

complaint

Mr E is unhappy with a used car he acquired through a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway, as he doesn't think it was of satisfactory quality.

Miss E, Mr E's partner, has made most of the submissions here and to the businesses involved. It also seems she is the person who uses the car most regularly. For simplicity, as the agreement is in Mr E's name – and he is therefore the eligible complainant, I refer to Mr E throughout.

background

The background to this complaint and my initial conclusions, were set out in my provisional decision dated 7 February 2019 - a copy of which is attached and forms part of this final decision.

I asked both parties to provide any more comments or evidence before I reconsidered the complaint and issued a final decision.

Moneyway replied saying it accepted my provisional decision and had no further points to add.

Mr E replied saying he disagreed with my provisional findings for the following reasons:

- he started having issues with the car only four months after he got it
- he disagrees that over revving or the issue with the "kickdown" function would've been noticeable initially and says it worsened at the point of his complaint
- the exhaust tailpipe repair and turbo chargers inlet hose repair, including the "back box", have not been completed properly and have caused further issues with the car
- he's had costs of over £400 in getting the car to pass it's MOT in February 2019
- damage has been caused to the SAMS unit due to water ingress and to the stereo screen either while the car was at the third party garage who completed an assessment for Mr E, or at the garage who completed the repairs for Moneyway
- the car now requires numerous repairs in order to make it roadworthy

Mr E also feels the £200 payment suggested for his trouble and upset does not fairly compensate him for the distress and inconvenience he and his family experienced. He also says that while the supplying dealership did offer to fix the car, the dealer changed his mind a number of times which added to the delays.

my findings

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

As I set out in my provisional decision, in thinking about whether the car was of satisfactory quality I considered if it meets 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. Which in a case involving a car, is likely to involve the relevant circumstances a court might take into account like the age and mileage at the time of sale and the car's history.

Here the cash price of the car was £12,500. It was eight years old and had travelled around 81,000 miles when Mr E got it. By the time Mr E took the car for its MOT in February 2019, the car was nearly 10 years old and it had done over 84,000 miles.

Mr E says that the issues with the car started only four months after he bought it, that the over revving and the "kickdown" function problem *were* present at the point of supply, and that the car still has the issues that he initially reported to Moneyway. But I haven't seen anything that persuades me to reach a different finding than I did in my provisional decision.

I set out in my provisional decision what the independent inspection completed in July 2018 showed, and what the engineer's comments were having looked at the car. Having considered everything I still think it's likely Mr E would've raised the issues with the over revving and the "kickdown" function as soon as he became aware of them, and that they would've been noticeable if they were present at the point he acquired the car. And, other than the issues with the exhaust tailpipe and the turbo charger inlet hose, I haven't seen anything that persuades me that the other issues Mr E raised were present at the point of sale or make the car of unsatisfactory quality at the point of supply.

Mr E has raised concerns that the exhaust tailpipe repair and the turbo charger inlet hose repair weren't properly completed or that the repairs have failed and caused further issues with the car - saying that he's had to spend over £400 in getting the car to pass MOT in February 2019.

Moneyway have provided invoices for the repairs it completed in October 2018, which have also been shared with Mr E. And I've seen the report from Mr E's garage regarding the new work done on the car in February 2019, and the further work it says is needed on the car.

I've talked to Mr E's garage as well as the garage that completed the repairs for Moneyway and reviewed all the invoices Mr E and Moneyway have provided. The invoice Mr E provided from February 2019, show costs to replace brake pipes, bulbs and sundries. These are all parts that will be affected by normal wear and tear, and will need replacing at various points in a car's life span. Based on the age of this car and the total mileage it's completed I think it's most likely that these additional parts needed replacing due to normal wear and tear rather than being issues that were present at the point of supply - even if Mr E has done limited mileage since the car was returned to him in November 2018.

Indeed the garage used by Mr E confirmed my thoughts about this saying that the parts were most likely worn due to normal wear and tear. What's more, these weren't issues that were previously identified by earlier inspections during the prior year, so I think it's most likely that these were caused by normal wear and tear due to the overall age and mileage of the car.

