

## **complaint**

Mr C and Miss E complain about problems with a car purchased with finance from Secure Trust Bank Plc.

## **background**

Miss E purchased a car in September 2016 and entered into a finance agreement with Secure Trust Bank Plc.

Miss E experienced a problem with a loss of power and the car going into limp mode the day she collected the car from the dealership. Miss E drove the car back to the dealership and was it remained there for a few days. The dealership told Miss E that the problem was a feature of Vauxhall cars, which is that the car goes into limp mode when low on fuel in order to conserve fuel and enable the driver to get to a petrol station. The dealership re-fuelled the car, re-set the fault codes and returned the car to Miss E.

Miss E continued to experience problems with the car. She says that power to the engine shuts down intermittently resulting in her not being able to drive the car until the power is restored. She says the car has broken down over 9 times as a result of this issue.

The car was inspected by a local Vauxhall dealership in February 2017. At the time of inspection the engine power light wasn't illuminated and the dealership wasn't able to diagnose a fault. The inspection identified fault codes in relation to the electronic brake control module. It found that the original ABS system had been removed from the car and replaced with a different one. The dealership subsequently replaced the ABS unit at no cost to Miss E.

Miss E says that this didn't resolve the issue with the engine shutting down intermittently.

Miss E complained again to Secure Trust in September 2017. She provided an inspection report from a third party garage which identified a fault with the throttle.

Miss E says that the issues with the loss of power haven't been resolved. She wants to reject the car and cancel the finance agreement.

Secure Trust says that the supplying dealership hasn't been given the opportunity to repair the fault. It wants Miss E to have the car inspected to confirm whether the fault was present at the point of sale.

The investigator upheld the complaint. She said that there was no evidence to suggest that the problem with the car going into limp mode was a feature of Vauxhall cars. She said that the supplying dealership had the opportunity to repair the car when Miss E returned the car to them immediately after purchase. She also said that the supplying dealership had arranged for the local dealership to inspect the car in February 2017. The investigator said that unless Secure Trust could provide evidence that the issue was a known feature of the car then the agreement should be cancelled and all payments refunded, together with compensation.

Secure Trust didn't agree. It said that it wasn't responsible for faults which arose after the point of sale.

## my findings

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

The Consumer Rights Act 2015 says that a car must be of satisfactory quality (taking into account its age and mileage), be as described and be fit for purpose. If a fault occurs within the first 30 days the car can be rejected (or the purchaser can choose to have a repair). After 30 days, if a fault occurs which was present or developing at the point of sale, the seller gets one opportunity to repair the fault. If the repair is unsuccessful the purchaser can reject the car. During the first 6 months after sale there's a presumption that the fault was present at the point of sale unless the seller can prove otherwise.

In this case, the problem with the car going into limp mode arose immediately. Miss E returned the car to the dealership and asked for a repair. The car was left in the care of the dealership for a few days. The dealership re-fuelled the car and re-set the fault codes.

Secure Trust said this didn't amount to a repair and that the dealership should be given an opportunity to repair the fault.

I don't agree that the dealership didn't attempt to repair the fault. The car was returned to the dealership with a specific problem. There's no evidence of what investigations or tests were carried out by the dealership but in my view, it had the opportunity on this occasion to repair the fault.

I've also taken into account the fact that the supplying dealership was involved in arranging an inspection of the car by a local dealership in February 2017. I think that this amounts to a second opportunity to inspect and repair the fault. So I don't think it's reasonable for the dealership to suggest that it hasn't had the chance to inspect and repair the fault.

The inspection didn't identify a fault. But it appears to be accepted by all parties that the car goes into limp mode.

The supplying dealership says that this is a feature of Vauxhall cars. This service asked Secure Trust to provide evidence that this is a recognised feature but none has been provided. Miss E has provided evidence from Vauxhall which says there are no known concerns relating to the engine going into limp mode on a Vauxhall Astra. Miss E has also provided photos of the car with the engine light illuminated when there is fuel in the tank.

On the evidence, I'm unable to agree that the engine going into limp mode is a recognised feature of the car. It is more likely that there is a fault with the car. I'm satisfied on the evidence presented that the fault was present at the point of sale, and that the fault has persisted despite at least one attempt at repair.

Taking all of the available evidence into account, I think that Miss E is entitled to reject the car.

Secure Trust Bank Plc should:-

- Unwind the agreement
- Arrange for collection of the car at no cost to Miss E

- Refund the deposit paid on the car together with 8% simple interest from the date of payment to the date of settlement
- Refund the monthly payments made since March 2017 together with 8% simple interest from the date of payment to the date of settlement
- Pay compensation of £300 to Miss E for trouble and upset

### **my final decision**

Secure Trust Bank Plc should:-

- Unwind the agreement
- Arrange for collection of the car at no cost to Miss E
- Refund the deposit paid on the car together with 8% simple interest from the date of payment to the date of settlement
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- Pay compensation of £300 to Miss E for trouble and upset

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss E to accept or reject my decision before 26 March 2018.

Emma Davy  
**ombudsman**