

The complaint

Ms R complains Secure Trust Bank Plc trading as Moneyway (Moneyway) supplied her with a car that she believes wasn't of satisfactory quality.

Ms R is represented by Mr T but as she is the agreement holder, I will refer to her throughout this agreement.

What happened

The details of this case are well known to both parties so I won't repeat them here. Instead I will focus on the reason for my decision.

In January 2024, I issued a provisional decision outlining my intentions to uphold the complaint. In summary, I said the car wasn't of satisfactory quality. To put things right, I said Moneyway must cover the cost of the repairs amongst other things.

In response, Ms R disagreed with the findings. She said there had been ample time for the car to be fixed and she now wants to reject it. She also said in recent weeks the car had lost all power while driving and a number of engine management lights came on. She had to be recovered at a cost of £500. From my understanding, the car is currently not driveable.

In February 2024, I issued a second provisional decision outlining my intentions that repair than an repair, Moneyway should allow rejection. I said:

"As mentioned in my provisional decision the car wasn't of satisfactory quality at supply due to faults with the exhaust gas recirculation (EGR), diesel particulate filter (DPF) and diesel exhaust fluid (DEF). As this is no longer in dispute and Moneyway accept the same, I don't find it's necessary to comment on this any further. I find the investigator's explanations were clear and well-reasoned so I won't repeat them again.

What is left in dispute is what Moneyway should do to put things right. They agreed to cover the cost of the repair which Ms R initially accepted. However after unforeseen circumstances at her chosen garage which meant the repairs couldn't be carried out and the recent breakdown, she wants to reject the car.

I initially said a repair should happen but on further reflection and in light of the further issues, I'm now intending to say Ms R should be allowed to reject the car. I will explain why.

Shortly after acquiring the car, Ms R provided evidence of the faults. As now accepted by Moneyway, these faults meant the car wasn't of satisfactory quality. Where this happens and it's outside the short time right to reject, The Consumer Right Act 2015 allows one opportunity to repair. I would expect the repair to be carried out at no cost to Ms R, within a reasonable period of time and without significant inconvenience to her.

In this case, the dealership refused to accept the evidence of the faults. The car was returned to them so I'm satisfied they had the opportunity to repair but there is no evidence they done so. Instead they made unfounded allegations against Ms R claiming the car was

being driven off road. However a manufacturer approved garage said that wasn't the case and a later inspection report also confirmed the faults.

Since that point, there has been much back and forth between all parties concerned. There have been a number of delays throughout this situation, some of which Moneyway has contributed towards, some I believe Mrs R has contributed to.

I'm fully aware following the investigator's view, recommending a repair should be carried out, Moneyway and Ms R accepted this, but due to unforeseen events it didn't take place. Moneyway also confirmed the dealership were willing to arrange the repairs but Ms R didn't wish to take that option given the breakdown of the relationship and communication with them. In light of what's happened, I can understand why she felt that way. In any event what I must stress is that this car is faulty and has been for a considerable amount of time without remedy (bearing in mind the faults were initially identified in July 2022). So it's evident there has been significant inconvenience caused to Ms R.

She said she's had no other option but to drive the car as she has a young family and no other means of transport. Given the time that's passed and the continued use of the car, it's reasonable to expect the faults may be getting worse and potentially causing more damage or impacting other parts of the car. Mrs R has told our service about a recent incident where the car lost all power while driving with her family. I'm very sorry to hear about this, I appreciate it would've been a very difficult and scary situation for her and those present.

Given the initial faults and possible new ones, it's likely the repair costs will grow significantly more than what was previously quoted and accepted by Moneyway. I must also take into account even if a repair is carried out, there is no guarantee it will fix all the faults bearing in mind there was some debate about what exactly needed to be done to resolve them. If the repair fails to fix all the issues, Ms R would be further inconvenienced and ultimately she would have the right to rejection based on the relevant law. She has stressed she has lost complete confidence in the car and I can understand why. I'm sorry to hear the car hasn't performed as expected.

Moneyway is likely to say Ms R's continued use of the car has led to these further issues. They may also argue the delays to the repair have been as a result of unforeseen circumstance or delays caused by her. In response, I would like to emphasise it's been determined this car wasn't of satisfactory quality at supply through no fault of Ms R, there's been an opportunity to repair by the dealership and to date, the faults remain. The delays and circumstances are not wholly down to Ms R yet she is the one that is being caused significant upset, distress and inconvenience.

Taking a broad view of what has happened and the reasons outlined above, I intend to say Ms R should be allowed to exercise the final right to reject the car.

Putting things right

To put things right, Moneyway should end the agreement with nothing further for Ms R to pay, collect the car at no cost to her, refund the part exchange value of £5,450 and remove any adverse information about this agreement from her credit file.

Based on the mileage covered since supply and recent events, it's clear Ms R has been able to drive the car so it's fair she pays to reflect that. Therefore I won't be saying Moneyway need to fully refund the monthly instalments she's paid. However to reflect the impaired use of the car due to the faults, they should refund 10% of the instalments she's paid.

I'm also aware that between July and November 2022, she was left without the car as it was returned to the dealership and she was not provided with a courtesy one. So as

recommended by the investigator, Moneyway should refund the equivalent of three and a half months instalments paid to reflect the loss of use. However if the account is in arrears, Moneyway can take that into account.

Ms R has provided evidence of an invoice she paid (£500) to have the car recovered after it recently lost power. Moneyway should reimburse her for the same.

