

The complaint

Mr F is unhappy with a car he acquired using a hire purchase agreement provided by Secure Trust Bank Plc trading as Moneyway.

What happened

At the beginning of June 2023, Mr F acquired a used car using a hire purchase agreement provided by Moneyway. The car cost £8,800. Mr F paid a deposit of £1,000 and was due to make repayments of £231.72 a month for 59 months, followed by a final repayment of £241.72. The car was just over six years old and had covered around 84,000 miles.

Mr F says around two weeks after he got the car, he noted issues with a warning light and the clutch slipping. He said it was returned to the dealer who kept it for a week for a repair. But, he says the car still had the same issues when returned. He said the car was again returned to the dealer in October 2024. He says the dealer had the car for around two weeks for repairs.

Mr F says the car then broke down again at the end of October 2023. Mr F said he asked to reject the car and complained to Moneyway. But he said the car was repaired again without his consent and was returned to him at the end of December 2023.

Moneyway issued its final response to the complaint in December 2023. It said, in summary, that no faults could be found when Mr F reported a problem with the clutch in June 2023. It said there were issues with the tyre pressure monitoring system ('TPMS') warning lights in October 2023 and the dealer replaced sensors free of charge. And it said the car then broke down in November 2023 due to an issue with the wet belt, which the dealer said it would repair as a gesture of goodwill. Moneyway said the car was now running well and Mr F couldn't reject it.

Mr F remained unhappy and referred the complaint to our service. He said when the car was returned it was still not performing as it should and so he hadn't driven it. He later sent a video of the car running. And he sent an invoice from a third party garage noting an issue with the "*exhaust flex*".

Our investigator issued an opinion and upheld the complaint. In summary, she said she thought the recent issue with the exhaust showed the previous repairs to the car had failed.

So, she said Mr F should now be allowed to reject the car. She said Mr F should be reimbursed 20% of the repayments towards the agreement from inception to 27 December 2023. She said all repayments post 27 December 2023 should be refunded. And she

thought Moneyway should pay Mr F £200 to reflect what happened.

Moneyway responded by sending a statement from the dealer and didn't accept the view. In summary, it said the timing belt issue had developed after the point of supply and so it wasn't responsible for this. It said the garage didn't confirm the recent issue with the exhaust was present or developing at the point of supply and it said the issue wasn't present when

repairs were carried out by the dealer. And it pointed out the issue with the clutch Mr F complained about couldn't be replicated.

Our investigator explained this didn't change her opinion. Moneyway didn't respond, so the complaint was passed to me to decide.

I sent Mr F and Moneyway a provisional decision on 10 October 2024. My findings from this decision were as follows:

Firstly, I'd like to explain to both parties that I may not comment on every point raised nor every piece of evidence. I'll instead focus on what I think are the key facts and what I consider to be the crux of Mr F's complaint. This reflects the informal nature of our service.

Mr F complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr F's complaint about Moneyway.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This says, in summary, that under a contract to supply goods, the supplier – Moneyway here – needed to make sure the goods were of 'satisfactory quality'.

Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors. In this case, it's important to note the CRA explains the durability of goods can be considered when thinking about satisfactory quality.

I'm satisfied a court would consider relevant factors, amongst others, to include the car's age, price, mileage and description.

Here, I'll consider that the car Mr F acquired was used, was around six years old and had covered around 84,000 miles. I'm satisfied a reasonable person would not have the same standards for its quality and condition as they would a newer car. And I'm satisfied they would expect parts of the car to have suffered from wear and tear. But, given the car cost just under £9,000, I think they would expect it to be free from anything other than relatively minor faults and would still expect trouble free motoring for at least a short time.

What I need to consider here is whether the car was of satisfactory quality or not.

Mr F has raised several issues with the car, so I'll consider these in turn.

Clutch:

Mr F says the clutch was slipping shortly after acquiring the car. I have not been provided with job sheets from the dealer. But I have seen some testimony and I've considered what the dealer said about this from when it had the car for repairs:

"Visit 1: 22nd June 2023 - Customer stated the clutch had dropped to the floor, but on inspection it was fine, and technicians couldn't replicate the issue, so the Car was taken away by customer. 83,799 miles."

