

The complaint

Mr K complains about the quality of a used car he acquired through a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway ('Moneyway'). Mr K says that the car wasn't of satisfactory quality.

What happened

Mr K's complaint is about the quality of a car he acquired in August 2022. The car was used, and it was first registered in 2014. So, it was around seven years old when Mr K received it. It had covered 62,208 miles.

Mr K acquired the car using a hire purchase agreement that was started in August 2022. The vehicle had a retail price of £14,200. Mr K paid a £2,350 deposit meaning £11,850 was financed.

This agreement was to be repaid through 60 monthly instalments, there were 59 instalments of £317.97 followed by a final instalment of £327.97. If Mr K made the repayments in line with the credit agreement, he would need to repay a total of £21,438.20.

Below is a summary of the issues complained about by Mr K and the investigation and repair work that has been carried out by the dealership, alongside what has happened in respect of the complaint.

The car broke down in June 2023 and was looked at by a recovery company. This organisation suspected that the engine was locked due to a broken timing chain and the car couldn't now be driven as it was 'stuck in park'. The car was recovered at this time.

Mr K took the car to be assessed by a local specialist garage. The garage looked at the information the car itself provided and said that this showed that several services had been missed. This may have led to the car not having the correct amount of oil which could have been a contributory factor in the timing chain snapping. It outlined the work that would need to be completed to repair the car, but estimated this could cost up to £11,000 (depending on what needed repairing). The car had travelled 72,258 miles at the time the garage looked at it.

Mr K complained to Moneyway about the quality of the car. Moneyway didn't fully respond to Mr K and he brought his complaint to the Financial Ombudsman Service.

Our Investigator upheld Mr K's complaint. He said it was clear the car had a fault as the timing chain was broken. He went on to note that the garage which assessed the car thought that this was due to the lack of servicing of the car before Mr K had acquired it. And so, our Investigator thought the car wasn't of satisfactory quality. He should now be able to reject the car and receive compensation based on this.

Moneyway initially didn't agree with the Investigator, and I've noted what it said about the car servicing intervals and Mr K's use of the car. And I've read the independent report it went on

to provide. All of which suggests that the problems with the car were due to driving, or maintenance errors, on the part of Mr K.

But it later agreed to settle the complaint largely in the way the Investigator had recommended. It did want to reduce the compensation payment by any damage that the vehicle had suffered when Mr K owned it.

Mr K hasn't agreed to the compensation. He thought that the car should be repaired and said that this was economical, and he provided estimates that he said show this was the case, and that he should receive greater compensation for the expenses he has incurred due to not being able to use the car, such as his public transport costs. He didn't return, or enable the return, of the car to Moneyway.

Because there was no agreement, our Investigator reconsidered the complaint. Our Investigator's second and third opinions about the complaint addressed the further issues Mr K has raised about the proposed compensation.

Our Investigator noted that it was essentially now agreed that the car wasn't of satisfactory quality and the agreement should be ended and the car collected. Our Investigator didn't think that further compensation should be paid for any costs Mr K's wife had incurred, any alternative transport costs Mr K had paid for, any PCN fines Mr K had incurred. He didn't think the award for distress and inconvenience should be increased after considering Mr K's health and other circumstances.

He did think that Mr K should have the car recovery fees he had paid reimbursed, if Mr K could show he paid these. He also said that Moneyway could reduce the compensation by any damage to the car above fair wear and tear. This should be using British Vehicle Rental and Leasing Association ('BVRLA') guidelines for this. Further, that it ought not include any damage caused by the car not being used for some time.

There was some further correspondence, but no new issues were raised. I've noted that agreement was reached in respect of some of the issues Mr K raised about the compensation. But he has continued to say that he doesn't entirely agree, so this matter has been passed to me to make a final 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.

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 was good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Moneyway as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is relevant 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'.

To be considered 'satisfactory', the goods would need to 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.

It's been established that the car Mr K acquired developed a fault with the timing chain and this led to it breaking down. This could have been due to a lack of servicing of the car before Mr K owned it. I also agree that this means the car wasn't of satisfactory quality. And Mr K should be compensated on this basis. Moneyway has agreed to this and has tried to implement it the compensation our Investigator recommended. I don't think whether the car was of satisfactory quality is in dispute, and so I won't comment further about this.

