

The complaint

Mr R is complaining that a van FirstRand supplied him under a hire purchase agreement wasn't of satisfactory quality.

What happened

In November 2016 Mr R entered into a hire purchase agreement with FirstRand to acquire a van. The van's cash price was around £12,000, it was around five years old and had travelled around 41,000 miles.

Mr R says he's had continual problems with the van. He says around two weeks after he acquired it, it had issues with a faulty reverse parking sensor and he said there was a knocking noise. He called the supplying dealership and he says he was told to take the van to another garage – who I shall call V – to get the work done.

In April 2017 Mr R says he took the van to V on two further occasions as he said the knocking noise was still present, the driver's door had dropped slightly on the hinge and he separately broke down which was discovered to be a fault with the battery.

In May 2017 Mr R says the van went into limp mode and he says he took it back to V. He says V had the van for around two weeks and says V cleaned the turbo and fitted a new solenoid. But Mr R says the van continued to go into limp mode, so he took the van back to V in May 2017 and he says V cleaned the turbo again. But Mr R says the van continued to go into limp mode, so in July 2017 he took the van to another garage – who I shall call M – who similarly cleaned the turbo.

In September 2017 Mr R says a further issue developed with the van's gearbox and he said there was a smell of fuel. V rectified the issue with the gearbox, but it said it couldn't find anything to substantiate a smell of fuel.

Mr R says the van continued to have issues with the turbo and in October 2017 V replaced the van's turbo. But Mr R says the van continued to go into limp mode after that. And he says that in December 2017 the van broke down again and it was recovered to M. Mr R says M stripped and cleaned the injectors and replaced the rocker seals.

In March 2018, Mr R says the diesel particulate filter was blocked and needed a regeneration, which M carried out.

In November 2018 Mr R says the engine blew and the van was recovered to a local garage and he was told it needed a new engine. Mr R then complained to FirstRand that it had supplied him with a van that wasn't of satisfactory quality. FirstRand responded and said, given how long he'd had the van, he'd need to provide an independent report in respect to the cause of the engine failure.

In March 2019 Mr R complained again about the condition of the van and he said he couldn't afford to keep up with the finance as he wasn't able to work. FirstRand said again that he needed to provide an independent report.

Mr R arrange for an independent inspection of his van in April 2019 and he forwarded this to FirstRand by letter in May 2019. Mr R called for an update in June 2019, but FirstRand said it was still waiting for the independent inspection. Mr R sent this again and FirstRand acknowledged it had received it.

FirstRand reviewed the report, but it still didn't think Mr R had the right to reject the van. It said Mr R had had the van for two years and it said a number of third-party garages had carried out repairs. It said the independent report inferred that the faults were due to a failed repair. And it said, as the supplying dealership wasn't involved in the repairs, it wasn't required to put things right.

I issued a provisional decision in July 2020 upholding this complaint. And I said the following:

"Mr R acquired the van under a hire purchase agreement. Legislation implies a term into the hire purchase agreement that the van must be of satisfactory quality. As the supplier and finance provider, FirstRand is responsible for the quality of the van it's provided under the agreement. There's no dispute there's a fault with the van, given the engine appears to have failed. But the issue is whether it was present or developing at the time of sale – or linked to a fault present or developing – and whether that fault makes the van of unsatisfactory quality when it was supplied. I've also considered whether a reasonable person would expect there to be problems such as Mr R has experienced in a van of this price, age and mileage – in short was the van sufficiently durable.

In deciding whether this van was of satisfactory quality, I take into account the relevant circumstances, such as the cash price, its mileage and age. In this case, Mr R paid around £12,000 for the van. The van was around five years old and had travelled around 41,000 miles at the point of supply.

It's clear Mr R has had a lot of issues with his van since he got it. Some of the initial issues have been resolved – namely the faulty parking sensors and the knocking noise in the exhaust – at no cost to Mr R. So I don't intend to comment on these further.

Between May and October 2017 Mr R says he took the van to both V and M on eight occasions due to issues with the van going into limp mode, which he says was linked to a fault with the turbo. V ultimately replaced the turbo in October 2017.