"Visit 2: 5th October 2023 - also bled clutch for air pockets - as he was complaining it wasn't quite right. 85,688 miles. "

"Clutch is fine and has no end-of-life wear"

So, it does appear the dealer attempted some work on the clutch when it had the car in October 2023, but it seems that this was based on what Mr F told it, rather than a fault being identified.

Thinking about all of this, along with what Mr F said, I've not seen enough to persuade me there was a fault with the clutch.

TMPS:

It doesn't seem in dispute there was an issue with the TMPS in this case. But it's worth explaining I also agree there was a fault here. Mr F says he noticed a warning light appearing on the drive home from collecting the car. The first time it's noted by the dealer was from the visit on 5 October 2023:

"Customer had TPMS warning light on dash, we changed 2x tpms sensors for him"

Mr F has explained the dealer did work on the TMPS on the initial visit from June 2023, where it reset the system, although this isn't reflected in the testimony from the dealer. But, I again need to think about the fact I've not been provided with job sheets from the time to show exactly what was worked on.

I've thought about this, and given Mr F has been consistent with what he's said and has provided a detailed timeline, I think it's most likely this issue did appear shortly after he got the car and he at least made the dealer aware.

The dealer explained it thought this issue was likely caused by an impact such as a pothole, but I haven't seen any evidence to back this up. Given how soon Mr F raised this issue, I think it's more likely it was present or developing at the point of supply. Even if I accepted the issue only occurred in October 2023, Mr F had only covered around 1,700 miles in the car at this point.

I've then thought about whether this issue meant the car was of unsatisfactory quality or not. I accept this wouldn't impact the performance of the car. But, the TMPS is part of the safety features of the car – the warning system not working could mask an issue with the tyres. And I've considered that an illuminated TMPS light would also mean the car would fail an MOT.

Thinking about all of this, I'm satisfied a reasonable person wouldn't expect the car to have had this issue when supplied. If it did appear later, I also think they wouldn't expect the car to develop this issue within around 1,700 miles of driving, and so would not consider the car to have been durable.

It follows I'm satisfied this means the car was of unsatisfactory quality due to the TMPS issue.

Wet belt:

The wet belt is first mentioned by the dealer when the car was recovered to it in November 2023:

"Visit 3: 6th November 2023 - Car has broken down, and was recovered in. The wet belt in the engine has not snapped but looks like pulley teeth are missing causing timing to go out."

The dealer has explained it believes this issue was caused by wear and tear and was not present or developing at the point of supply.

I do need to consider that Mr F raised an issue with the engine misfiring earlier than this – which it is my understanding could be a symptom of a fault with the timing belt. I've not seen any other explanation for the engine misfiring. And so, although it was not noted by the dealer until later, I think it's most likely this issue was in fact present or developing at the point of supply.

But, either way, I again need to consider the car's durability. While a wet belt is a serviceable item, its failure can cause serious issues including catastrophic engine failure. While the mileage isn't noted by the dealer, given the timescales and other available information I think it's likely this failed within the car covering around 2,000 miles. Taking everything into account I don't think a reasonable person would consider this to be durable.

So, it follows I think the car was also of unsatisfactory quality due to the wet belt issue.

Exhaust:

I've looked at the invoice from the garage here dated 14 March 2024. This said:

"ON INSPECTION THE EXHAUST FLEX IS BLOWING"

"ADVISORY:- NOT TO DRIVE UNTIL REPAIRED"

Mr F says the garage told him this was due to a previous failed repair. But, I need to consider that I've not seen anything, other than Mr F's testimony, to back this up.

I'm satisfied this shows a fault. But, it appears this could be due to a previous fault not being repaired, a new fault caused by the repairs that took place or a new fault now coincidentally appearing.

Thinking about this, at the point the car was inspected Mr F had had the car for around nine months. I differ from our investigator here in that I haven't seen enough to persuade me this most likely shows a fault present or developing at the point of supply, nor a failed repair. And given the timescales, I don't think a reasonable person, assuming the fault isn't linked to earlier issues, would consider that this means the car isn't durable.

So, in isolation, I don't think the most recent exhaust issue means the car is of unsatisfactory quality. But, whatever happened here, given a fault occurred again, I'm satisfied this does add to the overall picture that the car Mr F acquired was not of satisfactory quality and adds weight to the conclusions I reached above.