Mr E has also raised concerns regarding damage caused to the SAMS unit as well as further repair work that Mr E says is required post MOT to make the car roadworthy. The March 2019 invoice from Mr E's garage refers to excess play in the turbo impeller and says the valve stem oil seals are worn.

Mr E says these issues are related to either the repairs not being done properly or having failed, or they're a continuation of the issues that he originally raised about the car. And I'm aware that Mr E's garage has questioned whether Moneyway has properly completed the recommended repairs.

Having reviewed all the invoices and considered everything both parties have told me, I'm persuaded that Moneyway has completed the work as detailed on their invoice and that the invoices they've provided are genuine. Moneyway have provided invoices that set out the work completed as well as separate invoices for the manufacturer parts ordered for the repairs. And I haven't seen anything that suggests that the excess play in the turbo impeller is related to the replaced turbo charger inlet hose, or that the valve stem oil seals are related to the repairs not having been done properly or having failed.

As with the work done in February 2019 by Mr E's garage, these are parts that are affected by normal wear and tear and I haven't seen anything that suggests they were present at the point of sale or make the car of unsatisfactory quality when it was supplied to Mr E. They weren't identified until nearly a year after Mr E acquired the car and they weren't identified in the independent inspection report done in July 2018.

So I'm not persuaded that the work completed in February 2019, or the work that is now required on the car, is due to a failure of the repairs completed in October 2018 by Moneyway or as a result of anything other than normal and inevitable wear and tear.

Everything I've seen suggests that any further issues Mr E has experienced with the car are new issues, which I can't fairly hold Moneyway liable for.

Mr E also says that there are scratches on the stereo screen that weren't present before the car was returned to Moneyway for repairs. But for me to hold Moneyway liable I have to be persuaded that the damage was caused while it was with Moneyway, or a business acting for Moneyway. Mr E's car has been into a number of garages at different points some of which were acting for Mr E rather than for Moneyway, and it is unclear exactly when the damage occurred. Because of this I can't fairly say who caused the damage and can't hold Moneyway liable for it.

I'd like to assure Mr E that I have thought carefully about everything that he's told us, including the reasons he remains unhappy with the car, the issues he's had with the car and the distress and inconvenience he says his family has experienced. But overall I haven't seen anything that persuades me I should depart from the decision and award that I reached in my provisional decision, although I appreciate that Mr E will be very disappointed by this.

I've seen Mr E's recent emails and I'm very sorry to hear that he has lost his job. As I'm not holding Moneyway liable for any of the issues that Mr E has had with the car since it was returned in November 2018 (as set out above), I also couldn't fairly hold Moneyway liable for any losses that Mr E has experienced as a result of the car currently not being roadworthy.

As set out in my provisional decision, due to loss of use of the car Moneyway should refund Mr E his June 2018 and October 2018 hire purchase payments, as well as paying him £200 for his distress and inconvenience.

my final decision

My final decision is that I uphold this complaint

To put things right Secure Trust Bank Plc trading as Moneyway should:

- refund Mr E June 2018's and October 2018's monthly hire purchase payments (if not already refunded) and pay 8% simple interest from the date of payment until the date of settlement*,
- pay Mr E £200.00 for the trouble and upset caused.

* HM Revenue & Customs requires Secure Trust Bank Plc trading as Moneyway to take off tax from this interest. Moneyway must give Mr E a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 8 August 2019.

Lisa Lowe
ombudsman

provisional decision

complaint

Mr E is unhappy with a used car he acquired through a hire purchase agreement with Secure Trust Bank Plc trading as Moneyway, as he doesn't think it was of satisfactory quality.

Miss E, Mr E's partner, has made most of the submissions here and to the businesses involved. It also seems she is the person who uses the car most regularly. For simplicity, as the agreement is in Mr E's name – and he is therefore the eligible complainant, I refer to Mr E throughout.

