

The complaint

Mr H complains about the quality of a car he has been financing through an agreement with Secure Trust Bank Plc ("STB"). He's also unhappy that he hasn't been provided with the car's service history.

What happened

In March 2023 Mr H took receipt of a used car. He financed the deal through a hire purchase agreement with STB. At the point of supply the car was about eight years old and had already completed about 39,300 miles.

Shortly after he took receipt of the car Mr H noticed problems with it. An independent inspection was completed, and the inspector noted that there were faults with the air conditioning, Tyre Pressure Monitoring System (TPMS), and the remote locking of the passenger door. It was the inspector's view that as the car had only been driven for 799 miles and as Mr H had identified problems within a week of supply, the faults were developing at the time of purchase.

When Mr H discussed the issues with the broker and with STB he says he was led to believe they would accept rejection of the car. So, he bought a new car and entered into a further finance agreement to fund it. He was, therefore, upset when he was told the business were no longer supporting rejection and that they wanted to repair the car. They also noted that Mr H was concerned he'd never been provided with the service records for the car but as the dealer said they were provided they didn't uphold that aspect of Mr H's complaint.

Mr H referred his complaint to this Service. Our investigator didn't think there was sufficient evidence to substantiate Mr H's claim that the service records weren't supplied. But he did think STB had been unfair not to allow him to reject the car. He listened to calls Mr H had made to STB and their agents, the brokers, and he thought they'd given Mr H the impression they would allow rejection. In those circumstances he thought it wasn't unreasonable for Mr H to find and finance a new car. He thought the business should support the rejection, refund some finance instalments, and pay Mr H £250 to compensate him for the distress and inconvenience he'd been caused.

STB didn't agree with the investigator's opinion, so the complaint has been referred to me, an ombudsman, to make a 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 don't think STB have been reasonable here and they need to put things right for Mr H. 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 H acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

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 STB, who are also the supplier of the car, are responsible.

There's no dispute that this car wasn't of satisfactory quality when it was supplied. The independent inspector confirmed that, and STB accepted the inspector's findings.

The relevant legislation allows a business one opportunity to repair faults that are present or developing when goods are supplied. STB say they haven't been given that opportunity yet and Mr H, initially at least, accepted that the car would be repaired. But, having listened to the calls Mr H had with the business and broker I think he was led to believe that they would be supporting rejection, and that the dealer had no choice but to accept that decision. In those circumstances, I think it wasn't unreasonable for Mr H to source an alternative car, and that the problems he now faces were a consequence of the poor advice he was given.

If I were to allow STB to repair the car it would leave Mr H with two cars and two finance agreements to continue to fund. He's explained to us that he's unable to afford to continue with both arrangements. I've read about the issues Mr H is having with his mental health and I don't dispute that this issue won't be helping with that. It seems to me that he wouldn't have had two cars and two agreements if it hadn't been for the first car being supplied in an unsatisfactory condition. In those circumstances, I think the fairest resolution would be to allow Mr H to reject the car and end his agreement with STB.

I don't think I have sufficient evidence, however, to support Mr H's claim that service records weren't provided. That said, even if I had that information, I don't think it would change the outcome of this complaint. It's true, however, that the dispute over the service records prevented Mr H from giving the immediate go ahead to have the repairs completed and I've borne that in mind when thinking about this complaint.

Putting things right

STB should collect the car at no cost to Mr H and they should end the finance agreement.

They'll need to refund any deposit Mr H has paid and, as he's been deprived of that money, they will need to add interest to that refund.

It's only fair that Mr H pays for any use he's had from the car he's been financing. When the independent inspector looked at the car on 31 August 2023 Mr H had only completed 799 miles in it over the four and a half months he'd had the car. I've seen a copy of Mr H's new finance agreement for his replacement vehicle. That started in September 2023 and as I've found that Mr H wouldn't have entered into that agreement if the car was of satisfactory quality I think STB should refund any finance instalments he's made towards his agreement with them since then and all but one of the finance instalments he paid before that in respect of the limited use Mr H had from the car in that period.

Mr H has explained that the car has a gearbox problem and can't be driven at the moment.

That wasn't an issue that was highlighted during the independent inspection. I think it's likely that issue has developed as a result of the car being stood for so long and, even if I'm wrong about that, I don't think a reasonable person would expect a problem with the gearbox so soon and after such a limited amount of driving. I think the gearbox failure is another reason to support rejection.

Mr H has been inconvenienced by these issues. He's had to report faults, discuss matters with the broker and the finance provider, make arrangements to allow an independent inspection, and escalate his complaint to this Service. I can imagine, as Mr H says, that the issues haven't helped his mental health and, all told, I think STB should pay him £250 in compensation for the distress and inconvenience caused.

My final decision

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

- Allow Mr H to reject the car and end the agreement with nothing further to pay.
- Collect the car at no cost to Mr H.
- Refund any deposit or part exchange Mr H may have paid and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund all finance instalments that have been paid, less one, in respect of loss of use. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mr H £250 compensation for the distress and inconvenience caused.
- Remove any adverse reports they may have made to Mr H's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 August 2024.

Phillip McMahon
Ombudsman