In December 2017, Mr R had a further issue with the van when it stopped running. Mr R took the van to M who carried out further works.

It doesn't appear that there were any further significant issues with the van, apart from a regeneration of the diesel particulate filter in March 2018, until November 2018 when the engine blew.

I think the issue for me to decide is whether the engine failure was linked to the initial issues with the van. I've also thought about whether it would be unreasonable to have to replace the engine given how long Mr R has had the van.

I've paid particular attention to the independent report that was carried out on the van after the engine failed. In particular, I note it highlights the following:

"In our opinion based on the visible evidence, we can only conclude that at the time of our inspection we found excessive oil leakage from the turbo pipe on the exhaust side and excessive oil accumulation at the bottom nearside intercooler pipe consistent with wear.

From the information provided and, a technical discussion, we do suspect that the van has suffered from hydraulic lock up due to a worn turbo unit allowing excess oil into the combustion chambers.”

I also note the engineer has concluded that he thinks it's likely these faults were linked to the previous repairs. He's found evidence of excessive oil leaking from the turbo, which he thinks in turn has caused a hydraulic lock due to a build-up of excessive oil.

I've thought about Mr R's testimony and I'm persuaded by what he's told us that V carried out a number of repairs to the turbo and ultimately replacing it. I acknowledge FirstRand's concerns that there are no job sheets showing the repairs carried out. But I also think V was acting on behalf of the supplying dealership at the time. When Mr R first had issues with the van, he contacted the supplying dealership and, he was told to take the van to V. FirstRand has said there's nothing to show this. But the supplying dealership has confirmed this to FirstRand directly. I also haven't seen anything to show Mr R paid anything towards the repairs V did. I'm also conscious the warranty provider has said it didn't pay for any of the repairs.

I've found what Mr R has told us plausible. It's not clear whether Mr R took the van to V directly after the first repair, or whether he was instructed to do so again by the supplying dealership. I note the supplying dealership said they didn't hear from Mr R again until September 2017. But, I haven't seen anything to show Mr R paid for these repairs and, as I said, the warranty provider has said it didn't pay for any of the repairs. I think it's most likely V did this on behalf of the supplying dealership – whether the dealership asked Mr R to take the van there or not.

It seems the issues with the turbo first arose around six months after Mr R acquired the van. I don't think a reasonable person would expect to see these issues so soon after acquiring the van, given its age, price and mileage at the point of supply. And I don't think it's disputed the van wasn't of satisfactory quality at the point of supply. But for the avoidance of doubt, I don't think it was. The cash price of the van was around £12,000. So I think Mr R was reasonably entitled to expect it to be free from more than minor faults for a reasonable period of time. And I don't think he should have reasonably expected to have had a turbo failure on the van – which is what appears to have happened – so soon after acquiring it. I think, in asking V to carry out repairs, Mr R was exercising his right under the relevant legislation to have the van repaired.

I note FirstRand says it can't be held responsible for anything V did because it's not the supplying dealership. But I think, it's likely Mr R would have been told to take the van to V, even if he did contact FirstRand or the supply dealership beforehand. So I'm not persuaded the situation would be any different.

It seems V cleaned the turbo on two occasions, before replacing it in October 2017. As I said above, the independent engineer has concluded the engine failure is likely to be down to excessive oil leaking from the turbo. Given V cleaned the turbo on two occasions before replacing it and taking into account what the independent engineer subsequently found, it does seem likely the turbo was leaking oil at the time. And the engineer has concluded the issues Mr R has suffered are likely to be linked to the initial issues on the van. He's also said he didn't think “the van to be in a condition that would be expected of a van of this age and mileage and from documented evidence presented to us during our inspection, we consider these issues present due to failed previous repairs.”

I've found the engineer's report to be particularly persuasive in respect to his conclusions. And I don't think FirstRand has given me anything to say his conclusions aren't a fair reflection of what's happened.

I acknowledge FirstRand's concern that M has done some repairs on the car. But it seems they only did the same repair as V – i.e. a temporary clean. And I haven't seen anything to support that the engine has failed due to anything M did wrong.

