

The complaint

Mr O complains that a new van supplied to him under a hire purchase agreement with FCE Bank Plc wasn't of satisfactory quality.

What happened

Mr O acquired a new van in March 2020 financed through a hire purchase agreement with FCE. In October he brought a complaint to FCE. He said he'd had numerous problems with the van from the start but hadn't been able to take it back earlier due to the national lockdown.

Mr O said when the dealer eventually opened, he took the van back and spoke to the service manager. He said it needed a new battery, and that the software needed updating. He also said one of the problems with the van was excessive condensation. A week later Mr O collected his van but has continued to have issues with it, including:

- Stop/start not working
- Computer not working
- Radio, intermittent fault i.e. volume would not go up or down.
- Sat nav intermittent problems
- Ford app from the phone works only occasionally i.e. freezes
- Lights in rear of vehicle intermittent
- Plastic guard on bottom of door needed replacing

Mr O also complained to FCE that the contract is in his business' name and should be in his own name. He is a sole trader. In its final response FCE didn't uphold Mr O's complaint. It said based on the information available from the dealership, there was a lack of evidence showing the vehicle was faulty at the point of supply or had any issues. It offered to compensate Mr O with £192.00 as a goodwill gesture to reflect the time without the vehicle.

It also said Mr O was aware at the time the contract would be under the business name as he was unable to provide any proof of income. It said Mr O signed the contract as he was happy with the outcome.

Mr O brought his complaint to this service. He said the van has had many issues and had been back to the dealer more than four times. He said it wasn't fit for purpose. Our investigator felt that FCE had dealt with Mr O's complaint fairly. He said while Mr O said there were faults with the van no evidence had been provided to support this. He said compensation of £192.00 to reflect the time Mr O was without the vehicle was fair and reasonable.

The investigator went on to say while the agreement is in the name of the business, it is regulated by the Consumer Credit Act 1974 which means Mr O has the same rights as a retail consumer. He said at the time Mr O took the agreement out, he was provided with several documents including the hire purchase agreement itself which would have shown the name of the business and customer. By signing the hire purchase agreement, he confirmed

that he had read the terms and conditions of the agreement and wished to be legally bound by them.

Mr O didn't agree and asked for a decision from an ombudsman. He said he has continued to have problems with the van. And the £192 FCE offered him was an insult after spending £32,000.

I issued a provisional decision on 25 July 2022. I said:

FCE, as the supplier of the van, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr O. Whether or not it was at that time will depend on a number of factors, including age and mileage of the van as well as the price that was paid for it. Mr O was supplied with a new van and I consider it reasonable for him to expect it would be free from even minor defects. Satisfactory quality also covers durability which means the components within the van must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

In its final response FCE said Mr O had reported the following issues:

- *Stop/start not working*
- *Entertainment is not working*
- *Radio volume intermittent fault*
- *Dashboard keeps freezing*
- *Rear lights intermittently on*
- *Plastic guard on bottom of door needs to be replaced*
- *Condensation issue*

FCE as the finance provider, said that it relies on the expertise and mechanical experience of the manufacturer and their dealers' network. FCE confirmed the following:

- *ABS warning light was illuminated - in order to resolve the issue the service team*
- *updated the Accessory Protocol Interface Module (APIM) and updated the Sync 3 for*
- *the entertainment system*
- *The service team was unable to replicate Mr O's concern of the dashboard freezing*
- *The service team was unaware of any condensation.*
- *The service team explained to FCE that the satellite navigation and map were not fitted on Mr O's vehicle and advised him to discuss with the Sales department.*

FCE said the service team believes Mr O might not be registered to the Manufacturer's App

Our investigator requested job cards for all the work on the van but only warranty sheets were provided. On 4 December 2020, the dealership replaced the offside rear wheel arch protective strip on the vehicle. On 23 April 2021 the dealership replaced the battery under warranty as it was not holding charge. After this date there are no records of any repairs carried out under warranty.