And Whilst Mr K does now agree in principle that the car should be rejected, he doesn't think the compensation goes far enough. He thinks greater amounts should be paid for in respect of:

- Some parking charge notices (PCN) that he has received.
- The consequential losses that he has had to pay when he couldn't use the car such as alternative travel expenses, and other related costs.
- His wife has also incurred costs due the loss or lack of availability of a family car.
- He would like the award for the distress and inconvenience this has all caused increased as this has caused a deterioration in his health.

I've dealt with each of these points in turn in the following paragraphs.

I don't think the PCN's Mr K has been subject to should form part of the compensation. I've not seen any evidence that persuades me they are related to the quality of the car or an action, or inaction, of Moneyway. So, I think Mr K should be responsible for these.

Mr K has provided a spreadsheet that he says shows the alternative travel and transport costs he has incurred when he wasn't able to use the car. This does show some payments for the underground, and other public transport costs, and it also has items such as hotel accommodation for longer trips. I do note that Mr K has agreed that items such as the hotel accommodation should not now be refunded.

But it has been agreed that the finance payments Mr K made, from the point when the car broke down, should be refunded to him. And interest should be added to these. As a starting point I think this is adequate compensation for the loss of use of the car and recognition that he would have to pay for alternative transportation when he couldn't use the car. Mr K would always incur some kind of transport costs and I don't think refunding the finance repayments, plus what he also paid to be mobile, is reasonable. I don't think he would have been able to travel without costs. So, I think a refund of the finance repayments from the time the car broke down is adequate compensation here.

I agree that Mr K should be reimbursed for the recovery costs he paid to transport the car. He should provide an invoice (or similar) to show what these were. Looking at what he has already provided, I'm not persuaded that it's reasonable to include things like his recovery organisation membership, these are costs he would have incurred in any event during the period when he could drive the car. But recovery costs to a garage, and then back to his place of residence, for example, would be reasonable. And Mr K should provide invoices, or similar, to show this.

Mr K thinks that he should receive compensation on the basis that his wife incurred travel costs due to the loss of a family car. Mr K has said that his transport costs were effectively doubled as there were times when both him and his wife needed transport and they could have used the car for this. Whilst I can understand what Mr K is saying here, as our Investigator explained, Moneyway isn't responsible for any costs Mrs K may have incurred herself. And I'm not persuaded that because Mrs K could also sometimes have benefited

from the car means that I should make an award greater than a refund of the finance repayments.

Moneyway thinks that any damage to the car, above ordinary wear and tear, should be deducted from the compensation. I agree this is reasonable here as Mr K was able to drive the car a significant amount – over 10,000 miles - and he should pay for any damage he caused, but not for any wear and tear. The BVRLA has issued guidelines about how to do this and Moneyway should adhere to these. Moneyway should provide full information about how any charges have been deducted in order that Mr K can consider the reasonableness of them.

It's clear that Mr K has suffered some distress and inconvenience because of all of this. And he has had to find alternative transport over a long period of time. He says this may have affected his health negatively and he has outlined how he says this has affected his family and some career opportunities he may have had.

Whilst I don't doubt this was frustrating for Mr K, I've also noted that Moneyway agreed to collect the car and unwind the finance over a year ago now. It has not been able to do this as Mr K didn't disclose the location of the car. I think this could have been resolved much earlier, and Mr K could have avoided a lot of this inconvenience, if this had been done.

Overall, I think the £300 suggested by our Investigator for the distress and inconvenience he experienced is fair.

I'm upholding this complaint and Moneyway should put things right as I've outlined below.

Putting things right

I uphold this complaint against Secure Trust Bank Plc Limited and it should now.

- Collect the car from Mr K at no cost to him. Mr K should assist with this.
- The finance agreement should be ended, with nothing further to pay.
- Refund the deposit/part exchange contribution.
- Refund all the finance payments, which have been taken, after 26 June 2023 after which Mr K was unable to use the car.
- Refund the costs incurred for having the car recovered if Mr K can provide evidence – in the form of an invoice - of what he paid for this.
- The car should be inspected for any damage which is outside the BVRLA guidelines for fair wear and tear. If damages are found, Moneyway can deduct reasonable charges for this. If Mr K feels the deductions are not fair, this would need to be raised as a separate complaint to Moneyway.
- Pay interest on all refunded amounts, at an annual rate of 8% simple, from the date of the original payments, to the date of settlement.
- Pay a further £300 compensation for the distress and inconvenience caused.
- Remove any negative entries from Mr K's credit file if appropriate.

If Moneyway considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr K's complaint.

Secure Trust Bank Plc should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 April 2025.

Andy Burlinson
Ombudsman