

The complaint

Mrs K complains that a car she acquired which was financed by a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway (“Moneyway”) wasn’t of satisfactory quality.

What happened

In September 2023, Mrs K entered into a hire purchase agreement with Moneyway for a car. The car was over eight years old when Mrs K acquired it, had a cash price of £6,998 and had covered just under 87,000 miles.

Around three months after Mrs K acquired the car, the engine blew up while she was driving it. The car was recovered to a garage who inspected it and found that the con rod had failed, damaging the engine block. Mrs K then found it difficult to find out what was happening with the car. She contacted Moneyway, the supplying dealership, and the credit broker and says that no-one was willing to take responsibility.

Eventually, an independent inspection of the car took place in March 2024. The report noted that the engineer saw a hole in front of the cylinder block adjacent to one of the cylinders, and that there was excessive oil residue on the sub-frame, the chassis and under-body. The engineer went on to note that what happened was consistent with a lack of lubrication to the big end bearings and this had caused a catastrophic engine failure.

The report went on to conclude:

‘Considering the vehicle has covered 89,542 miles, we would not consider this to be a premature failure but is a deterioration related defect developing over time and usage.

Considering the vehicle has incurred 2,467 miles since purchase, we would consider that, on our engineering perspective that the fault would have been present or in the stages of development at the point of vehicle sale. Due to the type of condition under review the fault may not have been immediately apparent at the point of sale but due to the progressive nature of the condition it would have been developing’.

Mrs K then didn’t hear anything further until after she’d referred her complaint to us, as Moneyway hadn’t responded to the merits of her complaint about the car being of unsatisfactory quality. Moneyway told us the car had been repaired and sent a job sheet from 24 May 2024 setting out the car needed a reconditioned engine, although it also set out that there was a four-week lead time for the work to be completed.

Our investigator recommended that Mrs K’s complaint should be upheld. He felt it had taken an unreasonably long time for the car to be repaired and that Mrs K hadn’t been given any updates on what was happening to it. He recommended that Mrs K be allowed to reject the car and end the finance agreement with Moneyway. He also said Mrs K should be refunded all payments she’d made to Moneyway since the car broke down, with interest, and that they should pay her £300 for the distress and inconvenience this matter had caused her.

Mrs K agreed with our investigator's view and recommendation and says Moneyway told her that she wasn't required to make any more payments to them. She took that to mean that they agreed with our investigator's view on how to put things right, although they didn't confirm that with her. Since then, Mrs K has asked us to consider awarding her a further £1,500 which represents £1,200 for the cost of a new car she had to buy and £300 for cars she had to rent.

Moneyway hasn't replied to our investigator's view. So, the complaint has been passed to me to decide.

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 want to acknowledge that 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 want to assure Mrs K and Moneyway 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.

Mrs K used a regulated hire purchase agreement to acquire the car that is at the centre of this dispute. Our service can consider complaints about these sorts of agreements.

I've taken into account relevant law and legislation, which here includes the Consumer Rights Act 2015 ("CRA"). The CRA implies terms into the contract between Mrs K and Moneyway that the car will be of satisfactory quality. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods: (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It's reasonable in my view to note that the car here wasn't new and had already travelled just under 87,000 miles when Mrs K acquired it. So, it wouldn't be reasonable to expect a used car like this to be in the same 'as new' showroom condition which it would have been when it was first supplied. But just because the car was used with some mileage, doesn't mean that Mrs K has no right to claim the car wasn't of unsatisfactory quality.

It seems clear to me that the car wasn't of satisfactory quality. The car broke down three months after Mrs K acquired it with what the independent engineer noted was a catastrophic engine failure. Crucially in my view, the independent report concluded the fault that led to the engine failure was either present or developing at the time Mrs K acquired the car. I wouldn't expect a 'reasonable person' to have expected a car of this age and mileage to have suffered such a significant fault only three months into acquiring it, and one that the engineer concluded was likely present or developing at that time.

This in my view demonstrates the car wasn't sufficiently durable. And because of this, the car wasn't of satisfactory quality as required as set out in the CRA. It seems that Moneyway might accept this as Mrs K has told us they've said she doesn't need to make any more payments to them. But we haven't had confirmation of this from Moneyway, and this hasn't been made clear to Mrs K. So, I've made a specific finding on this point to make this clear to the parties.

As I've found the car wasn't of satisfactory quality, I will now consider what is required to put things right.

Putting things right

It appears that the car has been repaired following it being fitted with a reconditioned engine. However, it took about half a year for this to happen and, from what I've seen, Mrs K wasn't given much in the way of updates on what was happening to the car after it had broken down. In fact, it doesn't look like Mrs K was given any real form of update.

The CRA sets out that Moneyway should be allowed one chance at repair if Mrs K hadn't already invoked her short-term right to reject the car in the first 30 days of acquiring it (which she hadn't as the car hadn't broken down until after 30 days had passed). However, the CRA goes on to set out that repairs should be carried out in a reasonable time and without significant inconvenience to the consumer. If repairs aren't carried out in this way, then a consumer is entitled to reject the car.

Moneyway only told our investigator that the car had been repaired in July 2024. That was some seven months after it had broken down. And I note that Mrs K wasn't informed of this by Moneyway either.

Having considered the matter, including what the CRA says about remedies to goods that aren't of satisfactory quality, I consider it reasonable for Moneyway to take back the car from Mrs K (or from wherever it is currently) and cancel the hire purchase agreement with nothing further owed. Moneyway should arrange for the car to be collected and Mrs K shouldn't be responsible for any associated costs with taking the car back.

As Mrs K hasn't been able to use the car since December 2023, any repayments to the hire purchase agreement since December 2023 should also be refunded to her. Interest, at 8% simple per year, should be added to each of the refunded payments from the date of each payment until the date of settlement.

Mrs K has incurred some distress and inconvenience as a result of being supplied with a car that wasn't of satisfactory quality. This has understandably had an impact on her and hasn't been helped I would add by how Moneyway has dealt with the matter by not updating her on what was happening to the car or giving her their findings on the merits of her complaint. I consider it reasonable that Moneyway make an additional payment to reflect this. A sum of £300 is reasonable in my view considering the circumstances of this complaint.

I won't though be directing Moneyway to refund Mrs K £1,500 for the costs she incurred in finding a new car and renting cars after the one subject to this complaint broke down. I will be ordering Moneyway to refund the payments Mrs K to the hire purchase agreement while she wasn't able to use the car. The other costs she incurred are ones that essentially allowed her to find alternate ways of keeping mobile. If I were to instruct Moneyway to refund those costs as well, Mrs K would effectively be using cars at no cost, which wouldn't be reasonable.

Finally, Moneyway should ensure that any adverse information relating to the hire purchase agreement is removed from Mrs K's credit file. I say this noting that Moneyway has recently sent her arrears notices relating to the hire purchase agreement. While they are bound by the requirements of the Consumer Credit Act 1974 to send these notices because the agreement is still live, the fact that Mrs K was given a car of unsatisfactory quality for which Moneyway is liable means that it wouldn't be reasonable in my view for any adverse information to be recorded in respect of this agreement.

My final decision

My final decision is that I uphold Mrs K's complaint and direct Secure Trust Bank Plc trading as Moneyway to settle the complaint in accordance with what I've set out in the 'putting things right' section of my decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 11 October 2024.

Daniel Picken
Ombudsman