I'm aware Ms R paid to have the tyres replaced. I consider this to be wear and tear items and given the age and mileage of the car at supply, it's reasonable they would present signs of significant wear. Moreover, as Ms R has used the car for a significant amount of time since then, I'm satisfied she's had the benefit of the replaced tyres so I won't be saying Moneyway need to refund this cost.

I've carefully thought about the impact of this situation on Ms R. She's explained how it's significantly impacted her mental health, well-being, finances and it's causing her considerable distress and worry. There have been multiple trips to garages, the need to call out breakdown services, the extent of her communication to Moneyway to resolve matters, the time taken to resolve matters, etc. For this, I find Moneyway should pay £400 compensation to Ms R for the trouble and upset caused".

Response to the second provisional decision

Moneyway said Ms R has been in possession of the vehicle for a period of 20 months, and until recently has had use of the car. They also said since the agreement started in June 2022, she has only paid one monthly instalment and as of February 2024, the account is £7,509 in arrears. They provided the statement of account which confirms the same.

Ms R told our service that as of March 2024, the car's odometer records the mileage at 82,553.

In light of the same, I told both parties that I intended to amend my recommendations. I said although I've determined the car was faulty at supply, given the mileage covered, it's clear Ms R has had use of the car (albeit an impaired one). She has managed to cover in excess of 20,000 miles, I consider this a significant amount and I must take this into account when thinking about what Moneyway needs to do to put things right. It's reasonable Ms R pays to reflect use of the car and the relevant law allows a deduction for fair usage.

I said I intended to say Moneyway should:

- End the agreement;
- Collect the car at no cost to Ms R;
- Refund the part exchange value (£5,450) plus pay 8% simple interest per annum from the date of payment to the date of settlement;
- Refund 10% of the monthly instalment paid to reflect impaired use plus pay 8% simple interest per annum from the date of payment to the date of settlement;
- Refund the £500 cost of the breakdown recovery in February 2024 (subject to evidence) plus pay 8% simple interest per annum from the date of payment to the date of settlement;
- Reduce the arrears by the equivalent of three and a half months instalments to reflect the loss of use of the car;
- Pay £400 compensation to Ms R for the trouble and upset caused:

- Having calculated the above, Moneyway should deduct the account arrears from the above refunds and compensation award;
- If there is a positive balance that Moneyway owes to Ms R they should pay this directly to her;
- Remove any adverse information about this agreement from Ms R's credit file

Ms R disagreed. In summary, she said she shouldn't be charged for using a car that wasn't of satisfactory quality and she wouldn't be in this position nor the arrears so high had Moneyway allowed her to reject the car sooner. She had no alternative but to use the car as she has a young family and she wasn't provided with a courtesy car. She also says she was told by Moneyway that the account would be put on hold while the complaint was raised to our service.

Having done the above calculation, Moneyway said Ms R would be refunded roughly £453 and they provided a breakdown of their calculation.

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 thank both parties for their response. I've carefully thought about Ms R's comments and I acknowledge her upset and frustration. However I can't ignore the fact she's covered around 20,000 miles since she bought the car. I consider to be a significant amount therefore it's reasonable for her to pay to reflect that and the relevant law says this can be taken into account when determining how to put things right.

If I was to say the arrears should be waived or written off that would mean she had use of the car for free which wouldn't be fair nor reasonable. I wish to stress even if she had been provided with a courtesy car that wouldn't have been for free, the expectation would be the monthly instalments would still need to be paid.

I also wish to point out the time taken to resolve this complaint are not solely down to Moneyway although they have contributed to it. It's worth noting several months ago, both parties agreed for repairs to be carried out but due to unforeseen circumstances that didn't happen.

Moneyway has said they previously told Ms R that they would put a hold on sending her correspondence related to the arrears on the account as it was causing her distress. There's insufficient evidence Moneyway told Ms R that she didn't have to pay the monthly instalments whilst the complaint was ongoing and it's not our role to say they should allow her to do so. As a service we don't recommend consumers stop paying the monthly instalments if they've raised a quality of goods complaint about the car especially if they continue to use it. Given how long Ms R hasn't paid the instalments, it's reasonable for her to have known the arrears would be substantial.

Having viewed Moneyway's breakdown of the calculation, there's nothing to suggest it's incorrect or it didn't follow my direction as to how it needed to be worked out. A copy of this calculation will be sent to Ms R for her consideration.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Ms R's complaint.

To put things right, Secure Trust Bank Plc trading as Moneyway must:

- End the agreement;
- Collect the car at no cost to Ms R;
- Refund the part exchange value (£5,450) plus pay 8% simple interest per annum from the date of payment to the date of settlement;
- Refund 10% of the monthly instalment paid to reflect impaired use plus pay 8% simple interest per annum from the date of payment to the date of settlement;
- Refund the £500 cost of the breakdown recovery in February 2024 (subject to evidence) plus pay 8% simple interest per annum from the date of payment to the date of settlement;
- Reduce the arrears by the equivalent of three and a half months instalments to reflect the loss of use of the car;
- Pay £400 compensation to Ms R for the trouble and upset caused;
- Having calculated the above, Moneyway should deduct the account arrears from the above refunds and compensation award;
- If there is a positive balance that Moneyway owes to Ms R, they should pay this directly to her;
- Remove any adverse information about this agreement from Ms R's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 24 April 2024.

Simona Reese
Ombudsman