

complaint

Mr B complains that a car he bought with a hire purchase agreement from Secure Trust Bank Plc (trading as Moneyway) ("Secure Trust") was not of satisfactory quality.

background

Mr B bought a used car from a dealership that was quite a long way from his home. He took out a hire purchase agreement with Secure Trust to pay for it.

When he went to collect the car, he found that it had not been taxed nor had it had an MOT. However, the dealership had serviced the car.

The dealership suggested that it deduct the cost of the tax from the price of the car, and that Mr B should take the car for an MOT himself, which it would pay for. Because of the distance he had travelled to get to the dealership, Mr B agreed to this.

Although the car passed the MOT the following day, a number of issues were identified as needing attention. Mr B then arranged with the dealership to return the car for these issues to be fixed by its mechanic.

After the dealership had confirmed that all of the issues with the car had been resolved, it was returned to Mr B. However, three months later, he found that oil was leaking from the car.

He arranged to get a third party to look at the car, and was told that it was likely that the leak was being caused by a fault with the head gasket or coolant tank. When Mr B contacted the dealership, he was told that the three months warranty on the car had expired and that it was unable to help him.

Mr B took the car to his local garage where repairs were estimated to cost around £900. Mr B complained to Secure Trust that the car was not fit for purpose or was reasonably durable under the Supply of Goods (Implied Terms) Act 1973. He said that either the car should be repaired with no cost to him, or he should get a replacement car.

Secure Trust asked Mr B to arrange for a diagnostic report to be carried out on his car. However, the garage he had taken it to would only provide this verbally over the telephone, and Secure Trust would only accept a written report. Secure Trust concluded that Mr B had been able to travel just under 3,500 miles since he bought the car and it had completed mileage of over 100,000. It said that the issues he was experiencing were caused by wear and tear and Mr B needed to show that these were already there when he bought the car.

our adjudicator's view

Our adjudicator considered the complaint and said that Secure Trust should arrange and pay for a full independent report to be carried out on Mr B's car. It agreed to arrange this and the report found, in summary, that the car's cooling system was contaminated with engine oil. It concluded that the cylinder head gasket was likely to be the cause of the contamination and the effect of this on the car meant that it should not be used.

The adjudicator recommended that Mr B's complaint should be upheld. She said that the Supply of Goods Act gives implied conditions in a hire purchase agreement that the goods

will be of a satisfactory quality and will be fit for purpose. She said that as the issues with the car had arisen so soon after it was bought, this indicates that the car was not fit for purpose when it was sold. She concluded that Secure Trust should provide Mr B with a replacement car of satisfactory quality on a like-for-like basis, and pay him £200 for his distress and inconvenience.

Secure Trust did not accept the adjudicator's findings. It said that Mr B had not mentioned the oil leak or any problems associated with a blown head gasket when he had first gone back to the dealership after the MOT had been done. It said that considering the mileage that Mr B had been able to do with the car since he bought it, it did not consider that the oil leak was present at the time it was sold. However, as a gesture of goodwill, it offered to pay £400 towards the cost of repairing the car.

In the meantime, Mr B had sought another assessment of the car from his local garage. He was told that the engine needed replacing at a cost of £8,000.

The adjudicator then contacted the third party who had conducted the independent report on Mr B's car, about the timing of the fault with the head gasket. It said that this was not uncommon because of the car's age and it was not unreasonable considering the mileage it had covered. The third party said that it was unlikely that the fault could be traced back to the time the car was sold and that the fault would have taken around one to two weeks to get to the stage it was at when inspected.

The adjudicator reconsidered her findings and said it was more likely than not that the fault was developing at the time the car was sold and therefore was not of satisfactory quality. However, she considered that replacing the car was not the most appropriate remedy in the circumstances. She said that Secure Trust should pay for the remedial work needed on the car, refund the payments he had made to it when he was unable to use the car, and pay him £200 for distress and inconvenience.

If repairing the car was uneconomical, then she suggested that Secure Trust allow Mr B to reject the car, accepting its return and cancel the hire purchase agreement, and also refund his deposit with interest and the repayments he had made when he could not use the car.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and to Secure Trust. In summary, I found that the independent report into the fault with Mr B's car had shown that the problem was likely to have been caused by the failure of the cylinder head gasket. The third party who undertook the report expressed its opinion that this fault is unlikely to have been present at the time the car was sold to Mr B.