Background

Mr E acquired a used car in January 2018 through a hire purchase agreement. The car was first registered in 2009, had travelled around 81,000 miles and the total cash price of the car was £12,500 (excluding any finance charges, interest or fees). Mr E paid a deposit of £6,000 and financed the balance.

Mr E says he had issues with the car within six months of acquiring it. In June 2018 when the engine management light came on he contacted the supplying dealership to let them know about the problems. He says he was told to get in touch with the warranty company to see if he could claim under a policy that was purchased at the same time as he got the car.

Mr E took the car to a third party garage approved by the warranty company for assessment. The garage identified issues with the turbo pressure and the exhaust, saying that the air intake pipe had been previously repaired, but the repair was of a poor standard. They also said that the exhaust had been repaired but was "not of a standard expected".

Mr E got in touch with the warranty company and they told him that the policy didn't cover pipes or hoses. So the issues identified with the exhaust and turbo wouldn't be covered by the policy. At this point Mr E contacted Moneyway to raise a complaint. Moneyway asked the broker that arranged the finance to deal with the complaint on their behalf and let Mr E know.

In the following weeks, Mr E was in touch with Moneyway, the supplying dealership, the warranty company, the third party garage and the broker trying to arrange repairs to the car.

And in early July 2018, as the repairs hadn't happened, Mr E asked Moneyway if he could reject the car.

Moneyway arranged for an independent inspection of the car in July 2018. The inspection company found an issue with the "kick down" function, which resulted in the car not performing correctly. They also said the exhaust tailpipe had been crudely repaired and the off side "back box" had been removed and replaced with a poorly fabricated exhaust pipe. And that the turbo chargers inlet hose was covered in black silicone sealant and excessive cranking time was required to start the engine.

Moneyway discussed the report with Mr E and agreed to deal with the exhaust repair and the turbo inlet pipe repair at no cost to him, but said they deemed the other faults identified as wear and tear due to the time that had elapsed from when Mr E got the car and the mileage he had driven. Moneyway also told Mr E that they had the right to one repair, and as such Mr E couldn't reject the car.

During this time there appears to have been confusion and disagreement about whether or not the repairs to the exhaust and turbo would be covered under the warranty policy that

Mr E held. And the relationship between Mr E and the supplying dealership broke down. As a result Mr E asked that the repairs be carried out by a party other than the supplying dealership.

While waiting for the repairs to be agreed the car remained at the third party garage – who applied storage charges while the car was sitting with them. These charges were added to an outstanding invoice in relation to the assessment the garage had done when they had first received the car.

In August 2018 Moneyway issued their final response to Mr E. Moneyway confirmed they'd already refunded the equivalent of two months hire purchase payments to Mr E as a gesture of goodwill. They also offered to settle the invoice with the third party garage and said they would arrange for the car to be recovered from the garage. Moneyway said that while they'd agreed to repair the turbo inlet hose and exhaust they wouldn't allow Mr E to reject the car.

Mr E wasn't happy with Moneyway's response and brought the complaint to our service.

Mr E says that the repairs weren't completed in a reasonable timeframe and that the delays caused him and his family significant inconvenience – so felt he should be able to reject the car. He also asked to be reimbursed for costs including the hire car, loss of earnings, inspection costs and storage charges.

While the case has been with our service, Moneyway had the car repaired and settled the outstanding invoice with the third party garage. But Mr E has told Moneyway that he doesn't want the car back as he still wants to reject it.

An investigator looked into Mr E's complaint and upheld it in part saying that Moneyway agreed the car was of unsatisfactory quality at the point of sale. The investigator felt Moneyway hadn't repaired the car within a reasonable timeframe, which had caused Mr E and his family significant inconvenience.

So the investigator recommended Moneyway should end the agreement without Mr E having to pay anything further and refund any outstanding monthly payments made by Mr E from August 2018 onwards. She also thought Moneyway should reimburse Mr E's car hire costs and pay him £500 compensation.

