

The complaint

Miss F complains she was pressured into purchasing a car which was of unsatisfactory quality and pressured into taking out finance with Secure Trust Bank Plc trading as Moneyway ("Moneyway") that she couldn't afford.

What happened

On 8 November 2021 Miss F entered into a hire purchase agreement ("agreement") with Moneyway for a used car costing £7,199. Under the terms of the agreement, everything else being equal, Miss F undertook to pay a deposit of £200 followed by 56 monthly payments of £185.48 and 1 monthly payment of £195.48 - making a total repayable of £10,782.36 at an APR of 20.2%.

On 26 November 2021 Miss F complained to Moneyway about a number of concerns she had about the car and the agreement.

On 8 December 2021 an inspection of the car was undertaken by a company that I will call "R" at Miss F's request. R said:

"suspected throttle position sensor fault"

"The diagnostics given by [R] requires confirmation by a qualified technician in a workshop environment prior to any further work or parts replacement is considered."

R also identified a number of current and/or historical diagnostic codes.

On 11 January 2022 an inspection of the car was undertaken by a company that I will call "T" at the original supplying dealership's and/or the finance broker's request. T said;

"vehicle was brought to us for inspection, we first of all carried out a diagnostic code read even though there was no engine light illuminated, there was a couple of history codes but no current/present codes."

We then test drove the vehicle firstly 2-3mile the car drove find, under further instruction the vehicle had previously cut out we took the car on a long 15 mile test drive on the motorway to try and replicate issues reported by customer."

Again the car drove faultless and achieved motorway speeds without fault or incident, whilst the car has been with us and test driven by us we have been unable to find fault and the vehicle hasn't presented any issues or cause for concern in the 20mile we have done."

On 21 January 2022 Moneyway issued Miss F with a final response letter ("FRL"). Under cover of this FRL Moneyway said it didn't believe the car was of unsatisfactory quality when supplied to Miss F or that the agreement was unaffordable. But as a gesture of goodwill it, the original supplying dealership and the credit broker were prepared to accept rejection of the car and unwinding of the agreement, an offer that was available for acceptance until 28 January 2023.

On 24 January 2022 Miss F complained to our service.

Miss F's complaint was considered by one of our investigators who ultimately came to the view that Miss F was supplied with a car that was of unsatisfactory quality and that Moneyway should:

- end the agreement with nothing further to pay
- collect the car at no cost to Miss F
- refund to Miss F the £200 deposit she had 'paid' together with interest
- pay Miss F £200 for the distress and inconvenience she had been caused in being supplied with a car that was of unsatisfactory quality
- remove any adverse information it had recorded with credit reference agencies

Miss F agreed with the investigator's ultimate view but Moneyway didn't. Moneyway said:

- it remained of the view that the car wasn't of unsatisfactory quality when supplied to Miss F so it, the original supplying dealership and the credit broker were under no obligation to make an offer to Miss F to settle matters
- the offer made to Miss F to settle matters was made as a gesture of goodwill and only available for acceptance until 28 January 2022
- Miss F didn't accept the offer, at least 'in time', and it's no longer available for acceptance
- the time taken by our service to consider Miss F's complaint makes, now, rejection of the car and unwinding of the agreement more expensive and disproportionate

The investigator considered Moneyway's response to her view but wasn't persuaded to change her mind. And because the investigator wasn't persuaded to change her mind Miss F's complaint was passed to me for review and decision.

In September 2023 I issued a provisional decision on this case. In summary I said:

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

I'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Secondly, I would add that where the information I've got is incomplete, unclear or contradictory (as some of it is here), I've to base my decision on the balance of probabilities.

As the agreement entered into by Miss F is a regulated one this service is able to consider complaints relating to it. Moneyway is also the supplier of the goods under this type of agreement and so are responsible for a complaint about their quality.

The Consumer Rights Act 2015 ("CRA") covers agreements like the one Miss F entered into and says that goods should be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as the age, the mileage and the price paid.