I've thought about the fact Mr R has travelled over 14,000 miles in the van since he first acquired it. But I also think he was largely only able to do this because of the temporary repairs V carried out. Ultimately, I think, on balance, the engine has failed due to an inherent fault that was present – or at least developing – at the point of sale. So I think FirstRand should have allowed him to reject the van on receipt of the independent engineer's report."

So I thought FirstRand should do the following to put things right:

"As I said above, I think FirstRand should have allowed Mr R to reject the van on receipt of the engineer report. But I'm also conscious Mr R has suffered a lot of distress and inconvenience as a result of what's happened. He's also not had the use of the van he was entitled to expect as a result of what's happened. He's had to take the van to a garage on around seven separate occasions (although I acknowledge Mr R says he took it there at least 16 times). And he, ultimately, hasn't been able to use it since November 2018. So I think FirstRand should refund any payment Mr R has made since then.

FirstRand asked Mr R to get an independent report in December 2018. I think it was fair for it to request this, given the fact that Mr R had had the van for around two years by this time. So I think Mr R could have moved this forward quicker had he done so. But I'm also conscious that he was struggling with ill health at that time. And I note his father was temporarily given Power of Attorney over Mr R's affairs. So I don't think I can hold Mr R responsible for any delay here. And, ultimately, I think the reason he wasn't able to use the van was because it wasn't of satisfactory quality, rather than anything Mr R did wrong.

Mr R has said that his income has been reduced because he can't use his van. I understand he was previously working as a self-employed plasterer, but he's since had to work as an employed labourer. He says he used to earn £150 per day, but now only earns £80 per day. However, he hasn't provided anything definitive to show how much income he's lost. I'm also conscious that his expenses as a self-employed worker would have been higher. But, given the van was acquired for business purposes, I think it's likely he will have lost some income as a result. I also think it's clear this matter has caused Mr R a lot of distress and inconvenience. And he's provided a copy of his medical report which highlights that he was suffering from a high level of stress at the time.

I also note there were periods when Mr R wasn't able to use the van between April and November 2017 while it was with V being repaired, despite paying to hire it. In particular I note V had it for around two weeks in October 2017 and I understand Mr R wasn't given a courtesy vehicle during that time. So I think he's lost out during that time too. Taking all this into account, I think FirstRand should pay him £750 as compensation for the distress and inconvenience he's suffered, for the time he wasn't able to use the van and for any lost income.

Finally, I think Mr R has incurred expenses in demonstrating the van wasn't of satisfactory quality. I understand he had to arrange for the van to be taken to a manufacturing dealership prior to the independent inspection. He also had to pay for the independent inspection. He also paid M to clean the turbo and I think he should get that back too as I think this loss is directly attributable to the original breach of contract. I think FirstRand should refund these costs – subject to Mr R demonstrating he incurred them.

So, in summary, I think FirstRand should do the following to put things right:

1. Allow Mr R to reject the van and arrange to collect it at no cost to him;
2. Cancel the agreement with nothing further to pay - and arrange for any adverse data to be removed from Mr R's credit file;
3. Refund the deposit of £1,899. It should add 8% simple interest per year on this from when he entered into the finance agreement until he gets it back*;
4. Refund the monthly payments Mr R made since (and including) December 2018 as he wasn't able to use the van during this time*;
5. Refund the amount Mr R paid to transport the van to the manufacturing dealership and the cost of the independent inspection*; and
6. Pay £750 in compensation for the distress and inconvenience this matter has caused Mr R.