Mr E agreed with the recommendation, but Moneyway disagreed.

Moneyway responded saying that under the Consumer Rights Act 2015 they were allowed one attempt to repair the car. They also said the dealership had consistently offered to repair the agreed issues, but Mr E had refused these offers. Moneyway also said Mr E took an unqualified decision that the car was dangerous to drive and left it at the third party garage. They said any delays would've been reduced if Mr E had settled the storage charges with the third party garage, so the car could be released for repair earlier.

Moneyway also said that they'd refunded Mr E the equivalent of three contractual monthly payments so Mr E wasn't financially disadvantaged. Moneyway accepted that while there were some delays on their part these were significantly compounded by Mr E's actions and demands.

As such Moneyway didn't feel it was reasonable to allow Mr E to reject the car, and asked for an ombudsman to review the case.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. At this stage I'm minded to uphold the complaint but with different redress to that recommended by the investigator, and I'll explain why below.

was the car of satisfactory quality

Legislation – in this case the Consumer Rights Act 2015 (CRA) – implies a term into the supply contract that the car must be of satisfactory quality. As the supplier and finance provider, Moneyway is responsible for the quality of the car it provided under the agreement. So I've considered whether I think the car was of satisfactory quality.

The CRA says the quality of goods is 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 might take into account might include things like the age and mileage at the time of sale and the car's history.

Here the car cash price of the car was £12,500. It was eight years old and had travelled around 81,000 miles when Mr E got it.

Moneyway have agreed that the previous poor repair to the exhaust tailpipe and the black sealant around the outer casing mean the car wasn't of satisfactory quality at the point of supply. But for completeness, I have still considered this issue.

Mr E has raised other issues including that the car is misfiring, there is excessive smoke from the exhaust, the car isn't revving correctly, and there is a problem starting the car. The independent inspection report from Moneyway indicates that no misfiring was detected during the inspection or test drive and no excessive smoke was seen from the exhaust. But they did say that the car required "excessive cranking" to start the engine. Also that the "kick down" function would not operate resulting in the vehicle not performing correctly and over revving being present. The independent assessor suggests the excessive cranking and over revving would've been easily noticeable to the lay person, if they were present at the point of acquisition.

Mr E has challenged the independent assessor's comments, saying that these problems wouldn't have been noticeable to a lay person. But having considered everything I think it's more likely than not that these would've been noticeable at the point of acquisition. I also have to take into consideration that Mr E had the car for over five months before reporting any problems – and that he had completed just over 3,000 miles in the car during that time. And I think it's likely that Mr E would've raised the issues with the starting of the car, and the "kickdown" function or over revving at the point he became aware of them, rather than waiting over five months. So I'm not persuaded that they were present at the point of sale.

The independent inspection report Moneyway provided says "*exhaust tailpipe has been crudely repaired – The off side 'back box' has been removed and been replaced with a poorly fabricated exhaust pipe*" also that "*the turbo chargers inlet hose was found to be covered in black silicone sealant*". In addition, a letter provided by the third party garage says

“air intake pipe has been repaired but this repair is of poor standard. Exhaust has been repaired and sensors welded in, this is also of a standard not expected on this vehicle”.

Both reports suggest these two repairs were of a poor standard. And while I appreciate that the report Moneyway provided says they're unable to say whether these would've been present at the point of sale, given the way Mr E contacted all of the parties when the car broke down in June 2018, I think it unlikely he would have had repair work done on the car after he took possession of it without contacting the parties involved. I haven't seen anything to suggest that work has been done on the car since Mr E has had possession of it. So I think it's more likely than not that the poor repairs had been carried out on the car before he acquired it.

So I think the issues with the repairs on the exhaust pipe and the turbo chargers inlet hose, including the “back box” would've been present at the point of acquisition, and that these faults make the car of unsatisfactory quality, taking into account all of the relevant circumstances.

