I've thought about what is most likely, and in doing so I've noted that Mr R had the car for about ten months and had completed about 15,000 miles in it when it failed. I'm persuaded that it's more likely than not that the blanking plate was not fitted by Mr R and was either

fitted before the car was supplied to Mr R or during the subsequent repairs that were carried out by the supplying dealership. I say that because:

- Mr R told V12 about smoke coming from the exhaust within a few weeks of taking receipt of the car. He reported that on 30 December 2022, but he says he first noticed it very shortly after he took receipt of the car but assumed it was to do with oil burning from the replaced cylinders. I've looked at the DVLA's MOT Inspection Manual and that explains that an *"Exhaust on a vehicle fitted with a diesel particulate filter (that) emits visible smoke of any colour"* is a major failure. I think the presence of exhaust smoke that would render the car an MOT failure, so soon after an MOT had been completed, would bring into question whether the MOT, or at least its exhaust testing, had been conducted properly. Although it's not for me to decide whether an MOT has been competently performed, I do think this issue supports a view that the emissions testing may not have been completed satisfactorily, and that a blanking plate may have been pre-existing and wouldn't necessarily have been picked up by this particular MOT.
- It seems unlikely to me that Mr R would have the inclination to fit a blanking plate to the EGR valve. V12's system log shows he was concerned that the car had been *"ragged"* before he bought it and that that was why he thought new cylinders were required. It would to my mind seem incompatible with those concerns had Mr R subsequently fitted a blanking plate to enhance performance but one that risked damaging the car.
- I also think it's unlikely Mr R would have referred the car for a third-party diagnostic had he fitted the blanking plate. Had he the knowledge to fit such a device I think he would have been likely to have had sufficient knowledge to understand what had happened and why.
- There was opportunity for the plate to have been fitted when engine repairs were completed on a couple of occasions prior to, and shortly after, the car was delivered to Mr R.

In those circumstances, I think it's more likely than not that the car was either supplied in an unsatisfactory condition or that subsequent repairs to faults present when the car was supplied have failed.

Putting things right

The relevant legislation gives the business one opportunity to fix problems that were present when the car was supplied. I think V12 had that opportunity in January 2023 so they should now allow Mr R to reject the car. They'll need to collect it at no cost to Mr R. It wouldn't be fair to ask Mr R to pay any storage costs as they will have been incurred as a result of the car failing. V12 should pay any storage costs that may arise.

Mr R hasn't been able to use the car since 5 September 2023 so, while it's only fair he pays for the use he had from it before that date, V12 should refund (or waive) any finance instalments paid (or due) since 5 September 2023 in respect of loss of use.

Mr R has experienced distress and inconvenience as a result of these issues. He's been unable to remove the car from the garage where it's been stored, and he's been chased to do so. He's also broken down and had to get the car recovered to the third-party garage, and he's had to take it for repairs at the supplying dealership. He's been under pressure to pay an agreement while the car wasn't driveable. In the circumstances, I think V12 should pay him £300 in compensation.

My final decision

For the reasons I've given above I uphold this complaint and tell Secure Trust Bank Plc to:

- Allow Mr R to reject the car and end the finance agreement.
- Collect the car at no cost to Mr R.
- Refund any finance instalments paid from (and including) 5 September 2023 in respect of loss of use. Add 8% simple interest* per year from the date of payment to the date of settlement. Waive them if they were due but haven't been paid.
- Pay Mr R £300 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to Mr R's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest, they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 August 2024.

Phillip McMahon
Ombudsman