

The complaint

Mr B complains that the car he acquired financed through a hire purchase with Secure Trust Bank Plc (STB), trading as V12 Vehicle Finance, wasn't of satisfactory quality.

What happened

Mr B acquired a used car financed through a hire purchase agreement he signed in April 2023 with STB.

On 25 August the vehicle developed engine failure and ceased to work. Mr B brought a complaint to STB. He said he would like the vehicle repaired, replaced or a full refund on the grounds that it wasn't of satisfactory quality.

STB arranged for the car to be inspected by an independent engineer, E1, on 30 August. The report conclusions included that there was evidence of long-term coolant seepage. It recommended repair by the supplying dealer, D. The report was reviewed by D who advised it wanted to commission its own inspection.

The car was inspected again by a different inspector, E2. The inspector concluded there was visible coolant leakage and consequential damage but that the condition wasn't developing at the point of sale. The dealer disputed liability for the repairs. Mr B brought the complaint to this service. He said an independent report had concluded that it is a known fault with the engine on this particular model of car and the engine needs replacing. He said the car also has water ingress that needs repairing too.

In January a third independent inspection, E3, was commissioned by STB. E3 concluded there was a leak from the thermostat housing pipe, but the fault was not developing at the point of purchase. Its opinion was the failure was due to wear and deterioration. Based on this report STB issued a final response not upholding Mr B's complaint.

Our investigator concluded it more likely than not the engine failure was caused by a fault that was present or developing with the car when it was supplied to Mr B and recommended that Mr B be allowed to reject the car. STB didn't agree and asked for a decision from an ombudsman. It made some additional comments to which I have responded below where appropriate.

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.

Having done so I agree with the conclusions reached by the investigator for the reasons I've outlined below.

I trust Mr B or STB won't take it as a discourtesy that I've condensed the complaint in the way I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.

The Consumer Rights Act (CRA) covers agreements like the one Mr B signed. STB, as the supplier of the car, was responsible for ensuring it was of satisfactory quality at that time – whether it was of satisfactory quality will depend on several factors, including the age and mileage of the car and the price that was paid for it. The car that was supplied to Mr B was about nine years old and had covered 81,190 miles.

To uphold this complaint I must be satisfied that there were problems present or developing with the car at the point of purchase. And if there were problems with the vehicle I would need to be satisfied these weren't because of wear and tear. Satisfactory quality also covers durability which means the components within the car must be durable and last a reasonable amount of time.

I'm satisfied there is a problem with the car, and this is not disputed by any of the parties. All three independent inspectors identified a coolant leak and two of the inspectors (E1 and E2) linked this leak to head gasket breach/engine failure. Whether the problem was present at the point of sale is in dispute. While there are three independent reports their conclusions are not the same. I've read the reports and make the following observations and comments:

E1:

- *Cylinder head gasket has been breached caused by thermal stressing which has been induced by a long-term cooling system leak from the water pump area.*

E1 has identified two issues, (1) the leak and (2) the consequence of the leak which was the head gasket failing.

- *... evidence of long-term coolant system staining confirming the vehicle has been suffering from coolant seepage for some considerable time.*

It's not clear to me what how long "long term" or "some considerable time" is but given the age of the car it seems likely its more than four months.

- *... the cylinder head gasket has failed after the date of sale as the result of a leak from the water pump.*
- *We believe the sales agent should be responsible for the necessary repair costs on the grounds of durability as there was evidence of long-term coolant seepage which would lead us to the conclusion there was a developing issue with the vehicle's cooling system at the point of sale.*

E2:

- *... evidence of longstanding and substantial oil and coolant leakage from multiple sources, which have evidently been ongoing for some time.*

It's not clear to me what how long "ongoing for some time" is but, again, given the age of the car it seems likely its more than four months.

- *...evidence seen is indicative of a lack of maintenance by the operator. We do consider that if the fluid levels were regularly checked and leakages were repaired, the engine damage would not have occurred. ..we do not consider the condition to have been developing at that point.*

Mr B only drove the car for four months. And although he drove nearly 6,000 miles I do think it possible that the lack of maintenance mentioned above was from previous owners. E2 hasn't specified what condition was developing at the point of sale – the leak or the engine damage?

- *the vehicle is displaying oil and coolant loss resulting in engine overheating and consequential engine damage. We do suspect the vehicle has been driven in an obvious failing state to the point that the final breakdown has occurred. The concern would not have been developing at inception.*

Again it's not clear to me what E2 means by "the concern" – the leak or the engine failure. But E2 has said the leak was going on for some time.