So, I've gone on to consider what the fair and reasonable remedy would be here.

how this should be put right

Moneyway said that the Consumer Rights Act 2015 gives them the right to one attempt to repair. But the Consumer Rights Act was set up to give consumer's protection in buying goods and to set out consumer rights. So rather than providing the trader with a 'right to repair' - it sets out the circumstances when traders should have an opportunity to repair the car.

Mr E says that he wasn't happy to accept repairs being done, because the business took too long to complete them which caused significant for his family. And, on that basis, he should have the right to reject the vehicle.

In deciding whether it's reasonable for Moneyway to repair the car, or for Mr E to reject it – I've taken into account all the relevant laws, legislation and rules – including the Consumer Rights Act. Ultimately I need to decide what is fair and reasonable in the circumstances of this case.

From what I've seen, the first time Mr E reported any issues to the supplying dealership was after he'd had the car for over five months in June 2018. And I think allowing the dealership an opportunity to repair the car wasn't an unreasonable starting point here. But I also need to consider whether how matters unfolded – and Moneyway and the dealerships actions - led to an unreasonable delay or significant inconvenience for Mr E.

Mr E raised his concerns with the supplying dealership in June 2018, who offered to take the car back and fix it at their local garage, but Mr E didn't want this to happen. It also suggested as an alternative that Mr E get the car repaired under a warranty policy he took out at the time he acquired the car. So, Mr E got in touch with the warranty company, who recommended he take the car to a local garage for an inspection. At the end of June 2018 Mr E had a call with this third party garage, the warranty company and the supplying dealership to discuss whether the repairs would be covered under his policy. The warranty company told Mr E that hoses and pipes weren't covered, so the issue with the exhaust and turbo wouldn't be covered under his policy.

From what I've seen the supplying dealership were still offering to repair the car, but Mr E wasn't satisfied with that as it would require him to return the car to Dundee. And due to a breakdown in trust with the supplying dealership he wanted the repairs carried out by a different provider. While the supplying dealership's location was a distance from Mr E, I don't think it was an unreasonable distance, especially considering that was where Mr E acquired the car in the first place. What's more, I can see that the broker had offered to collect the car to minimise inconvenience to Mr E. But Mr E rejected this offer, and got in touch with Moneyway.

In July 2018 Moneyway arranged for an independent inspection to be done on the car. I don't think this was an unreasonable course of action, especially as here, the car had travelled some distance from the point of supply and as have I found, some of the faults were more likely wear and tear issues. Moneyway called Mr E to discuss the findings less than a week after getting the report.

At the end of July 2018, Mr E let Moneyway know that the third party garage wouldn't release the vehicle without him paying their outstanding invoice – which included storage charges of nearly £600. As Mr E couldn't afford to pay this the car remained at the third party garage until early September, when the third party garage accepted a discounted settlement on their invoice from Moneyway for £190 – which was the cost of their inspection. But it looks like Mr E initially wouldn't consent to the car being released to Moneyway. So from what I've seen Moneyway wasn't the cause for these delays in August 2018, and once the car had been released from the third party garage, the repairs were completed within four weeks.

Overall the car took nearly four months to be repaired and returned to Mr E - between June and November 2018. But from what I've seen the car was ready to be returned in October 2018, and was only delayed till November 2018 at Mr E's request which I acknowledge was because of some difficult personal circumstances. Also I have to take into account that the car was held up during the month of August, while Mr E and Moneyway were trying to get the car released from the third party garage. But moreover, as I set out above, a reasonable starting point here – given the age and mileage of this car and when the fault first occurred – was for a repair at the dealership - and ultimately the dealership had offered to fix the car when the issue was initially identified in June 2018.

I acknowledge that there was dispute about using the warranty company, but that seems to have post-dated the dealership's first offer. And once Moneyway became involved, it acted relatively swiftly in arranging an inspection to ascertain its liability in July 2018, which again I think was reasonable in the circumstances.

