

## **The complaint**

Mr R is unhappy about the outstanding balance of a loan account that Secure Trust Plc trading as Moneyway say he is responsible for.

## **What happened**

Mr R took out a hire purchase agreement with Secure Trust. In July 2022, he was unhappy with the car he purchased so he returned it to the dealership and told them he had rejected it under the Consumer Rights Act 2015 (CRA).

In October 2022 Secure Trust spoke to Mr R and he told them he had rejected his vehicle and left it at the dealership. In November 2022, Secure Trust issued a final response to Mr R saying they didn't agree to the rejection.

Secure Trust started default proceedings in March 2023 because payments on the agreement had been missed. As part of this, in March 2023, the car was collected from where Mr R left it at the dealership and was sold at auction. Because of the damage that was present, it was sold for considerably less than the purchase price.

The auction sale price was used to offset the remaining balance on Mr R's agreement. But, because it was lower than the purchase price, Mr R still owes Secure Trust a significant amount of money. Mr R doesn't feel that it's his fault the car sold for less, so he is unhappy about the amount he is being asked to repay.

I've previously issued a decision explaining that I'm unable to consider Mr R's complaint about the quality of his vehicle because it wasn't brought to us in time.

Our investigator instead investigated Mr R's concerns about the amount he owes under the agreement.

He said that after Secure Trust knew Mr R had left the car at the dealership, they asked him to collect it and keep it safe at his home address, but Mr R didn't do this. The investigator felt that because the car was left at the dealership for more than six months, it's plausible that it had developed faults. He wasn't persuaded that the further damage was a result of the dealership or the quality of the car at point of sale. And so, he thought it was fair for Secure Trust to hold Mr R responsible for the outstanding balance.

Mr R was unhappy with the investigator's response. He said the dealership knew that the car had been left and that he had rejected it. And because they knew this and didn't do anything about it, he shouldn't be held responsible for the loss of value.

As Mr R disagreed with the investigator's findings, the case was passed to me to make a final decision.

I sent Mr R and Secure Trust my provisional decision on this case, on 2 September 2024. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

Mr R's finance agreement began on 9 June 2022. The car he acquired had a cash price of £12,537, and the total amount payable under the hire purchase agreement was £18,344.80.

I can see from the account notes that Mr R made the first payment due under the agreement. After this payment, it is not in dispute that no other payments were made. I don't think Secure Trust were unreasonable in starting the default process considering the number of payments which had been missed. I also don't think they've been unreasonable recording adverse information on Mr R's credit file relating to the payments he didn't make as it is a true reflection of what happened.

As part of the default process, Mr R's car was collected and sold at auction. Any money made on the sale was taken off the outstanding balance owed by Mr R. And so, I've considered whether Secure Trust holding Mr R responsible for the outstanding balance is fair, bearing this in mind.

The job cards from the supplying dealership show that immediately after Mr R got the car it was sent back with several issues. These issues included problems with the rear side wing mirror, air conditioning, engine mount and electric windows. The job card confirms that these repairs were completed in August 2022 and the car had a mileage of 36,328.

Mr R had left the car with the dealership at this point and says he didn't drive or see it again. Secure Trust then collected it to sell at auction in March 2023. I've seen the auction notes which show that it was advertised as a 'non runner' and sold for £1,934, the mileage listed at auction was 36,329.

The similarities in the car's mileage supports Mr R's testimony that he didn't drive the car after August 2022. The auction notes also say that the car wasn't driveable because there wasn't any compression with the timing chain. I've considered that it is unlikely that a timing chain would develop issues because a car wasn't being driven.

For these reasons, I can't reasonably conclude that the damage to the car's timing chain was a result of Mr R's decision to leave the car at the dealership in August 2022. And so, it follows, that I don't think Mr R's actions caused the car to be described as a 'non-runner.'

This means I don't think he is responsible for the car being sold at auction for a considerably lower price than what he paid for it.

Secure Trust also added charges of £504 to Mr R's account for collection activity, including recovery of the car and appointing a third-party recovery agent. The terms and conditions of agreement say that they will charge for any costs associated with these activities. I don't think the charges relating to appointing the third-party recovery agent are unfair because it is a cost that Secure Trust has had to incur.

However, I don't think it is fair for the recovery fee to be charged. This is because I don't think it was Mr R's fault that the car was not able to be driven. He had also left the car at the dealership, so it didn't need to be recovered from a different location. In addition, I think Secure Trust would have always incurred some costs in selling on the car, regardless of how the agreement was terminated.

Because I don't think Mr R is responsible for the damage to the car which caused it to be sold for less at auction, I don't think it is fair that he bears the loss for this. And so, to put things right, I think it's fair for Secure Trust to only charge Mr R for the time he had the car to when they initiated repossession proceedings and ended the agreement. They should also remove any charges relating to the recovery of the car from what Mr R owes.

Secure Trust didn't respond to my decision. Mr R replied to say he didn't have anything further to add.

### **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.

As Mr R accepted my findings, and I didn't receive any further comments from Secure Trust, I see no reason to depart from the conclusions I reached in my provisional decision.

### **Putting things right**

I require Secure Trust Plc trading as Moneyway to adjust the outstanding amount Mr R owes by:

1. Revising the outstanding balance of the loan account, so Mr R is only responsible for the repayments due between July 2022 and March 2023.
2. Reducing the outstanding balance of the loan account by the £240 cost of the vehicle recovery charge.

### **My final decision**

My final decision is that I uphold this complaint and require Secure Trust Plc trading as Moneyway to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 October 2024.

Ami Bains  
**Ombudsman**