

The complaint

Miss W complains about the quality of a car financed by Secure Trust Bank Plc trading as V12 Finance ('STB').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

STB supplied Miss W with a car via a hire purchase agreement in March 2023.

Miss W says that she was having problems with the car from an early stage with a loss of power. She contacted STB about it at the start of July 2023 – she told it she had taken the car in to a third party dealer ('Dealer B') at the end of June 2023 and they had diagnosed costly repairs – which caused her to lose faith in the car and she wanted to hand it back.

In the end STB arranged some repairs through its own dealer ('Dealer A') in September 2023. And it refunded Miss W one monthly payment to reflect the time she was without the car to date.

Miss W got the car back in October 2023 and said it was still slowing down with warning lights on the dashboard. She is not happy and wants to reject it.

Our investigator did not uphold this complaint. Miss W has asked for an ombudsman to look at things for a final decision. I issued a provisional decision on this case which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. STB is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA' from here) says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

STB supplied Miss W with a second-hand car that was five years old and had a mileage of 56,710. There is a reasonable expectation that it would have suffered some wear and tear already and a degree of repairs and maintenance would be required sooner than with a brand new or newer car. However, it is important to note this car is not extremely aged or high mileage and was priced at almost £32,000, which is a significant amount of money for a car. Furthermore, this amount, according to information I have seen was several thousand over market value. Therefore, the expectations around satisfactory quality would be suitably heightened.

Engine concerns appear to be the issue here – namely that Miss W says at a fairly early stage she was experiencing a loss of power and warning lights appearing on the dashboard.

It appears from the information I have seen (including emails from Dealer B and a job sheet diagnostic) that in June 2023, just a few months after supply Dealer B diagnosed significant engine related problems requiring over £4,000 in repairs. It said that the car was showing a warning light and the turbo and intercooler needed replacing. The engine required a strip down of induction system and injector removal for piston clean. This all sounds like a lot of work.

I note that Miss W had travelled around 7,000 miles in the car at the point of the diagnostic – which is a notable amount of mileage. However, even taking this into consideration these sorts of costly engine issues would be excessive considering the price of the car and the overall age and mileage. Furthermore, I note Miss W indicates she had reported the issues at an even earlier stage to Dealer A but it told her to go through the warranty company (but she had issues with that due to the claims limit on her policy). This would explain why Miss W ended up reporting things to STB a bit later than when they began.

On the basis of the diagnosis by Dealer B I would say that the car was apparently not of satisfactory quality as supplied. However, I note that Dealer A took the car from Dealer B and carried out its own assessment. This resulted in a different diagnosis of a split pipe causing oil loss. This was fixed and the car was serviced resulting in a cost of £854.40 (which I understand was covered by STB).

Based on the work carried out by Dealer A it would appear debatable if the car was of satisfactory quality at the point of sale. The issues Dealer A diagnosed and addressed appear relatively minor (and far less costly) than those diagnosed by Dealer B. But in any event repair is a valid first stage remedy under the CRA – and that is what was done at no cost to Miss W.

However, Miss W has said the issue with loss of power has still not been fixed. And it is what she has said (along with a subsequent independent expert report which I will refer to as 'Report S') that causes me to question whether the issue has been fixed, and if in fact the diagnosis of major repairs (and connected costs) by Dealer B was likely accurate versus the assessment by Dealer A. I will explain.

Report S appears sufficiently independent and relatively detailed. I accept that the engineer makes a general comment as to the physical condition of the car and MOT history to conclude the car was fit for use at the point of sale, and the current issues were not present or developing at the point of sale. However, I note the engineer confirms the car was showing issues with low coolant, engine management light illumination, and diminished engine performance. For example:

'whilst low coolant level may indicate a requirement for topping-up, further investigation into the reason for loss is strongly advised'

'I carried out a full diagnostics and found 1 fault code recorded/stored in the ECU. P2251 – O2 Sensor Negative Current Control Circuit/Open Bank 1 Sensor 1'

'An HO2S with a control circuit problem could result in a very poor running engine and various drivability issues and should be classified as severe and rectified as quickly as possible'

'it started and idled without difficulties and all dash warning lights came on and extinguished correctly except the EML which remained on constantly'

'I carried out a 7 miles test drive...and EML remaining on constantly'

'very intermittently some diminished engine performance became evident'

'I can confirm that currently faults are evident with a low coolant level in the expansion tank requiring further investigation into the reason for loss is strongly advised'

'Also a very intermittent diminished engine performance becoming evident during the 7 miles test drive...consistent with the symptoms and activation of the fault code P2251 as indicated and reported.'

'Therefore, to determine the exact cause and extent of the failure, dismantling and further, more detailed, investigation will be required.'

I question how the engineer can conclude that the car is suffering from normally expected wear and tear – yet also recommend further dismantling and investigation of what appear to be potentially serious issues related to the engine. I also note that while the car might have been roadworthy at the point of sale (shown by the MOT and pre-sale inspection) this is not the same as the requirement for goods to be of satisfactory quality as set out in the CRA – which factors in the many elements I have already discussed above including reasonable expectations around durability. Report S does not sufficiently address this, and raises too many serious concerns and question marks around the current condition of the car for me to fairly conclude that the initial repairs by Dealer A were a success or that the car is simply suffering from unrelated reasonably expected wear and tear. The issues identified by Report S appear to be intrinsically linked to the problems Miss W originally complained about with loss of engine power.