Mr E also says his family experienced significant inconvenience as the car was used to take his children to and from school each day, as well enabling his partner to get to and from her place of employment. And that there are limited public transport links within his area, meaning the family had to use different methods of transport to get the children (who are different ages and at different schools) to their required destination and home each day. I have considered the overall impact on Mr E and his family and how to put that right below. But I also have to take into account that when something goes wrong with a car, there is always a level of inconvenience caused by having to arrange inspections, repairs, and usually there will be a period of time during which the car may not be available. This is especially so when there is disagreement over what faults are as a result of the car being supplied in an unsatisfactory condition and those that are fair wear and tear.

So, while I appreciate that the repairs took some time, I'm not persuaded that the delays were necessarily due to the supplying dealership or Moneyway. All things considered, I don't think Moneyway took an unreasonable length of time in getting the car inspected, released and repaired or that Moneyway's or the dealership's actions led to the significant inconvenience Mr E says he experienced.

Moreover, I can see that in August 2018 Mr E approved the repairs being completed on the car. Even though he was telling this service that he wanted to reject the car. And we've been provided with an invoice, which shows that this repair work has been completed at a cost of nearly £1,400. I know Mr E feels that Moneyway should've agreed to his specific assurance and requests. But having considered everything I don't think it's reasonable to now allow Mr E to reject the car.

As Moneyway have repaired the two issues with the exhaust pipe and the turbo chargers inlet hose – I won't be asking them to do anything further in regards to faults with the car.

the money paid by Mr E for a hire car

Mr E has asked for the costs of a hire car to be paid by Moneyway. But I have to take into account that Mr E would've had some costs in staying mobile during this time. As he didn't have use of the car he was financing for a period time, I think it's reasonable for Moneyway to refund his hire purchase payments for the month's he was without the use of the car – even though I think Mr E could've worked with Moneyway and the dealership to reduce some of the delay, which I have kept in mind when deciding what is fair here.

Moneyway has provided us with an account statement which shows that they've already refunded Mr E's hire purchase payments in July 2018, August 2018 and September 2018.

But from what I've seen Mr E reported the issues with the car in early June, and he was without the use of the car for most of June 2018, so Moneyway should also refund June's monthly hire purchase payment – if they haven't already done so. And as the car wasn't fixed and ready to be returned to Mr E until later in October 2018, I also think Moneyway should refund his October 2018 payment – if they haven't already done so. But, I don't think it's fair to ask Moneyway to refund any further payments after October 2018.

So Moneyway should refund Mr E his June 2018 and October 2018 hire purchase payments.

the inconvenience Mr E and his family experienced

Mr E has also asked to be reimbursed for Miss E's lost earnings, as she was unable to attend work without the car. And, he's asked for compensation for the trouble and inconvenience their family has experienced, including his kids being unable to attend summer club. As I mentioned previously, Miss E was not a party to the hire purchase agreement, so I can't fairly hold Moneyway liable for her employment losses. But I can consider any losses or inconvenience that Mr E experienced, and the impact on him and his family's inconvenience.

And I do think that Mr E suffered some inconvenience. Having thought about everything that has happened here, I think £200 is an appropriate award to reflect the overall inconvenience suffered by Mr E. So I'll be asking Moneyway to pay him £200 for his trouble and upset.

my provisional decision

For the reasons I've explained above I plan to uphold this complaint in part, unless I get any new information that makes a difference from Mr E or Secure Trust Bank Plc trading as Moneyway - by the date set out at the beginning of this decision, I intend to ask Secure Trust Bank Plc trading as Moneyway to do the following:

To put things right Secure Trust Bank Plc trading as Moneyway should:

- refund Mr E June 2018's and October 2018's monthly hire purchase payments (if not already refunded) and pay 8% simple interest from the date of payment until the date of settlement*,
- pay Mr E £200.00 for the trouble and upset caused.

* HM Revenue & Customs requires Secure Trust Bank Plc trading as Moneyway to take off tax from this interest. Moneyway must give Mr E a certificate showing how much tax it's taken off if he asks for one.

Lisa Lowe
ombudsman