

The complaint

Mr U has complained about the quality of a car he acquired under a hire purchase agreement with Secure Trust Bank PLC trading as V12 Vehicle Finance ("V12").

What happened

To summarise, Mr U acquired a used car and warranty under a hire purchase agreement with V12 in February 2023 for £6,339. The car was around eight and a half years old and had covered around 98,500 miles when he acquired it. The agreement was to be repaid over around three years with payments of around £200 per month. I understand Mr U paid to have an oil/filter service along with the timing belt changed by the supplying dealer at a cost of £250 when he acquired the car.

V12 said Mr U contacted it in April 2023 to complain about:

- Sat nav not working
- Two screws in the rear side outer edge of the tyre
- One screw in the near side outer edge tyre
- Scratches on panels of the vehicle
- Near side front tyre low
- Front gear time running light not working on the near side
- Oil on the engine block
- Main vehicle key faulty
- Vehicle smelt of damp and mould
- Mould on the seatbelts
- Clutch paddle loose
- Losing water from on top of the engine from a pipe
- Middle seat couldn't move forwards or backwards
- Grinding noise by the fan belts

I understand Mr U broke down in the car around that time and had to pay £250 transport costs. I can see he paid £500 for repairs to a third-party garage for the following:

- Renew heater inlet pipe
- Remove/refit thermostat housing
- Diagnostics
- Coolant change

I can see Mr U received a partial reimbursement from the warranty company for £237.26. But the warranty company told him the product was being cancelled because the supplying dealer didn't pay for it.

V12 issued a final response upholding the complaint saying the supplying dealer had agreed to reimburse Mr U for the work to the pipes as the warranty company wouldn't cover the full cost. Mr U decided to refer his complain to the Financial Ombudsman. He wanted to reject the car. He said the car was still leaking oil and coolant. He said the sat nav still wasn't working and there were cosmetic issues. He also tells us he paid £95 to supply and fit a new

water pump. He says this should've been repaired by the supplying dealer when he returned it in February 2023.

V12 arranged an independent inspection in October 2023. The mileage at this point was around 104,400. In summary, it said the car had an oil leak from the rocker cover gasket area and the sat nav system wasn't working. It said the coolant level sensor was defective, the clutch was found to judder, and the clutch pedal was loose and worn. It also found other defects such as a loose engine air filter housing; noisy turbocharger; noisy rear suspension; and a steering pull. In conclusion it said *'The vehicle owner stated at the time of inspection the oil seepage from the rocker cover and the satnav was not functional at the point of sale, this is not in dispute and although the highlighted issues are not preventing the vehicle being road legal we suggest that the sales agent should be responsible for fixing the oil leak and replacing the satnav data card as good customer service'*.

Our investigator upheld the complaint because he thought the car wasn't of satisfactory quality. He thought seeing as though several repairs had been attempted Mr U should be able to reject the car. He noted Mr U had not been able to use the car for around three weeks and thought Mr U should receive a refund of payments for that period. He recommended V12 end the agreement and collect the car. He said V12 should refund him for the period of loss of use and pay interest on that amount. He also said V12 should pay £250 compensation; refund Mr U additional expenses (£95 repair cost, £250 travel cost, £399 warranty cost, £250 timing chain cost); and it should remove any adverse information about the agreement from Mr U's credit file. He said he couldn't reasonably recommend V12 pay other costs Mr U incurred when he broke down, including accommodation and further travel costs, because he hadn't evidenced those costs and they weren't all reasonably foreseeable.

V12 hasn't offer a substantive response. Mr U queried why the balance of the £500 repair wasn't included, and our investigator said this payment should be made. It looked like Mr U was going to take the car off the road when its MOT came due around February 2024. But he's shown us he paid £330 to have repairs to a wishbone and exhaust, along with the cost of the MOT.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr U and V12 that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr U acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr U entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. V12 is the "trader" for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

In Mr U's case, the car supplied was used and had covered around 98,500 miles. There'd be different expectations than if it was a brand-new car.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

I think there's enough evidence to demonstrate there are faults with the car. Mr U has had various repairs undertaken and the independent report noted several issues. I'm not going to go into detail for each individual fault. And I don't think all the faults complained of would have made the car of unsatisfactory quality but, taking things as a whole, given when the faults manifested, and taking into account when Mr U had repairs carried out, on balance, I think there's sufficient evidence to determine the car wasn't of satisfactory quality. Mr U broke down in the car within a couple of months and had to have quite significant repairs carried out to the thermostat and heater inlet. I don't think a reasonable person would have expected those issues to manifest so soon after acquiring the car, even taking into account its age and mileage. Moreover, there's an independent report highlighting faults that were present or developing at the point of supply. And those faults weren't all resolved.