I note STB has commented on Report S and says it does not consider it means it is liable for repairs or that Miss W has the right to reject the car. However, I consider Report S supports the following, on balance, conclusions:

- That the car is still suffering from the power loss and engine related issues Miss W originally reported to it;*
- the repairs by Dealer A did not address the underlying issues Miss W reported to STB originally;*
- the severity and cost of the repairs, and level of investigation/dismantling of components required are likely more in line with what Dealer B originally identified to Miss W – and those that would not be reasonably expected at the time Miss W originally reported power loss issues (noting the age and mileage of the car at the time and the overall price agreed).*

On balance, I consider the car was not of satisfactory quality at the point of supply, essentially because it appeared to be suffering from significant engine issues causing power loss that a reasonable person would not expect at this stage. I have therefore, moved on to consider a fair remedy in line with the CRA. While I acknowledge that repair is a fair option initially, I note STB has already had one attempt at addressing the problem via Dealer A – and this has not been successful. Therefore, in line with the remedies under the CRA Miss W is able to exercise her final right to reject the car. I acknowledge that she has continued to

use the car – but considering her need for the car to carry out things like school runs I don't consider it fair to say this means she has forgone her right to reject here.

Miss W should be able to return the car at no further cost to her and have her deposit contribution repaid (£503) and positive equity (£765). I also think in the circumstances it wouldn't be fair for her to have adverse data on her file in relation to the credit agreement as although she ideally should have carried on payments, ultimately the issues here with payment at times appear to have stemmed from the breach of contract by STB in respect of the quality of the car.

Miss W says that prior to the repairs carried out by Dealer A in September 2023 she hadn't had full use of the car. It isn't clear to me how long she didn't have it for – she says it is three months but I also note she covered about 7,000 miles from supply – which is notable and needs to fairly be reflected in what refunds are due. It looks like the car was with Dealer B for some-time after diagnosis at the end of June 2023 and then moved to Dealer A where the repair was carried out by mid-September 2023 (even though Miss B didn't pick the car up straight away). This isn't a science but I think that overall refunding Miss W for two months of payments for loss of use would be fair here. I note that STB has already refunded Miss W one payment. And that a payment she missed during this period STB moved to the end of the agreement. But in light of what I have said I think this should be written off.

I know Miss W has mentioned the cost of alternative transport during the time without the car – but at the moment I think this is fairly covered by refunds of her monthly rentals. However, there has been inconvenience from not having her usual financed car - as Miss W has mentioned issues with things like having to get alternative transport to do the school run. Therefore, I think that STB should pay her £150 for distress and inconvenience more generally.

I note that since Miss W got the car back in October 2023 she has been using it. I can see that by the February 2024 MOT she had increased the mileage by about 3,000 miles. However, it appears that the issue with intermittent loss of power has been ongoing (I don't have persuasive evidence it has resolved since Report S). Therefore, although Miss W has been able to use the car, her use of it has likely been impaired to a degree by intermittent lack of power. This isn't a science – but I think that for the engine not performing as it should be Miss W should get back a refund of 5% of her monthly payments from her October 2023 rental payment onward.

My provisional decision

I uphold this complaint and direct Secure Trust Bank Plc trading as V12 Finance to:

- Take back the car at no further cost to Miss W and cancel the finance with no further liability;
- refund Miss W the positive equity and deposit contributions;
- write off the missed payment as directed above (when taken with the refund Miss W has already received this will practically be a refund of two months of rentals);
- refund Miss W 5% of each monthly rental paid from October 2023 onwards to reflect ongoing impaired use;
- pay 8% simple yearly interest on any refunded payments from the date of payment to the date of settlement;
- pay Miss W £150 compensation for the inconvenience caused by the time she was without the car; and
- ensure any adverse information in respect of the credit agreement is removed from Miss W's file.

If STB considers it needs to deduct tax from any interest element of the award it should provide Miss W with a certificate of tax deduction.

I asked the parties for their comments – neither party added any further comments by the deadline.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision.

I am aware that Miss W got in touch recently to ask some questions about my provisional findings – but I understand our investigator clarified matters and that Miss W did not raise any objections. For clarity – her comments do not give me cause to change my provisional findings.

Putting things right

STB should put things right as I have set out below.

My final decision

I uphold this complaint and direct Secure Trust Bank Plc trading as V12 Finance to:

- Take back the car at no further cost to Miss W and cancel the finance with no further liability;
- refund Miss W the positive equity and deposit contributions;
- write off the missed payment as directed above (when taken with the refund Miss W has already received this will practically be a refund of two months of rentals);
- refund Miss W 5% of each monthly rental paid from October 2023 onwards to reflect ongoing impaired use;
- pay 8% simple yearly interest on any refunded payments from the date of payment to the date of settlement;
- pay Miss W £150 compensation for the inconvenience caused by the time she was without the car; and
- ensure any adverse information in respect of the credit agreement is removed from Miss W's file.

If STB considers it needs to deduct tax from any interest element of the award it should provide Miss W with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 17 October 2024.

Mark Lancod
Ombudsman