

complaint

Mr B is unhappy that Secure Trust Bank Plc wouldn't accept the rejection of a car which they supplied to him under a hire purchase agreement.

background

A used car was supplied to Mr B under a hire purchase agreement with Secure Trust in May 2018. The car was supplied by car dealership ('T') at a cost of £9,500. He paid a £600 deposit and financed the rest through a hire purchase agreement with Secure Trust. The car was around six years old and had done 95,921 miles when Mr B collected it. Mr B also bought a separate maintenance and breakdown plan, provided by a different company ('R'), and which was financed through a separate credit agreement.

Mr B complained to T about the service he'd received on the day he collected the car. And that, because of the length of time he was there, he couldn't drive all the way home and had to stay in a hotel overnight. A couple of days later Mr B contacted T again. He said that the car's gearbox was stiff, it was difficult to change gears and the gearbox would rattle when in third gear. Around the same time he complained to Secure Trust that:

- the rear door handles had been engraved/scratched
- the gearbox was stiff, and it was hard to select third gear
- the car was shuddering and swayed when driven on the motorway
- there was rust on the wheel brake callipers

T offered to inspect the car, but Mr B asked for the car be inspected at a local garage as he lived a three hour drive away from T. So T agreed to pay a local to Mr B, manufacturer approved garage, for a diagnostic report. The car was inspected on 22 June 2018, at which point it had done 97,232 miles. The report said:

"Carry out initial consultation ... gearbox would need to be removed to inspect clutch & flywheel also parking light bulb needs replacing. Recommend alignment [sic] is checked for steering fault also non approved tyres fitted, Surface corrosion to brakes including calipers, hub & discs".

T offered to either arrange for the car to be collected so they could remove and inspect the clutch gearbox; or to arrange for another (non-manufacturer approved garage) to further inspect the car. But Mr B wanted this to be done by the local garage who'd already inspected it. And he said that, if T wasn't willing to arrange this, he wanted to reject the car. T said they'd inspect the car and let Mr B know if it'd allow him to reject it. They also said if they didn't accept rejection, they'd complete any repairs and pay for the car to be further inspected by the original garage to confirm the repairs were satisfactory.

Mr B arranged for R to collect the car on 26 June 2018. They recorded there were several diagnostic codes present and delivered the car to T. T carried out an extended road test and visual checks. But they couldn't replicate the mechanical faults Mr B had reported. But they agreed that a bulb needed changing, and that there was some surface corrosion on the brakes (which they considered normal for a six-year-old vehicle that had driven over 97,000 miles). They added there was no swaying at all when the car was driven at 70 miles per hour.

T offered a free four-wheel alignment and replacement of the bulb. But they said Mr B couldn't reject the car and asked him to collect it. Mr B didn't accept this, and wasn't willing to pick the car up, so it was left with T. And he told Secure Trust he wanted to reject the car.

Secure Trust didn't think there was enough evidence to allow Mr B to reject the car. But they offered to arrange an independent inspection. Mr B declined, because he didn't think Secure Trust would complete sufficient diagnostic checks. He asked for the car to be inspected by a specific electronic specialist and said this would cost £650. Secure Trust told Mr B they thought the quote was excessive and would need a detailed breakdown of what this inspection would cover before agreeing to it.

Mr B provided the requested breakdown. He also said the auto electrician had told him R's diagnostic report had a "*Crash Error Flagged*" which could mean the car had been in an accident. Mr B also said the gear-selector fault was logged on the manufacturer's system as a recall item and should have been visible to T prior to the sale of the car.

T investigated Mr B's complaint and didn't uphold it. But, as a gesture of goodwill, they offered to take back the car and unwind the agreement. Mr B wanted to know why no admission of liability had been made regarding the faults. He also said that, if he were to accept the offer, then no adverse information about the agreement should be recorded on his credit file. And T should refund him:

- the DVLA number plate retention fee of £80.00
- the £493.84 cost of his insurance and any administration charges
- the road tax he'd paid
- the £200 he'd spent to tint car windows
- £30 for the cost of the hotel he used after collecting the car
- the £600 deposit he'd paid
- all the money he'd paid towards the finance agreement for the car
- all the money paid he'd towards the breakdown cover
- any administration fees that may apply

T explained the offer included a refund of deposit, refund of instalments paid towards the agreement and instalments paid towards the breakdown cover. They also offered an additional £100 in respect of other costs incurred.