In summary, I find that the car was of unsatisfactory quality due to the faults with the TMPS and wet belt.

Putting things right:

I've then gone on to consider what, if anything, Moneyway needs to do to put things right.

Moneyway argue that as repairs took place, Mr F's rights under the CRA have been met. Mr F has said he believes he has a right to reject the car. Thinking about everything, I agree with Mr F here. I'll explain why.

The CRA explains Mr F would have the final right to reject if:

"after one repair or one replacement, the goods do not conform to the contract"

'Conform to the contract' here can be taken as meaning the car being put back to

satisfactory quality. So, in other words, if the car had a fault which made it of unsatisfactory quality, it was repaired, but then still remained of unsatisfactory quality, Mr F would have a right to reject it.

I've explained above that I'm satisfied the car was of unsatisfactory quality due to the TMPS issue. This was repaired at the beginning of October 2023. But, at the end of October 2023, another fault occurred with the wet belt, which I've explained above also meant the car was of unsatisfactory quality. So, at this point Mr F would've had the right to reject the car, if he exercised this.

I should point out to both parties that this reasoning is also strengthened by the issue with the mis firing engine. As I've explained above, I've seen no evidence this could've been due to anything other than the timing belt. If this was the case, I've seen evidence Mr F made the dealer aware of the misfire before the car was taken for a repair at the beginning of October 2023. So, I think the dealer also had the opportunity to repair this issue at this point.

I can see Moneyway were informed Mr F wanted to reject the car on 2 November 2023. I'm satisfied at this point repairs hadn't yet been carried out, and I can see from invoices that it appears the dealer had not yet ordered the parts to complete the repair.

So, I'm satisfied that Mr F had a right to reject the car and exercised this right before repairs had taken place. I find that Moneyway should've allowed him to reject the car at this time, in line with his rights under the CRA. Mr F has explained he has stopped using the car, which seems reflected in the evidence I've seen. So, I think it's fair and reasonable he is now allowed to reject it.

I've considered if Moneyway needs to do anything else to put things right. Our investigator explained she thought Mr F should be reimbursed 20% of repayments for the time he had use of the car, due to it not performing as it should. Given he explained the issues with the TMPS began very shortly after he got the car, and his testimony about the other issues, I'm satisfied he did have impaired usage and this amount seems reasonable.

That being said, Mr F also had periods where he was without the car at all. When it was initially returned on 22 June 2023, Mr F said the dealer had it for seven days. On 5 October 2023 Mr F said the dealer had it for ten days. When the car broke down on 31 October 2023, it wasn't returned from repair until 28 December 2023, when Mr F says he stopped using it. Mr F also says he was left without a courtesy car when the repairs took place.

Thinking about this, I don't think Mr F should pay for the time he was without the car. So, Moneyway should reimburse him the payments due for the periods he was without it. And I think it should reimburse all payments since the point the car broke down – from 31 October 2023.

Mr F has also explained the impact this has had on him and his family. I think it must have been upsetting to have to keep returning to the dealer for repairs. And he's now had to store the car for some time without using it. So, I agree with our investigator that the situation has caused him distress and inconvenience and I think £200 is reasonable to reflect this.

I want to reassure both parties that I've carefully considered all the other comments and points raised about this complaint. But these do not change my opinion.

I gave both parties two weeks to come back with any further comments or evidence.

Moneyway didn't respond. Mr F came back and said he agreed with my provisional 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.

Having thought about all of the information and evidence again, I still think this complaint should be upheld. This is for the same reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint and instruct Secure Trust Bank Plc trading as Moneyway to put things right by doing the following:

- Cancel the agreement with nothing further to pay
- Collect the car at no cost to Mr F at a time and date convenient for him
- Reimburse Mr F's deposit of £1,000*
- Reimburse Mr F pro rata payments from 22 June 2023 for seven days*
- Reimburse Mr F pro rata payments from 5 October 2023 for ten days*
- Reimburse Mr F all repayments made post 31 October 2023*
- Reimburse Mr F 20% of all other repayments made to the agreement*
- Remove any negative information from Mr F's credit file in relation to the account
- Pay Mr F £200 to reflect the distress and inconvenience caused

*Moneyway should pay 8% simple interest on these amounts from the time of payment to the time of reimbursement. If Moneyway considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 25 November 2024.

John Bower
Ombudsman