

The complaint

Mr K complains about the quality of a car he has been financing through an agreement with FCA Automotive Services UK Ltd, trading as Fiat Financial Services, and who I'll call FCA.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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 know it will disappoint Mr K, but I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr K acquired his van under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our Service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the van should have been of satisfactory quality when supplied. If it wasn't then FCA, who are also the supplier of the van, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a van the other relevant circumstances would include things like the age and mileage at the time the van was supplied to Mr K. The van here was brand-new so I don't think a reasonable person would expect it to have any faults.

The relevant legislation gives the business one opportunity to fix a fault that is present when goods are supplied. I think it's likely the issue with the suspension on this van was present when it was supplied. I say that because the manufacturer's field technician has confirmed the noise is present when going over speed bumps and that it was also present on another car of the same make and model that he repeated the test with. It was his opinion that the issue couldn't be resolved, but he didn't dispute the noise was present, and I don't think a reasonable person would expect such a noise on a brand new vehicle.

I think that suggests this is a manufacturing issue, present on supply, and potentially present on all vans of this make and model, and that despite several attempts to repair, the fault has not been remedied.

In those circumstances the relevant legislation expects the business to allow rejection of the van, but it also allows the business to retain some of the finance instalments paid in respect of the use the consumer has had from the goods.

Here Mr K has been able to drive an appreciable distance in the van and his use doesn't appear to have been impaired too much other than there being an annoying squeak when travelling over speed bumps. In those circumstances, I think the investigator's suggestion FCA should refund 5% of the finance instalments in respect of the impaired use Mr K has experienced is a fair one.

I understand Mr K would like a replacement vehicle but it's clear from the field technician's comments, that the technician feels the issue is a fault present on all vans of this make and model, so I don't think a replacement would resolve matters for Mr K, and the business don't have to replace the van with another similar one.

If Mr K accepts my decision the business will therefore need to collect the car, allow him to reject it and end the finance agreement he has with them and refund any deposit or part exchange that may have been paid. They'll also need to refund 5% of any finance instalments Mr K has paid in respect of the impaired use he's had from the car. Mr K has had to return the car for investigations on several occasions and he's had to escalate his complaint to this Service when I think it could have been resolved earlier by FCA. In those circumstances FCA should pay him £150 to compensate him for the distress and inconvenience he's experienced.

Putting things right

FCA should put things right in the way I've set out above and detailed below.

My final decision

For the reasons I've given above I uphold this complaint and tell FCA Automotive Services UK Ltd to:

- Allow Mr K to reject the car and end the finance agreement.
- Collect the car at no cost to Mr K.
- Refund any deposit or part exchange allowance and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund 5% of all finance payments that have been made in respect of the impaired use Mr K has had from the car. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mr K £150 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to Mr K's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 20 September 2023.

Phillip McMahon
Ombudsman