Secure Trust issued their final response in July 2018 and said there wasn't enough evidence to say there was a fault with the car. They pointed out they'd offered to arrange an independent inspection of the car, which Mr B had declined. And they said the offer made by T was fair and agreed to unwind the agreement if Mr B accepted it.

Mr B was unhappy with the offers made and brought his complaint to us. And, because Mr B hadn't accepted the offers, Secure Trust continued to ask him to make payments towards the agreement. Mr B tried to accept the offer after the deadline set by T, and this wasn't accepted. Secure Trust told Mr B if he no longer wanted the car, he could voluntarily terminate the agreement, voluntarily surrender the car or part exchange it.

Mr B contacted DVLA to transfer registration of the car to Secure Trust. But didn't tell Secure Trust he wanted to take up any of the options it had provided him. No further payments were made towards the agreement and Secure Trust defaulted Mr B's account in November 2018. The car, which had been left at T's premises, was sold at auction for less than the outstanding credit, so there was an amount outstanding for Mr B to pay.

Our investigator explained we could only look at T's actions as a credit broker and couldn't consider whether they should allow him to reject the vehicle. So, Mr B asked her to consider whether Secure Trust should have allowed him to reject the car and compensate him in line with his request to T.

The investigator didn't uphold Mr B's complaint. She concluded that, although one inspection had suggested the gear change was stiff, there was no evidence this was due to a fault rather than wear and tear. She also explained that the diagnostic report provided by R didn't confirm what the diagnostic codes meant or that the car wasn't of satisfactory quality.

Secure Trust accepted her assessment, but Mr B didn't. Mr B made a number of points in response, in summary he said:

- he was able to obtain three separate reports from reputable companies and the manufacturer which all describe similar faults
- he'd supplied a manufacturer recall notice which corresponded with the dashboard warning light, and this was recorded at the point of sale

My colleague issued a provisional decision on 1 July 2020, where they explained their intention to uphold the complaint. In that decision my colleague said:

This complaint is about a regulated hire purchase agreement. We can consider complaints against the supplier – Secure Trust - about the quality of goods under this type of arrangement.

When considering what's fair and reasonable, I take into account relevant law. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. This says that when Mr B got the car, the supplier had a responsibility to make sure it was of 'satisfactory quality'.

Satisfactory quality is what a 'reasonable person' would expect – taking into account things like the car's age, price, mileage, description and other relevant factors. In this instance the car cost £9,500, was around 6 years old and had completed 95,921 miles when Mr B collected it. The price of the car was much lower than it would have been if it were bought new and the recorded mileage was high. With this in mind, I think it is fair to say that a reasonable person would expect that components of the car would already have suffered some wear and tear. And the car could require maintenance shortly after it was acquired and/or serviceable parts may need to be replaced.

The independent inspection by the manufacturer garage suggests that the gearbox was stiff but inspection of the external components of the gearbox seemed ok. It suggested the only way forward would be to remove the gearbox to inspect both the clutch & flywheel. This was never done. But I have spoken with the garage, it explained that it couldn't say for certain but it was most likely that the clutch or flywheel needed to be replaced, this would probably have been due to wear and tear. But it went on to explain that it thought the issue was probably present when Mr B collected the vehicle and had got worse in the time he'd been in possession of it.

It said there had been no recall for clutch issues on this model of car and what Mr B had provided was most likely a repair instruction for cars of that model, but it had only been recorded as affecting four cars and the manufacturer wouldn't have covered the cost of such repairs.

Based on what I've seen so far, I think there was an issue with the gearbox, and this was most likely caused by the clutch or flywheel. I think a reasonable person would expect that a clutch or flywheel may need to be replaced at the mileage completed by Mr B's car.

But I've also thought about how soon after he collected the car that Mr B experienced problems. He collected the car on 18 May 2018, and he emailed T on 24 May 2018 to raise concerns about the stiffness when changing gears. Given Mr T had only been in possession of the car for a few days this would suggest that the issue with the gear change was most likely present and developing when Mr B collected the car as suggested by the manufacturer approved garage.