E3

- *There was an immediate leak found, coming from the thermostat housing pipe on the nearside of the engine...we would consider with the mileage covered in the vehicle from purchase to failure, that this was not developing at purchase.*

E3 hasn't been specific about what wasn't developing at point of purchase – the leak or the engine failure

- *... the vehicle has covered sufficient mileage for the fault to have developed within that period. This type of failure would not be considered unexpected when taking into account the vehicles age and mileage.*

Again it's not clear to me what fault is being referred to.

Mr B has also drawn attention to a known problem with this model of vehicle concerning coolant leaks leading to head gasket problems and overheating – a fact I have verified for myself online.

I'm persuaded that given the short period of time Mr B had the car on the road the problem with the leak was present/developing at the point of sale. Two of the three inspectors noted this had been going on for some considerable time. And it does seem likely engine failure was a consequence of this.

In its response to our investigator's view STB said:

The third (E3) report was instructed, again by a mechanical expert, training specifically in the motor trade field, giving their position based on evidence found at the time of inspection. Both reports (E1 & E3) are independent of all parties and are in favour of supporting that the dealership is not the liable party to assist. We are inclined to support this without any evidence to the contrary.

I don't agree that both reports support the position that the dealership isn't liable. As indicated above E1 states "*the sales agent should be responsible for the necessary repair costs on the grounds of durability...*"

I am not dismissing the technical evidence provided by the three mechanical inspectors, I am relying on it. But, as I've illustrated above there appear to be two issues, the leak, and the engine failure, one a consequence of the other. E1 is clear that there was a developing issue with the vehicle's cooling system at the point of sale. Both E1 and E2 state the leak has been going on for some time. And I'm persuaded that as this appears to be a known problem with this model this leak was likely not as a result of wear and tear.

STB also said

We note that the dealers' comments around the actual fault being a hole in the engine, that has arisen as a result of a pressurised system that had no water in it and caused to fail. This would have posed a temperature warning light on the dashboard had this been long standing and or an indicator to top up the coolant levels. Either this was ignored by the customer, if it was long standing or was not present due to the sudden nature of the fault. Moreover, supporting that this was not present at the point of sale or underlining given the distance the customer has successfully travelled. The customer could not have travelled 6k miles with a hole in the side of

the engine

I'm also not disputing the findings of the dealership which seem to correlate with the independent reports.

E2 has suggested that if the fluid levels were regularly checked and leakages were repaired the damage would not have occurred. This seems likely, but Mr B only had the car for four months before it failed. And it's reasonable to bear in mind the components within the car must be durable and last a reasonable amount of time. I'm not able to comment on whether any warning lights were apparent. I agree that the engine failure wasn't present at the point of sale, but I'm satisfied the leak was, which led to engine failure. And I'm persuaded the car wasn't of satisfactory quality at the point of purchase. The car has been off the road for some considerable time and repairs will be costly so I believe Mr B should be allowed to reject it.

Putting things right

Mr B hasn't used the car since 25 August 2023 because of the faults. But, as he was unable to use the car, he also stopped making his monthly rental payments since that date. Therefore, STB don't need to refund any monthly rentals.

Mr B has said he incurred alternative transport costs since the car broke down. He submitted a breakdown of train fares he's incurred between the date of breakdown and 22 January 2024. These totalled around £1,600 – but will likely have increased in the further months that have passed whilst the complaint remained unresolved.

STB must refund Mr B the difference between his transport costs and what he was contracted to pay by way of his monthly rental payments between 25 August 2023 and the date of settlement. STB should request and review an updated total of transport costs since the breakdown, minus the contractual monthly rentals due since the breakdown, and reimburse Mr B the difference. Mr B must provide evidence by way of receipts to STB.

Mr B has described the impact all of this has had on him. He has been heavily impacted by not having a car. I think it's fair and reasonable for STB to pay him £300 compensation to reflect this.

In summary, to put things right STB must:

- end the agreement with nothing further to pay;
- collect the car (if this has not been done already) at no further cost to Mr B;
- refund Mr B alternative travel costs for the period from 25 August 2023 to the date of settlement (as set out above);
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- pay Mr B a further amount of £300 for distress or inconvenience;
- remove any adverse information from the customer's credit file in relation to the agreement.

My final decision

My final decision is I uphold this complaint and Secure Trust Bank Plc, trading as V12 Vehicle Finance must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 November 2024.

Maxine Sutton
Ombudsman