But Mr O has consistently said he continues to have problems with the van, specifically relating to the dashboard computer, and that it has been back to the dealer several times. Mr O brought his complaint to our service in February 2021,

before the battery was replaced under warranty in April 2021. He said by August 2021 the van had had to be seen by the engineer a further two times but that he couldn't identify the problem.

Since then Mr O has reported continuing issues with the van to our service. From 31 August 2021 up until July 2022 Mr O has reported the van has been back into the garage many times. He has said that lots of little things work then don't work. He has had to wait five weeks for a new transponder which eventually also didn't work. A replacement part has then taken over 10 weeks to be delivered. And again the van still had problems. Mr O reported that on 12 April the van was taken back in and the garage managed to put in a new part which lasted only a day. He said the service manager told him he'd been in touch with the manufacturer's technical team and there was nothing they could do. He said the van's radio doesn't work, the interior lights don't work all the time, the stop/start is not working.

On 28 October 2021 our investigator asked to see the job cards for the van to see what works have been carried out. FCE sent details of repairs carried out in December 2020 and April 2021. The investigator informed FCE that Mr O said the van was still with the dealer and had been told the part his van needs may take some time to arrive. Despite telling Mr O it relies on the expertise of the manufacturer and the dealer network, and that it regularly consults with them regarding mechanical issues, FCE told our investigator to contact the dealership as the van went to the dealership long after FCE closed the complaint.

The investigator asked Mr O for details of the dealer the van was at so he could talk to the mechanic. Mr O responded and noted that the dealer doesn't return his calls. In February the investigator attempted to contact the dealer on several occasions. The dealership told Mr O it couldn't get through to the Financial Ombudsman Service.

Mr O has been consistent in his testimony that there are problems with the van that the dealer hasn't been able to correct. And it seems that up until the point when the investigator issued his view, attempts were made by Mr O and the investigator to get some technical evidence from either FCE or the dealer and none was forthcoming.

My job is to come to what I think is a fair and reasonable outcome based on the evidence available to me, taking account of the relevant laws, rules and industry practice. Where evidence is missing or conflicting, I'll look at what's available and the surrounding circumstances – to decide what I think is most likely to have happened.

From Mr O's testimony, which I find very credible, it would appear there are problems with the van, specifically the onboard computer, that the dealer is struggling to fix. I note that in December 2020 FCE advised Mr O that an inspection be carried out. The contact notes said "but customer told me the issues are intermittent". Intermittent issues are not in themselves a reason not to commission an independent inspection.

As Mr O appears to have continuing problems with the van and as both Mr O and our investigator have tried to get technical evidence with little success, I felt it fair and reasonable that an independent inspection be commissioned to determine what, if any, problems there are with the van and whether the vehicle was of satisfactory quality at the point of supply.

I asked Mr O if he was willing to commission an independent report. At this point he advised us that he was quite unwell. Given these circumstances, I asked FCE if it would be willing to commission an independent inspection on the vehicle. It wasn't

clear from any of its responses that it was agreeing to commission an inspection at its expense.

Mr O has since updated this service again with videos showing the blank screen on his dashboard computer and the failure of the radio to switch off.

Mr O acquired a new van. As such I wouldn't expect it to have problems related to age and wear and tear. FCE has said that two issues were corrected under warranty but, according to Mr O, the problems continue. He has updated this service many times, on the condition of the van and situation regarding replacement parts. Technical evidence hasn't been provided by the dealer but this appears to not be for want of trying.

Given the consistent credible testimony by Mr O over a very long period of time, starting soon after he collected the van, I consider it to be more likely than not that there's an intermittent fault(s) with the van. I don't consider it reasonable to expect a new van to have the repeated issues such as Mr O has described so I consider it to be more likely than not the van wasn't of satisfactory quality when it was supplied to Mr O. So subject to any further information I might receive from either party, I'm minded to say that Mr O should be allowed to reject it.

It seems to me that Mr O has tried many times to get the van fixed and to get help from the dealer with evidence. FCE offered compensation of £192 for the time Mr O was without the van. I'm persuaded that this is not enough. I'm minded to award Mr O a further £300 for the distress and inconvenience this has caused him.