The diagnostics completed by the manufacturer approved garage shows the gear selector lever indicator warning was logged when the car had completed 96,775 miles. The fault message reads "Gear selector-lever indicator. Malfunction. Engaged gear cannot be displayed correctly. Use caution. Consult nearest service center."

So, Mr B had completed almost 1,000 miles before the warning light came on. So, I don't agree this particular fault was clearly evident when he collected the car. But I do think there was a problem with the gears developing and its most likely whatever repair the car required was required when Mr B collected the car.

I think a reasonable person would expect that a car that had completed the mileage Mr B's had would likely need some serviceable parts (like the clutch or flywheel) repaired/replaced shortly after purchase. But I don't think a reasonable person would expect a car that costs £9,500 to need parts repairing/replacing straight away, as happened in this case. So, I don't think the car was of satisfactory quality when it was supplied to Mr B.

I don't think there's enough evidence to show that the other issues raised by Mr B were faults rather than the sort of normal day to day maintenance that would be required for a car of a similar age and mileage to Mr B's. But I do think it was concerning that R's diagnostic highlighted so many potential issues and I haven't seen an explanation of what these meant or that they didn't show there were other faults with the car.

I appreciate Secure Trust did offer to arrange an independent inspection of the car and this was declined by Mr B as he wanted it to be inspected by a different company. The cost difference was significant, and I don't think the reasons Mr B had provided for wanting the inspection completed by an auto electrician were enough to justify the difference in price.

So I don't think it was unreasonable for Secure Trust to decline Mr B's request. But I do think that an independent inspection had identified faults with the car which needed to be addressed. And Secure Trust could have arranged an additional inspection before selling the car but didn't.

Having very carefully considered all the evidence which has been presented in this complaint, although it is finely balanced, I think it's more likely than not that the car wasn't of satisfactory quality when it was supplied to Mr B.

what should Secure Trust do to put things right?

Because I'm satisfied the issue Mr B experienced meant the car wasn't of satisfactory quality Secure Trust needs to do something to put that right. The CRA provides the consumer with

the right to have goods repaired if faulty. But as the car has now been sold this remedy isn't possible anymore. So, I think Secure Trust should treat the agreement as though Mr B rejected the car at that point instead, it should refund his deposit plus interest at 8% simple per annum. And update his credit file accordingly.

Although there was clearly a problem with the car, I think Mr B was able to use it between collection and the car being inspected by the independent garage. So, I think it's fair he pays for that month's use.

T did previously offer to let Mr B reject the car, But Mr B wanted a number of other costs refunded too so didn't accept T's offer. As he was using the car, I think it's fair he pays for the roadside assistance policy for that month too and the corresponding insurance and road tax payments.

An email from Mr B's insurer show he paid £2,088.78 for annual cover and an additional £35.99 for additional insurances. As I said above, I think Mr B should be required to pay for the first month's cover, the insurances were in place and Mr B was able to benefit from them if required. But after that he wasn't in possession of the car and wasn't able to benefit from the insurance. I don't think it would have been reasonable for him to cancel the policy straight away as he was still responsible for the car. So, I've thought about whether it was reasonable for Mr B to leave the car with T when he did and whether its fair for him to pay the associated insurance costs.

The independent garage had determined there was a problem with the car which Mr B was entitled to have repaired. I don't think it was unreasonable for Mr B to not collect the car until it had been repaired.

So, I don't think it's fair for Mr B to have to cover the costs of insuring the car after he'd left it with T as he didn't have the benefit of the cover he paid for. Secure Trust should provide Mr B a pro-rata refund for the insurance cover he paid for between 19 June 2018 and when the policy was cancelled on 26 September 2018. This should include the additional insurance products Mr B purchased replacement car cover at £21.00 and the Motor Legal Protection for £14.99, as well as any cancellation fee Mr B was charged. Mr B's insurer has confirmed in total he received a refund of £1,259.02 when he cancelled the policy but I've not seen evidence to show whether or not a cancellation fee was applied.

For the same reasons as I explained above, I also think any payments Mr B made for road tax or breakdown cover after the first month should be refunded on a pro-rata basis. Subject to Mr B providing Secure Trust with evidence to show how much he paid and what refunds he received.