In support of its view that the car wasn't of unsatisfactory quality when supplied Moneyway is relying on, amongst other things, the report provided by T and its belief that the evidence provided by Miss F is neither strong nor persuasive.

In support of her view that the car was of unsatisfactory quality Miss F is relying on, amongst other things, the report provided by R and a number of photographs and videos taken by her.

I've considered both reports and can confirm that I find neither of them particularly persuasive. But what I do find persuasive are the photographs and videos provided by Miss F (which for the avoidance of doubt I'm satisfied are of her car and were taken shortly after the car was supplied), Miss F's consistent testimony about the issues she experienced with the car and how quickly she contacted the original supplying dealership, the credit broker and Moneyway to complain about those issues.

Given what I say above I can confirm that on the balance of probabilities I'm satisfied that the car was of unsatisfactory quality when supplied to Miss F. And given how quickly Miss F brought her concerns in this respect to Moneyway's attention rejection, rather than a repair or replacement, constitutes a fair and reasonable remedy.

Now I accept that directing Moneyway to accept rejection of the car now will cost it substantially more than if Miss F had agreed to rejection in January 2022, or if our service concluded this was what should happen shortly after January 2022, rather than in June 2023. But Miss F was under no obligation to accept Moneyway's offer of rejection in January 2022 and entirely within her rights to refer her complaint to our service. I would also add that it would be unfair for Miss F to be 'penalised' for the time taken by our service to consider her complaint.

As well as agreeing with the investigator that Miss F should be able to reject the car I also agree with her (and for the same reasons) that Moneyway should:

- end the agreement with nothing further to pay*
- collect the car at no cost to Miss F*
- refund to Miss F the £200 deposit she 'paid' together with interest*
- pay Miss F £200 for the distress and inconvenience she has been caused in being supplied with a car that was of unsatisfactory quality*

- *remove any adverse information it has recorded with credit reference agencies*

For the sake of completeness, I would add that I'm satisfied that I need to make no finding on whether Moneyway should have declined Miss F's application for finance (on the grounds of affordability). This is because a finding by me that Moneyway shouldn't have approved Miss F's finance application wouldn't result in a better 'compensation' outcome for Miss F than the outcome I've reached above.

Finally, although I can't say for certain that Miss F wasn't promised a £500 part exchange for her old car, I'm not persuaded, on the balance of probabilities, this was the case. I say this in part because the agreement clearly shows an allowance in this respect of £100 and not £500.

Miss F responded to my provisional decision to say she accepted it.

Moneyway responded to my provisional decision to say that it had concerns about the current condition of the car given the length of time passed since it made its goodwill offer and to ask; *"what the expectations would be if there are damages to the vehicle"*.

What I've decided – and why

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

I appreciate that the car may now be worth substantially less than £7,199 Miss F originally paid for it due to, by way of example, it sitting idle for several months. I also accept the car may have suffered damage between November 2021 and now. But I've seen nothing that would lead me to conclude that Miss F has been negligent in her care of the car whilst it has been in her possession. So I see no good reason to amend my provisional award for the 'fact' that the car may now, for various reasons, be worth substantially less than it was worth in November 2021.

Given what I say above and given that Miss F has confirmed acceptance of my provisional decision I can confirm that I see no reason to depart from my provisional findings and I now confirm them as final.

My final decision

My final decision is that I uphold this complaint and Secure Trust Bank Plc trading as Moneyway must:

- end the agreement with nothing further to pay
- collect the car at no cost to Miss F
- refund to Miss F the £200 deposit she 'paid' together with interest at 8% simple a year from the date of payment to the date of settlement*
- pay Miss F £200 for the distress and inconvenience she has been caused in being supplied with a car that was of unsatisfactory quality
- remove any adverse information it has recorded with credit reference agencies

** HMRC requires Secure Trust Bank Plc trading as Moneyway to take off tax from this interest. If Miss F asks for a certificate showing how much tax has been taken off this should be provided.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 22 November 2023.

Peter Cook
Ombudsman