**If FirstRand thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate."*

Mr R responded to accept my provisional decision. FirstRand didn't accept it and raised the following points:

- The engineer says they're unable to find the cause of the fault, so it thinks Mr R should pay for a further inspection. It also highlighted the engineer has commented that the fault could be due to wear and has not commented on what repairs have failed. It said the engineer could only say he doesn't know the exact fault and can only attribute failed repairs to either the last repairer or the selling agent.
- It queried why the dealership was being held responsible for the failure of the engine, if the turbo has been replaced, and M have completed work to the injectors, seals and DPF. It said it thought the DPF could be a sign of a failing turbo. It said M was the last repairer before the engine blew up based on the customer's timeline of events which it thought indicated they are responsible for the failed repairs, not the dealership or V.
- The independent engineer said he could only comment on the evidence provided. It maintained Mr R hasn't provided sufficient evidence to support the timeline of events – only his testimony. It said this was the only information the engineer has used to form his opinion which it said I've relied heavily upon. It acknowledged the engineer has commented he feels this is a case of failed repairs, but he's not commented on which repairs have failed. He still feels the van needs to be further stripped to allow a proper diagnosis, and further evidence to establish liability. It maintained Mr R should be responsible for this given the length of time he's been in possession of the van.
- It said it needs to be considered how many times the dealership/V have actually had the van to complete repairs. It said it can't be ignored the customer acquired the van on a personal agreement for business use and has completed 15,000 miles. It thinks the dealership should be allowed reasonable attempts to resolve the matter as per the Supply of Goods Act. And it said it's not conclusively clear how many times the dealership has been responsible for the repairs. It says, all Mr R says in his timeline is he took the van to V who didn't resolve the issue. It said there's no confirmation V actually repaired the van on the occasions where this is mentioned. And it said there's no documented evidence to confirm whether this is the dealership's liability, V's failed repair or M's failed repairs. It also suggested the failure was down to general wear.

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've taken FirstRand's comments into account, but I'm not persuaded it's provided anything significantly new that it hasn't raised before. I recognise it strongly feels Mr R doesn't have the right to reject the van. But I think my provisional decision addresses the majority of FirstRand's comments – particularly in respect to why I'm persuaded V did carry out the repairs Mr R said it did, why I think the dealership is liable for the current failed repair, and FirstRand's comments that Mr R has travelled around 15,000 miles in the van. So I'm not going to comment on this further.

FirstRand has suggested the independent engineer has only based his conclusions on what Mr R has said about the van's history. But I don't agree. The engineer has particularly highlighted that he found evidence of excessive oil leakage from the turbo pipe and excessive oil accumulation at the bottom nearside intercooler pipe. I don't dispute the engineer's considered Mr R's testimony in his conclusions, but I think it was fair for him to do so. I'm satisfied that his conclusions are based on what he found during his inspection of the van. And it's fair to rely upon them.

I note FirstRand has suggested other faults could have caused the engine failure. But I think it's fair to rely on the independent engineer's conclusions that it's most likely to be down to the turbo failure. And I haven't seen anything to say I shouldn't rely upon this. Ultimately, he's concluded the engine failure is linked to the turbo. And V carried out the fundamental repairs to the turbo. So I'm not persuaded the engine failure is down to any failed repairs M carried out.

I note FirstRand says Mr R should pay to have the engine stripped down. But I don't agree. I've seen enough to show the issues are most likely to be linked to the initial faults with the van's turbo. So I don't think Mr R needs to pay to have the engine stripped down. I'm not persuaded that doing so would change the situation either.

Finally, I've thought about FirstRand's comments it should have further rights to repair the van. I'm satisfied V – on the dealership's behalf – has had looked to fix the van a number of times. But this hasn't been successful. Legislation now allows Mr R to reject the van. And I still think that's the fair and reasonable thing to do too.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint. And I require FirstRand Bank Limited to compensate Mr R as follows:

1. Allow Mr R to reject the van and arrange to collect it at no cost to him;
2. Cancel the agreement with nothing further to pay - and arrange for any adverse data to be removed from Mr R's credit file;
3. Refund the deposit of £1,899. It should add 8% simple interest per year on this from when he entered into the finance agreement until he gets it back*;
4. Refund the monthly payments Mr R made since (and including) December 2018 as he wasn't able to use the van during this time*;
5. Refund the amount Mr R paid to transport the van to the manufacturing dealership and the cost of the independent inspection*; and
6. Pay £750 in compensation for the distress and inconvenience this matter has caused Mr R.

*If FirstRand thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 September 2020.

Guy Mitchell
Ombudsman