

The complaint

Mr A complains that a van he acquired through a hire purchase agreement financed by Volkswagen Financial Services (UK) Limited trading as Volkswagen Commercial Vehicle Finance (VCVF) was of unsatisfactory quality.

What happened

Mr A acquired a used van under a four-year hire purchase agreement with VCVF in February 2020. The van was around a year and a half old and had covered around 27,000 miles when it was acquired. The cash price of the car was £22,794 and an advance payment of £1,000 was made, with the remaining £21,794 being financed by the hire purchase agreement.

Mr A says that he noticed problems and noises as soon as he drove the van away from the dealership and that he'd seen that there was no spare tyre present. Mr A raised this with the dealership and mentioned that there was a sound of glass when opening and closing the door.

The dealership then took the van in for inspection and subsequently told Mr A that they couldn't find any faults. Mr A wasn't happy with this and contacted VCVF saying he wanted to reject the van. VCVF didn't accept Mr A's request for rejection.

Since then, the van has had several inspections and work carried out on it. In May 2020 the dealership removed the rib belt tensioner after Mr A reported there was a noise coming from the engine. In the following month, the flywheel and gearbox were removed and reinstalled. Mr A also reported that the side door wasn't working, and that water was leaking into the passenger footwell.

In July 2020 the van broke down again and had to be recovered as it was leaking fuel and the side door became stuck. The van was taken back to the dealership where they noticed a fuel smell in the cabin and found a fuel leak coming from the bottom of the fuel filter housing which was replaced.

In August 2020, the van broke down again and the recovery agent who looked at the van noted the following:

- the coolant was below minimum levels
- the side and rear doors were not opening or closing correctly which he suspected was due to an issue with the door lock
- the ambient temperature sensor was hanging down behind the bumper which he felt was due to the bumper being previously removed
- noises from the top end of the engine and the brake pads
- juddering when the van was reversed around bends and from the wheel while driving
- water ingress in the passenger footwell
- the radio unit was freezing intermittently.

The dealership carried out further repairs following this, but Mr A says that since then, there were still faults with the window, radio, satellite navigation system and doors, and that there was a knocking noise from the engine as well as a coolant leak.

VCVF agreed to allow the van to be independently inspected. The engineer noted the following:

'Front wheels judder when viewed from outside. A video was seen which appears to show the right front wheel judders slightly backwards and forwards at slow speed. No defect was identified, and engineer believed this to be a characteristic of the vehicle and transmission operation of the vehicle. No free play of excess movement could be identified in any of the vehicle's suspension components.'

Noise on start up. A video of this was seen and appears to show a belt squeak. No undue noise was evident at time of inspection.

Brake judder. No brake judders were evident at time of inspection; however, the brakes require further investigation as a degree of wear was seen.

Noise in third and fourth gear. No defects were found with the operation of the DSG gearbox at time of inspection.

Reverse vibration. No defects were found with the DSG gearbox at time of inspection.

Intermittent window operation. A video was seen which appears to show the driver's window lowering fully but only raising by approximately two centimetres and stopping. The window worked correctly for the engineer at time of inspection with no patent defect evident.

Side door and rear door fails to unlock intermittently. A video was seen which appears to show these doors failing to unlock. The side door operation was found to be correct at time of inspection. The rear door release handle was found to be sticking in the open position, which results in the door failing to unlock. If the handle was pushed back to the closed position the lock was found to operate correctly. It is recommended this is investigated further and rectified as necessary.

Radio operation intermittent. A video was seen which appears to show the radio on (with sound) but the actual screen blank and buttons inoperative. The radio operation was found to be correct at time of inspection'.

Our investigator upheld Mr A's complaint as, in summary, she felt the van was not of satisfactory quality when it was supplied to him and that Mr A was entitled to reject the van using his rights under the Consumer Rights Act. She said that VCVF should pay Mr A £500 for the distress and inconvenience he'd suffered and for them to refund him the cost of the spare tyre. However, she didn't ask VCVF to pay Mr A anything towards his claimed loss of earnings or for the cost of the alterations he'd made to the van.