I haven't seen any confirmation to show exactly when Mr B changed number plates on the car, but I can see that his insurer charged him for changing the registration on 15 June 2018. So, I suspect this was the day it was changed. I think it would be unreasonable for me to ask Secure Trust to cover this cost because it wasn't necessary to be completed when it was. Mr B knew there was an issue with the car that required further investigation and I think he had a responsibility to mitigate any potential loss. So, I don't think it would be fair for me to ask Secure Trust to refund Mr B any costs he incurred for changing his number plate.

I haven't seen any evidence which confirms how much Mr B paid for tinting the windows or when this occurred so at this stage, I'm not asking Secure Trust to refund this. Mr B has also asked for the cost of the hotel he paid for when collected the car to be refunded. As this

wasn't incurred as a result of the quality of the car it's not something, I'm going to ask Secure Trust to pay.

I've also considered the impact that this matter has had on Mr B. I understand he would have found the whole matter stressful to deal with and would have been particularly concerned after the car was repossessed. But I think the actions Secure Trust initially took were reasonable. It clearly set out what Mr B's options were and offered to arrange an independent inspection of the car when T didn't agree there was a fault with the gearbox. It also made clear the consequences if Mr B didn't make payments towards the agreement and/or didn't accept T's offer to allow him to return the car. So, I'm not going to ask Secure Trust to pay any additional compensation in this respect.

Subject to any further evidence I receive, I'm minded to uphold this complaint. To put things right Secure Trust Bank Plc should:

- refund Mr B's deposit of £600;*
- provide pro-rata refunds for the costs Mr B incurred for insurance, roadside assistance and road tax, plus any administrative costs for cancelling early, less any refunds received for early cancellation (subject to evidence).*
- pay 8% simple interest on the above payments from the date of payment until the date of settlement*;*
- re-work the agreement as though the car had been rejected and the agreement ended in June 2018. Meaning Mr B's not liable for any payments under the agreement other than the first month and that his credit file is updated accordingly.*

** If Secure Trust Bank Plc considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Responses

Secure Trust agreed with my colleagues' recommendations, and to update Mr B's credit file to reflect this. But they didn't agree with the payment of interest. They thought this should only be paid from the point of sale until 27 July 2018 – the date of their final response letter.

Mr B didn't agree with my colleague's recommendation. He thought he should be reimbursed in full for the maintenance and breakdown plan he had with R, because T had benefitted from this when it was used to recover his car back to their showroom.

Mr B explained why he'd changed the number plate on the car when he took possession of it, and how this was linked to his medical issues. He's said *"that the changing of number plate is a necessary adaptation requirement for easing and preventing otherwise stressful day to day inconvenient situations which would otherwise be overwhelmingly frustrating."* He's also explained how, because of the disagreement with Secure Trust, he couldn't afford to purchase a car that he could transfer his number plate onto until November 2019, when he obtained a car through the Motability Scheme. And this *"has affected my disability on a day to day basis and worsened my health conditions notably."*

In respect of the car itself, Mr B has explained why he had the windows tinted, and that he paid for this in cash *"to benefit from a heavily discounted sale price."* And he thinks Secure Trust should cover the cost of this work.

Mr B also believes that Secure Trust should pay him compensation for the emotional disturbance he's suffered as a result of this experience and the way he was communicated with. He feels it was Secure Trust's decision not to have the additional inspection completed, and he felt the offer made by T was unfair – if he accepted this it meant he wouldn't have the right to then take his complaint to us for investigation. And he wasn't happy that the offer was made without any admission of fault.

Mr B feels that Secure Trust could've done more to mediate the outcome with T, so it wouldn't cause him excessive stress and financial difficulties. Especially given his medical issues (which he has provided proof of).

Because my colleague no longer works for the Financial Ombudsman Service, this complaint has been passed to me to review the responses received, and to issue a final decision.

my findings

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

I'm pleased to see that Secure Trust mostly agreed with my colleague's recommendations. But I don't agree with them that the interest should be limited to the period from the point of sale to their final response letter. Mr B has the right not to agree with the Final Response Letter, and to have his complaint considered by the Financial Ombudsman Service. And he shouldn't be disadvantaged because of this, even if the outcome from our investigation was that any offer made in the Final Response Letter was fair and reasonable.