Although it is difficult to define what could be considered to be wear and tear on a used car such as Mr B's, I agreed that Mr B could reasonably have expected to be able to use the car for a longer period than he was able. But he was able to drive the car for a considerable number of miles before he was affected by the issue with the head gasket.

As I was unable to safely conclude that the fault with the head gasket was present at the time the car was sold, I could not agree that it was not of satisfactory quality when it was sold. I asked Mr B to reconsider whether he wished to accept Secure Trust's offer of £400.

Subject to any further representations by Mr B or Secure Trust, my provisional decision was not to uphold the complaint.

Secure Trust said that it had provided all the information it believed to be relevant and had nothing further to add.

Mr B did not accept my provisional decision. He raised a number of points in response:

- there was reasonable doubt that the dealership had serviced the car;
- the MOT conducted the day after he collected the car highlighted a number of points that needed immediate attention;
- these should have been picked up if the car had been serviced;
- the gestation period for the head gasket failure to show suggests that it could have been present when he bought the car;
- his make of car is thought to have an extremely robust engine, and would expect to achieve a higher total mileage than average;
- he does not understand why he has no protection when a major fault occurred within three and a half months from when he bought the car;
- he says that Secure Trust should bear the cost of the repairs in full.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have given careful consideration to each of the points Mr B has made. I do appreciate his strength of feeling with this matter and the amount of research he has undertaken into the issues he has experienced with his car.

For ease, I will look to address each of his points separately.

the servicing of the car and the MOT

The dealership said that Mr B's car had been serviced before Mr B collected it, and this is recorded in the service log book. I am unable to safely conclude that the service had not been conducted as it should, simply because the MOT inspection showed some areas that needed attention.

The MOT did not highlight any problems of oil leaking or with the head gasket. The points noted by the MOT were remedied by the dealership. Mr B then was able to drive the car for some considerable miles before he found an oil leakage.

the full independent report

I have based my findings from this on the report that was completed and presented by the assessor. Also, the adjudicator discussed the report with the third party during her investigation into this complaint. I am satisfied that this gives me sufficient information to understand the findings of the report without the need for further inspection or discussion.

Although I understand what the assessor may have told Mr B during the inspection, its opinion was that it was not unreasonable for the head gasket to have failed considering the age and mileage of the car, and that it was unlikely to have been present when Mr B bought it.

the average expected mileage from the car

Any such information given in a car's marketing literature relating to average mileage would have been obtained under test conditions to provide comparable results. These are indicative figures and provide a guide to the car's performance. But they do not give any guarantee that they are exactly what will be achieved, when the actual mileage that could be achieved from any one particular car is dependent on a variety of individual factors specific to that car, the way it is driven, how it is maintained and how it is used.

The different companies Mr B has spoken to will have given their opinion on the average expected mileage from the engine of Mr B's car. But this can only have been an average estimation and not specific to Mr B's car.

Mr B was able to drive the car for just over 3,500 miles before he was no longer able to use it, and its mileage was over 100,000 by this point.

consumer protection

The Supply of Goods (Implied Terms) Act 1973 has an implied term that the goods should be of satisfactory quality when they are sold. They would be considered of satisfactory quality if a reasonable person would consider their standard to be satisfactory. This should take into account the individual relevant specifics of the goods.

This was further clarified by the Sale and Supply of Goods Act 1994, so 'satisfactory quality' includes: being fit for purpose; appearance and finish; free from minor defects; safe and durable.

Considering the specifics of the car Mr B bought, I am unable to fairly conclude that it was not of satisfactory quality when it was sold. The car passed its MOT and the aspects that were seen as requiring attention from this were fixed by the dealership. The opinion of the third party that undertook the independent report was that the problem with the cylinder head gasket was unlikely to have been present when the car was sold.

In all the circumstances, and after carefully considering all of the information before me, I am unable safely to conclude that Mr B's car was not of satisfactory quality when it was sold as it would not seem that the fault with the cylinder head gasket was present at that time.

Secure Trust has offered to pay Mr B £400 towards the cost of the car's repair, and I leave it to him to consider accepting this.

my final decision

My decision is that I do not uphold this complaint.

Cathy Bovan
ombudsman