

## **The complaint**

Miss F complains about a car she acquired under a hire purchase agreement with Secure Trust Bank Plc, trading as Moneyway.

## **What happened**

In July 2022 Miss F entered into a regulated hire purchase agreement with Moneyway in relation to a used car. The car was nine years old, its mileage was 92,089 miles, and its cash price was £6,650. It had just passed its MOT test with no advisories.

Starting in September 2022, Miss F noticed that the car had started making a noise. In March 2023 she took the car to a garage for the noise to be investigated, and the timing belt kit and power steering pump motor were replaced. This work was not covered by her warranty. Later on, she had the suspension arm joints replaced too. In July 2023 she complained to Moneyway, and asked to reject the car and to get a full refund.

Miss F also complained that the broker had mis-sold the agreement; that is being dealt with as a separate complaint against the broker, but it is also part of this case because Moneybarn is jointly liable for what the broker did, under section 56 of the Consumer Credit Act 1974. Miss F said she had been told that the car came with a full service history, but this had turned out not to be true; and that she had not been told that interest due under the agreement would be front-loaded. This meant that if she wanted to settle her account early, most of the interest would have already been paid, and she would still owe most of the principal.

Moneyway did not uphold Miss F's complaint. It said there was no evidence that the problems had been present at the point of sale, and that as Miss F had first raised the problems more than six months later, the burden of proof was on her to show that the car had been defective at the start of the agreement. It said that the issues with the car all appeared to be normal wear and tear issues, considering the age of the car and its mileage (which was then over 107,000 miles).

Miss F then brought this complaint to our service, but our investigator did not uphold it either. She thought there was no evidence that there had been a fault developing with the car at the start of the agreement, other than ordinary wear and tear. The car had not been advertised or sold as having had a replacement cambelt, and so it had been Miss F's responsibility to be aware that the cambelt might need replacing at some point. So she concluded that Moneyway was not liable for any repairs, and that Miss F was not entitled to reject the car.

On the mis-selling point, the investigator found that there was no evidence that the car had been advertised as having a full service history, and the invoice didn't mention this. And although the agreement didn't say that the interest would be front-loaded, it had still been clear how much Miss F would have to pay, and how much of that was interest.

Miss F did not accept that decision. She pointed out that the issues with the steering motor had begun within six months of the point of sale. She said it was unacceptable that the cambelt hadn't been replaced after nine years, and before the car was delivered to her. She

offered to get an independent inspection of the car to support her case. She said the front-loaded interest was not taken into account when she had asked Moneyway for an early settlement figure, so she had been disadvantaged by it.

These points did not change the investigator's mind, and so this case was referred for an ombudsman's 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.

#### The condition of the car

Under the Consumer Rights Act 2015, it was an implied term of Miss F's contract with Moneyway that the car would be of satisfactory quality at the start of the agreement. What is satisfactory quality in any particular case depends on variables such as the age of the car and its mileage. A brand new car can be expected to be in top condition, but a used car will inevitably come with some wear and tear. Miss F's car was nine years old and had been driven over 90,000 miles, so a significant amount of wear and tear is to be expected. So not every problem means that the car was not of satisfactory quality at the point of sale.

Under section 19 of that Act, if a problem which is too serious to be considered normal wear and tear appears within six months of the point of sale, it is presumed to have been present at the point of sale, unless Moneyway can prove it wasn't. Later than that, and the burden of proof switches to the consumer. Legally it is only the appearance of the problem, not when Miss F reported it to Moneyway, which counts for the purposes of the six month rule – provided that I'm satisfied that the problem did begin within six months. When she reported it is a matter of evidence, which I can take into account when deciding whether I believe that the problem actually began earlier or not. Miss F has explained, and I accept, that the delay was due to her difficult personal circumstances at the time.

A cambelt should be replaced between 40,000 and 100,000 miles. This car had been driven for just over 90,000 miles by the time Miss F acquired it, so by that measure it didn't need to be replaced yet. By March 2023, Miss F had driven the car more than 100,000 miles. But a cambelt should also be replaced after seven years, and this car was already nine years old. So on the balance of probabilities, I think it is most likely that when the car began to make a noise in or around September 2022, this was the result of normal wear and tear on the cambelt, rather than because of some other defect with the cambelt that was present all along.

I have thought about whether the age of the car means that the dealership should have replaced the cambelt before delivering the car to Miss F. However, even if I decided that the car was not of satisfactory quality at that time, Miss F's remedy would not be to reject the car, but to have the cambelt replaced at no cost to her. I think that by instructing a third party to replace the cambelt and the power steering motor, instead of getting Moneyway to do it, she deprived Moneyway of the opportunity to inspect those components and check whether they were likely to have had something wrong with them at the point of sale, and to resolve those issues itself. The cambelt and steering motor are no longer available for inspection. Since Moneyway bore the burden of proving that there was nothing wrong with the car at the point of sale, I don't think it would be entirely fair of me to uphold a complaint against Moneyway in circumstances where it is now impossible for Moneyway to defend its position.

I think that the other items that were later replaced – components of the suspension – are by their nature wear and tear items. I am therefore not going to order Moneyway to pay for these repairs.

(There are a couple of other components that failed more recently. Those are outside the scope of this complaint.)

#### Mis-sale of the agreement

Although the agreement does not spell out that the interest was front-loaded, this is standard practice with hire purchase agreements, and it was taken into account when the Consumer Credit (Early Settlement) Regulations 2004 were passed. I am therefore satisfied that Miss F has not been treated unfairly in that respect, although I appreciate that she was disappointed to learn how the agreement works. I've seen no evidence that the car was marketed as having a full service history. For these reasons, I don't think the agreement was mis-sold.

#### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 18 October 2024. But apart from that, this decision brings to an end our service's involvement in this case.

Richard Wood  
**Ombudsman**