So I don't think it's reasonable for the interest to stop at the point the Final Response Letter was issued. And this should be calculated at 8% simple interest a year to the point any refund is paid to Mr B.

With regards to the plan with R, Mr B said he tried to cancel it soon after collecting the car; he said he intended replacing it with a cheaper cover through a different provider. And he thought, if this hadn't been in place, then either T or Secure Trust would've had to pay the costs of collecting his car.

Because Mr B explained he would've taken some type of roadside assistance cover, he'd always have had to pay something for this. So I think it's fair he should pay for this cover through R for the time he had the car. And, even if I were to say Secure Trust should've arranged for the car to be collected, I'd only ask them to do something to put this right if Mr B had lost out as a result. And, as he was able to use the cover with R, he didn't incur any additional costs. So I won't be recommending a full refund of the cost of the cover with R.

Mr B explained why he needed his personalised number plate on his car. But he also said that, after he chose to transfer the ownership of the car to Secure Trust, he didn't have a car until November 2019. At which point he was able to transfer the number plate to this car.

If things hadn't gone wrong, Mr B would always have needed to transfer the number plate at the point he decided to get rid of the car supplied by Secure Trust. And he would always have had to pay for the cost of this transfer. So I don't think it's fair to say that Secure Trust

should reimburse him for the cost of the number plate transfer because it happened in November 2019, rather than at a different date of Mr B's choosing.

Mr B has provided photos of the car, both before and after the windows were tinted. He's also provided details from a tracking app that shows he went to a company that applied window tints the day after he'd been supplied with the car, and before he travelled home. He's also shown that he withdrew £200 from an ATM that day – the same amount he says the window tints cost him.

I've no doubt that Mr B had window tints put on the car. But the tracking app also shows that Mr B went from the tinting company to a restaurant. And then he would've needed to travel home – a journey he's said was three hours. Without any additional evidence, such as invoice, receipt, or letter from tinting company, saying exactly how much the tinting cost, I can't say how much of the £200 was used for the tinting, and how much was used for other expenses, for example food, fuel or other things. And without this evidence, I can't fairly ask Secure Trust to contribute towards the cost of the tinting.

Finally, I've considered the impact this has had on Mr B. I've no doubt that Mr B found the whole situation stressful. But I'm only considering the actions of Secure Trust when looking at this, and whether those actions caused any additional and avoidable stress to Mr B. I'm not considering the actions of T or any other circumstances.

Secure Trust set out the options to Mr B, and offered to arrange for the car to be independently inspected. But Mr B didn't want this. T also made Mr B a time limited offer to allow him to reject the car, receive a refund of his deposit and payments made, and an additional £100 for the costs he'd incurred. And Secure Trust agreed to abide by this offer. But Mr B didn't accept this within the time limits set by T, and the offer expired.

Following this, Secure Trust made it clear to Mr B that he needed to maintain payments on the car and set out the possible consequences if he didn't do this. But Mr B chose to transfer the ownership of the car to Secure Trust and stop making payments. While I appreciate that Mr B won't agree with me on this, I'm satisfied that Secure Trust's actions were reasonable. So I won't be asking them to pay any additional compensation

Based on what I've seen, and for the reasons referred to above, I don't see any compelling reason to change the recommendations made by my colleague. So I'll be adopting these recommendations as my final decision.

Putting things right

To put things right Secure Trust Bank Plc should:

- refund Mr B's deposit of £600
- provide pro-rata refunds for the costs Mr B incurred for insurance, roadside assistance and road tax, plus any administrative costs for cancelling early, less any refunds received for early cancellation (once Mr B has provided them with the evidence of this)
- pay 8% simple interest a year on the above payments from the date of the payments until the date of the refund*
- re-work the agreement as though the car had been rejected and the agreement ended in June 2018. Meaning Mr B's not liable for any payments under the agreement other than the first month, and update his credit file accordingly

* If Secure Trust Bank Plc considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B 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 explained above I uphold Mr B's complaint. Secure Trust Bank Plc must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 January 2021.

Andrew Burford
ombudsman