On the one hand, Mr U has tried to mitigate the problems by having repairs carried out himself and so you could argue V12 wasn't given the opportunity to repair. But on the other hand, Mr U complained to V12 back in April 2023, it wasn't until October 2023 that a report was carried out. Repairs ought to have been carried out within a reasonable amount of time and without significant inconvenience to Mr U. I don't think that happened here. And in all likelihood, even if V12 acknowledged it was liable for repairs earlier on, it likely would have asked Mr U to have the repairs carried out in a similar way to what he's done.

The CRA sets out that (outside of the short term right to reject period) if the goods don't conform to the contract the consumer has the right to ask for a repair. And if the goods aren't brought back to conformity after the repair the consumer has the right to reject the goods. The CRA also says where the consumer requires the trader to repair or replace the goods, this must be done within a reasonable time and without significant inconvenience.

In all the circumstances, given what I've said above, I think Mr U has fair grounds to seek rejection of the goods. He's had various repairs carried out, and despite that the car wasn't brought back to conformity within a reasonable amount of time. So I've thought about how things can fairly be put right.

As a starting point, Mr U has been able to use the car, albeit with various repairs required. The CRA says a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure. But as a starting point, in the particular circumstances of this case, I think the monthly repayment towards the hire purchase agreement is a reasonable figure to use for a months' worth of use of the car. So I think V12 can retain the monthly payments Mr U made in recognition of the use he's had of the car. It's currently covered around 107,500 miles.

At the time our investigator issued his assessment, he said V12 should refund Mr U around three weeks' worth of a repayment to reflect the time Mr U was unable to use the car when it was being repaired. He asked V12 if it had any comments or objections to that but V12 hasn't engaged with the assessment. I'm conscious Mr U has had further repairs carried out since then. I'm also conscious there's an element of impaired use for Mr U as well, which I

don't think has been accounted for. Again, there's no exact science, but in the round, I'm going to propose V12 refunds Mr U £200 in recognition of the loss of use and impaired use.

I've next thought about the other costs Mr U says he incurred. The warranty was paid for as part of the cost of the finance agreement so I'm not going to direct V12 to make a separate refund for that. I'm conscious the remedy I'm going to propose is broadly putting Mr U in the position he'd have been in had the warranty paid out all the repairs in the year he's had the car. So even though it wasn't set up properly by the supplying dealer, I think it puts Mr U in a fair position as if he'd had the benefit of the warranty for the time he's been paying towards it.

I think it's fair Mr U is refunded the £250 he paid to have the timing belt changed when he bought the car seeing as though he's not going to have the full benefit of that now I'm proposing the car is rejected. I think it's fair he receives a refund of the travel cost he incurred on 17 April 2023 for £250 because he incurred this as a result of breaking down. And, on balance, I think he broke down as a result of the car not being of satisfactory quality. I think it's fair he's refunded the balance of the £500 repairs from 21 April 2023 he's not received yet. So V12 should pay him £262.74 unless the supplying dealer can show this has already been done. I think it should refund Mr U the £95 he paid on 17 July 2023 for the water pump. I think it's fair he's also refunded the £330 he paid for the recent work and MOT on 15 March 2024. Mr U wouldn't have paid these costs if he'd been allowed to reject the car when he asked to do so.

I've not been given evidence of other costs Mr U says he incurred. It's not clear they would have been fairly recoverable against V12 in any event. So I'm not proposing further costs are refunded.

I also think there's been overall inconvenience caused as a result of Mr U being supplied a car that wasn't of satisfactory quality. The car has broken down. He's had to take it for various inspections and repairs. He must've been really disappointed to have so many issues within such a short space of time. I also think V12 could have helped him resolve things sooner. I agree with our investigator's recommendation of £250 compensation.

Mr U had nothing further to add. I can't see we received a response from V12.

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.

Seeing as though I can't see either party has submitted anything materially new for me to consider I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

I direct Secure Trust Bank PLC trading as V12 Vehicle Finance, to the extent not done so already, to:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr U;
- reimburse Mr U £1,187.74 in relation to the costs set out above, upon receipt of evidence those costs have been paid;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- refund Mr U £200 in recognition of loss of use and impaired use;

- pay £250 compensation;
- remove any adverse information from Mr U's credit file in relation to the agreement.

If V12 considers it is required to deduct tax from my interest award it should provide Mr U a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Secure Trust Bank PLC trading as V12 Vehicle Finance to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 9 May 2024.

Simon Wingfield
Ombudsman