VCVF accepted our investigator's view, although noted that it was more likely than not that Mr A was provided with a spare tyre or a tyre inflation kit.

Mr A didn't agree, so his complaint was passed to me for a decision.

I issued my provisional decision on 25 February 2022, in which I said the following:

The agreement Mr A entered into was a regulated hire purchase agreement so this service

can consider complaints relating to it. Under the hire purchase agreement, VCVF is also the supplier of the car and is therefore responsible for a complaint about its quality.

Our investigator said that the Consumer Rights Act (CRA) was relevant to this complaint. However, this isn't the case.

Section 2 of the CRA states the following:

'(3) "Consumer" means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession'.

Mr A confirmed that he acquired the van subject to the hire purchase agreement with the sole intention of using it for business purposes. So, he is not deemed to be a 'consumer' under the CRA and isn't able to exercise any of the rights set out within this such as the remedies applicable when goods are of unsatisfactory quality.

That doesn't though mean Mr A isn't able to complain about the van he acquired or that he has no protection in respect of this. In this case, the issues relating to the quality of the goods would be considered under the Supply of Goods (Implied Terms) Act 1973 and this is the relevant legislation in respect of Mr A's complaint and the legislation I have taken into account.

The Supply of Goods (Implied Terms) Act 1973 sets out that there is an implied term that the goods supplied under a relevant hire purchase agreement are of satisfactory quality. It goes on to explain that goods are deemed to be of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances.

It also sets out that the quality of goods includes their state and condition, to which the following (among others) would be appropriate aspects:

- fitness for all the purposes for which goods of the kind in question are commonly supplied*
- appearance and finish*
- freedom from minor defects*
- safety*
- durability.*

It seems that there is little dispute that the van VCVF supplied to Mr A was of unsatisfactory quality. I say this noting that VCVF agreed with our investigator's view where she set out why she felt the van wasn't of satisfactory quality. So, I don't intend to go into any great detail on this.

For the avoidance of doubt however, I find that the van wasn't of satisfactory quality. It's clear that the van has had numerous faults that were identified by the dealership and by independent engineers. These weren't minor issues either. The flywheel and the gearbox had to be taken out and refitted when the van had only been with Mr A for around three months. And there was a serious fuel leak which required repairing only a couple of months later. Not only that, the van total mileage wasn't significant at either of those times (under 40,000 miles).

The most recent independent report set out that there were still issues with the rear doors which Mr A had consistently pointed out throughout this dispute. So, although it seems that a lot of the faults had been repaired (or may have been repaired), there were still faults remaining. And I'm not persuaded that the faults shown within that report were ones that could be attributed to general wear and tear or from misuse of the van by Mr A.

So, what remains is for me to determine what redress Mr A is entitled to. I note that the van was sold by Mr A in October 2021 for around £25,000 and that he settled his outstanding finance with VCVF with part of those proceeds.

Mr A has sent in a statement from his accountant setting out that he lost expected profits from his business as a result of not being able to use the van. The accountant said that Mr A's losses equated to £5,460 between February 2020 and September 2020.

I have no doubt that the problems that Mr A experienced with the van throughout his acquisition of it would have meant that he couldn't use it for intended jobs at certain points. However, for me to be able to compensate Mr A for what he's claiming for, I would need to see that specific jobs were accepted and booked by prospective customers and that those jobs were unable to be taken on because Mr A couldn't use the van. I appreciate that Mr A has sent in evidence of quotations given by him. However, it doesn't necessarily follow that those quotations would have led to specific agreements for work to be carried out or that there was anything specifically agreed which couldn't be completed because of the problems with the van. So, I won't be asking VCVF to pay anything in respect of Mr A's claim for loss of earnings.

I note also that Mr A wishes to be refunded for costs he incurred in modifying the van for his business. I've seen that Mr A has fairly recently outlined that he paid £2,500 for upgraded security, £1,000 for alloys and tyres, £600 for up-rated suspension, £560 for a headlights upgrade, £650 for protection to the bodywork, window and alloys and £165 for removal and transportation of an awning.

