

## **complaint**

Mr L complains that Secure Trust Bank Plc trading as Moneyway set up a hire purchase agreement for the wrong car.

## **background**

Mr L was looking for a car through a broker. During that process, Mr L discussed a number of different cars. Mr L signed a hire purchase credit agreement to hire a car with Moneyway. But when he went to collect it, he says it wasn't the car he'd agreed to hire.

Mr L didn't pick up the car – and he doesn't consider that it's fair that Moneyway is pursuing for the amount due under the credit agreement.

Our investigator said there was no evidence that the car financed under the agreement was one that Mr L had discussed with the broker – but there was evidence that Mr L had asked for another car. The investigator said that Mr L wasn't aware of what the registration number was – so there was nothing on the credit agreement to alert him that there was anything wrong. And Mr L's actions when he went to collect the car support what he says.

Our investigator said that Moneyway should unwind the credit agreement, remove any trace of it from his credit file and pay him £300 for any trouble and upset.

Moneyway didn't accept what the investigator said.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

Under section 56 of the Consumer Credit Act 1974, Moneyway is responsible for negotiations conducted by a credit broker.

Mr L says he wanted to buy a black BMW 11 plate with 60,000 miles from Highline Motors Ltd. The car that was supplied was a silver BMW 59 plate with 90,000 miles from Highline Cars.

We have some of the emails exchanged between Mr L and the broker who arranged the car and the finance. The last car I can see that Mr L and the broker discussed in those emails (before they called Mr L to confirm the agreement) was a BMW 120D SE, 11 plate, with a price of £8,495. Mr L sends a screenshot of that car at 3.02pm on 26 August 2016 and confirmed the dealership was Highline Motors. But it appears that the emails are incomplete. I'm surprised by the way that such a significant purchase and associated finance was initially arranged – there was scope for confusion during those negotiations.

The broker spoke to Mr L by phone soon after the last email. In that call the broker confirms that Mr L is financing a BMW 118D Sport, 59 plate, for a price of £8,442 – and Mr L agrees to that. Mr L also later signed a credit agreement that included details of the same car. The model of the car, the registered year and price are clearly set out on the loan agreement. Mr

L signed the agreement. And the broker spoke to Mr L again and said it was making the payment to Highline Cars.

Bearing in mind the price, registration year and model are different from what Mr L says he wanted, I might have expected him to question this. But I can see that the name of the dealer and other details of the car are very similar to what Mr L says he was expecting.

I accept that it's unclear from the emails between Mr L and the broker, which car Mr L wanted. But I can't see that the actual car that was eventually supplied or the dealer the car was actually supplied from were discussed at all.

Mr L says that the main reason he chose the car was the colour and the location of the motor dealer who was selling the vehicle – he didn't pay that much attention and wasn't concerned with the other details, as long as it was a BMW 1 series. He says he only realised that the car wasn't what he wanted when he phoned the motor dealer to collect the car and found out it was in Manchester, not Birmingham as he was expecting.

The investigator was persuaded by Mr L's explanation of what happened. I've also spoken to Mr L. He has given a convincing and credible account of what happened – and in particular that the car supplied wasn't the one he wanted or had agreed to.

Moneyway says its position is that Mr L suffered buyer's remorse and he simply changed his mind about the car.

This is a finely balanced case. It is difficult to overlook that Mr L had the chance to verify the vehicle details in the phone call and that he signed a credit agreement agreeing to the car that was supplied. I would usually be very reluctant to go against that – Mr L has a responsibility for his decision to sign the agreement.

On the other hand, Mr L has given a clear, consistent and credible account that this isn't the car he wanted. If it was, then it would be reasonable for the broker to be able to produce some evidence that the car supplied was mentioned during the email correspondence that ended only shortly before the phone call and credit agreement were sent. Everyone accepts the emails were how the purchase and associated credit were arranged – there were no separate negotiations.

Further, all of the cars discussed were very similar. Not unreasonably, it was the colour and location of the dealer that Mr L was concentrating on – and he had no opportunity to realise these were different to what he had agreed to until the agreement was in place

On balance, I'm not persuaded that the car supplied was as described to Mr L. And his subsequent actions support that there has been a misunderstanding. I think it was more likely there was some confusion by the broker – and there has been a mix up between similar cars and dealers with similar names. As the car was not as described during negotiations then it wouldn't be fair to hold Mr L liable for that agreement.

In any event, putting aside whether the car supplied by Mr L was what he agreed to, I asked Moneyway to demonstrate that it had treated Mr L fairly once it found out what had happened. I drew its attention to the FCA's principles for businesses – and in particular to have due regard to interests of its customers and treat them fairly and communicate in a way that is clear fair and not misleading. It said it was unable to give us any evidence that it had treated Mr L fairly.

It was clear to Moneyway from the outset that Mr L didn't want the car that was supplied. I think it could have done more to set out in a clear and fair way what Mr L's options were so that he could make an informed choice about what to do. As I understand it Mr L's car was repossessed as Moneyway treated it as abandoned.

I think it's likely if Moneyway had set out more clearly than it did what the options then Mr L would have picked up the car – and he says that is what he would have done. So I think Mr L has lost out because of the way that Moneyway dealt with him – and that has caused him unnecessary trouble and upset.

Overall and after careful consideration I think it would be fair and reasonable in the individual circumstances of this complaint to unwind the agreement as set out by the investigator.

### **my final decision**

My final decision is that Secure Trust Bank Plc should:

- Refund all payments that Mr L has made.
- Pay interest on each of the above payments at 8% simple per year from the date each payment was made until date of settlement.
- Cancel the credit agreement and write off any outstanding balance.
- Remove any trace of the agreement from Mr L's credit file.
- Pay Mr L £300 for any trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 June 2017.

Ken Rose  
**ombudsman**