Mr O has managed to get some use of the van so in order to recognise this I'm minded to instruct FCE to refund payments made since April 2021, when the battery was replaced under warranty.

FCE responded that it did make arrangements to complete an independent inspection in June 2022 by a third party, R. It said when R spoke to Mr O it was advised by Mr O that he would contact R to arrange the inspection but that Mr O was not keen on completing this. It said it was reasonable to complete the inspection.

Mr O responded by sending in further videos illustrating dashboard issues on the van including loss of power. Mr O also made some additional comments including that he would ring the garage every day, sometimes three or four times but it wouldn't respond.

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.

Having done so I believe my provisional decision still stands.

I said in my provisional decision that I thought an independent inspection was warranted. I can see that FCE did eventually try to get one arranged with Mr O but said Mr O wasn't keen on this. I also noted that it was around this time Mr O declared to us that he was ill, and I believe, was in hospital. It's possible this was why FCE couldn't pursue the inspection. Mr O has told this service that he spoke to R about the faults and said they were intermittent, and he was worried they might not show during the inspection. As I stated above this isn't a reason not to commission an inspection but I do understand his concern.

I've reviewed all the evidence again, including the new videos Mr O has provided. And I've

thought very carefully about how to proceed without the inspection. I think an inspection would of course be useful as it would provide independent technical results, but I'm not persuaded it's essential for me to come to the right outcome. I also consider that this inspection could have happened much earlier, including prior to FCE issuing its final response letter and when our investigator was attempting to get further technical evidence.

During the process of this complaint our investigator asked FCE to provide the job cards in late 2021. Its response was to request that we contact the dealer directly as the complaint had been closed. It could, at this point, have asked for an independent inspection. Our investigator then informed FCE that he didn't know which dealership to contact and asked FCE to retrieve job cards for work done. But nothing was received. After issuing his view and receiving further video evidence from Mr O, our investigator tried to get hold of the dealer to confirm the issues with the van and the dealer wasn't forthcoming. Mr O has said he has repeatedly tried to get a response from the service manager at the dealership. So I think reasonable attempts have been made to get technical evidence.

When the complaint came to me I asked FCE if it would commission an independent inspection. On 13 June it responded:

"Thank you for your email, yes FCE accept the decision of a R report"

It wasn't clear to me from this response that FCE was agreeing to commission an inspection, so I asked it to clarify its position. It said:

"I already told and sent an email to confirm FCE will accept the R – what exactly FOS (Financial Ombudsman service) needs?"

It's possible that at this very late stage FCE thought an inspection had been done when it hadn't and then tried to arrange it as I've mentioned above.

As I said in my provisional decision Mr O has given consistent and credible testimony over a very long period, starting soon after he collected the van and he's provided video evidence of the problems. I consider it to be more likely than not that there's an intermittent fault(s) with the van. I don't consider it reasonable to expect a new van to have the repeated issues such as Mr O has described and shown so I consider it to be more likely than not the van wasn't of satisfactory quality when it was supplied to Mr O. So, Mr O should be allowed to reject it.

Putting things right

To put things right FCE Bank Plc must:

1. End the hire purchase agreement and arrange for the van to be collected from Mr O, both at no cost to him.
2. Refund to Mr O the monthly payments that he's made under the agreement since April 2021.
3. Refund Mr O's deposit.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Pay £300 to Mr O to compensate him for the distress and inconvenience that he's been caused.
6. Pay Mr O the £192 compensation it offered unless it has already done so.
7. Remove evidence of this agreement from Mr O's credit file.

HM Revenue & Customs requires FCE Bank Plc to deduct tax from the interest payment referred to at 4 above. FCE Bank Plc must give Mr O a certificate showing how much tax it's deducted if he asks it for one.

My final decision

My final decision is that I uphold this complaint. FCE Bank Plc must put things right as itemised above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 13 October 2022.

Maxine Sutton
Ombudsman