I've also seen that Mr A had previously set out further costs he incurred including £265 for wood, £100 for a carpet, £300 for a water tank, £360 for an insurance charge, £50 to remove an old sign and £4,500 for a custom awning.

I am though not currently minded to ask VCVF to refund any of these costs. I haven't seen specific invoices where each of these costs are set out. And it seems to me that these costs were costs Mr A would have incurred anyway because they related to how he was running his business. So, I don't currently find that these costs arose as a direct consequence of the van not being of satisfactory quality. In other words, I don't currently find that these are losses that Mr A incurred because of the problems he had with the van.

I note also that Mr A sold the van at a profit and that the alternations he made likely contributed to this.

So, taking everything into account, I don't think it reasonable for VCVF to refund the costs that Mr A is claiming for.

I do though think that VCVF should pay something to Mr A. He had to take the van back on numerous occasions to the dealership for work to be carried out on it. And he experienced the inconvenience of having to do this as well as being without the van for periods of time, although I note that he was given courtesy vehicles by the dealership when the van was with them.

I appreciate that Mr A will likely feel disappointed with this. I intend to direct VCVF to pay him £500 for the inconvenience he suffered as a result of the van not being of satisfactory

quality. I also intend to ask VCVF to refund Mr A any cost he incurred for buying a spare wheel for the van upon his provision of suitable evidence of this. I note VCVF thinks that Mr A was given a spare wheel, however I would find it unlikely that this was the case if Mr A can provide evidence that he had to pay for this.

I invited Mr A and VCVF to provide any further comments or evidence to me.

VCVF replied saying that they accepted my provisional recommendations.

Mr A replied saying that there was enough evidence to show that he had suffered a loss of earnings and that he had suffered a further loss because the van had been sold at less than its value. Mr A also attached a copy of the receipt for the cost of the spare tyre he bought for the van.

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 realise that Mr A feels very strongly that he is the innocent party in what transpired. I agree with him as I am satisfied that he was provided with a van that wasn't of satisfactory quality.

However, as I set out in my provisional decision, for me to be able to fully quantify any loss of earnings Mr A suffered, I need to be satisfied that he lost out on specifically agreed jobs that he was prevented from doing because of the issues with the van. I'm afraid I have not been provided with that specific evidence, although I do appreciate that the nature of Mr A's job may be that such firm potential contracts of work would only be agreed once the customer agrees to have the work done (rather than simply asking for quotations from Mr A and other potential businesses). But without those specific agreements, I can't award amounts for jobs that may have happened when what I need is evidence where contracts were firmly in place.

Mr A has said that if I am unable to make an award for loss of earnings, he should be refunded 50% of the total amount he paid under the finance agreement with VCVF. I don't agree with this though as Mr A did have the van in his possession for the majority of the time before the van was sold. A 50% refund would not be reasonable in view of this.

I haven't seen anything that would make me think that what I proposed in my provisional decision is unfair or unreasonable. I've considered Mr A's comments about the van being undervalued when it was sold. I don't though have anything compelling evidence that so it's possible for example that this was simply the price that the buyer was willing to pay (rather than the amount it was only worth). Mr A has though sent me a copy of the receipt for the cost of the spare tyre he bought. So, I will be instructing VCVF to refund Mr A this, with interest, as I set out in my provisional decision why it was reasonable for that cost to be refunded. A copy of the receipt will be sent to VCVF with this decision.

Putting things right

For the reasons given in my provisional decision and in this decision, I consider that Mr A should be refunded for the cost of the spare tyre, with interest added, and that he should be paid £500 for the inconvenience he suffered for being given a van of unsatisfactory quality.

My final decision

I uphold this complaint and direct Volkswagen Financial Services (UK) Limited to:

- pay Mr A £500 for the inconvenience caused to him for being given a van that was not of satisfactory quality
- refund Mr A the cost of the spare tyre he bought and add interest to this of 8% simple per year from the date of payment to the date of settlement.

If Volkswagen Financial Services (UK) Limited considers that it's required by HM Revenue and Customs to deduct income tax from the interest part of my award, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 April 2022.

Daniel Picken
Ombudsman