

## **The complaint**

Mrs W complains to MI Vehicle Finance Limited ('MI') about a van it financed.

## **What happened**

Mrs W was supplied a small combo van from MI on hire purchase in September 2020. However, about 12 months later she contacted MI to explain there had been serious mechanical issues picked up when it was taken in for an MOT/service and that she was advised the van needed a replacement engine. She complained to MI about the quality of the van.

MI would not offer to fix the van or accept it back. In summary, it noted:

- Faults can develop over long periods of time, and it has no control over this.
- There is a requirement for the driver to regularly service the vehicle so that the engine is not over stressed.
- Because Mrs W has had the car for over 6 months it will not pay for a repair.
- An independent inspection concluded that as the vehicle had covered 5019 miles the fault would not have been present at the point of sale.

Our investigator looked at the complaint. He considered there were question marks over the durability of the van and concluded that it was not of satisfactory quality taking into account the provisions of the Consumer Rights Act 2015 ('CRA'). He upheld the complaint and directed MI to take the car back, end the finance and pay a refund of rentals for loss of use plus interest. He also recommended that it pay Mrs W an amount for distress and inconvenience caused due to the faulty goods.

MI does not accept the findings of our investigator, so the matter has been passed to me. In summary, MI submits:

- That the independent inspection is by an industry recognised expert and concludes the fault would not have been present at the point of sale.
- The van is a commercial vehicle with significant mileage (pre-dating the supply to Mrs W) and is cheaper than a new vehicle based on the age and mileage – it was not advertised as having a full-service history.
- Mrs W was in possession of the van for a significant time and had not had it serviced during this time.
- The report states that further dismantling is needed to ascertain the cause of the fault – under the CRA it is Mrs W's responsibility to evidence that the fault was present or developing at the point of sale – so this falls to her to organise.

- The expert report suggests that the load in the van could have contributed to the failure – which has been dismissed entirely on the word of the consumer. The van was taken out by Mrs W, but it appears that it was used by her partner for work purposes.
- It considers that 5,000 miles covered with the van being overloaded is the probable cause of the issue.
- It wants a review of the case taking into consideration the factual evidence provided by industry professionals. This should override the customer's testimony.

I issued a provisional decision on this matter. In this I said:

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

*Mrs W personally took out the finance with MI and her name is on the hire purchase agreement. However, Mrs W says her partner also used it to commute and transport his tools to the work site where he works as a contractor and that was always the intention (which the dealer was aware of). I want to note (in the interest of completeness) this could mean the CRA (referred to thus far) is not the relevant law here. However, because the equivalent legal provisions are broadly similar in any event I don't consider it warrants further scrutiny or changes the key considerations. With this in mind I will simply refer to the 'relevant law' rather than the CRA specifically.*

*The finance agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. MI is also the supplier of the goods under this type of agreement and responsible for a complaint about their quality.*

*The relevant law here 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.*

*So it seems likely that in a case involving a van, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.*

*The relevant law says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.*

*My starting point here is MI supplied Mrs W with a second-hand vehicle. At the point of supply it was around 6 years old and had already travelled around 64,000 miles. So I consider it fair to conclude that a reasonable person would expect the van to have parts that have suffered more wear and tear and that the likelihood of outlay on maintenance will be higher than with a newer less road worn vehicle. However, I also note the van was about £6,000, and while this was less than a newer vehicle it is enough to create certain reasonable expectations around durability and freedom from certain defects at the point of supply.*

*The expert report*

*I have carefully considered what MI has said. I note that in particular it has relied on the findings of an expert to support its position. However, while I have given the expert report due consideration I find it inconclusive. The expert makes a generalised statement about commercial vehicles being known to have faults due to the way they have been driven or the load they have carried – but there is no evidence to support the finding that Mrs W or her partner have overloaded this particular van or driven it poorly.*

*The expert also points to the fact that the vehicle has covered 5,019 miles since it was supplied to Mrs W to show the fault could not have been present at the point of sale.*

*However, I note the expert:*

- Says further investigation will be required to determine the exact nature of the engine fault and how it has occurred; and*
- does not address the fact Mrs W has said the van had a ticking noise from an early stage; or*
- the account that the mechanic who looked at the car initially found mass carbon build-up /metal shavings in the filter and sump and had suggested the build-up would have been present over a long period of time (I note that the photo Mrs W provided to MI shows significant carbon build up); and*
- does not appear to discuss the expectations around durability in this situation based on the circumstances of sale (including the price paid) and what Mrs W has said about the particular use of the van while in her possession.*

*So although I appreciate MI got an expert inspection carried out – I don't consider it to be definitive in showing the engine failure is a result of reasonable wear and tear in these particular circumstances.*

*I have turned my mind to the individual circumstances here. Mrs W has explained that the van is only used for commuting and not transporting heavy loads and I don't have cause to doubt that. I note the van is a small combo van – so it seems more likely than not that it was only being used to carry her partner's tools to and from the work site rather than large loads. So overall, despite the speculation from the expert based on the evidence I have I don't think it fair and reasonable to conclude that Mrs W or her partner are responsible for overloading the van. Or that it was used for anything other than commuting to and from the work site.*

*There is also no persuasive evidence the engine issue has been caused by Mrs W or her partner failing to take care of the vehicle more generally, or that it has been driven while in her possession in such a way as to likely cause damage to the engine. And while I note Mrs W does not appear to have had the van serviced prior to discovery of the engine issue I note the expert has not presented persuasive evidence to show the van required servicing sooner than when Mrs W took it in to get serviced and that said action likely caused the engine failure. The van was last serviced in February 2020 and had covered less than 10,000 miles prior to it being taken in for the MOT/service where the engine failure was discovered. So it is arguable it wasn't overdue a service / that servicing had not been neglected during the time the van was in Mrs W's possession.*

*I accept the mileage the van travelled while in Mrs W's possession could point to it not being sold with a pre-existing fault. However, I also note Mrs W has indicated the van was ticking at an early stage and smelt of fumes. I also note she has said her mechanic explained the contamination and build up had been there likely prior to the sale and which had also caused excessive fumes. To reinforce this Mrs W had provided a photo to MI showing significant carbon build-up on the engine which indicates that it had not happened recently (and which*

*the expert has not fully addressed). This could credibly suggest the underlying fault was present at the point of sale but was simply not picked up on until the car was taken in for the MOT and service.*

*MI has indicated Mrs W could have prevented the engine failure by having this looked into sooner. I don't think in this case it is fair to conclude that Mrs W or her partner would necessarily have considered this was something that needed urgent attention (for example they thought the fumes were because it was a painter's van)– nor is it clear to me that had they done so it would have prevented the need to ultimately replace the engine. So I don't think this is a fair reason for not upholding this complaint.*

*Even if I were to accept that the evidence points to the fault not being present at the point of sale – I do also have to consider the expectations around durability of the goods. There is an argument that buying a second-hand vehicle like this comes with a degree of acceptance that durability will be diminished. I have carefully considered this. But balanced against this I question whether the reasonable person would consider it acceptable that a major component like the engine would need replacing soon after the purchase of a vehicle of this age and mileage which also cost around £6,000.*

*This is not a clear-cut case and I note there is still some uncertainty about the root cause of the engine failure. MI has indicated that had the issue come to light in the first six months it would have assisted with a repair but because it came to light about 12 months in it is Mrs W's responsibility to get further information.*

*However, when considering what is fair and reasonable in all the circumstances I note that Mrs W has said the van was not getting a lot of use early on due to the issues around the Covid-19 pandemic. This seems plausible as shortly after buying it there were multiple lockdowns and restrictions. It appears that had the van been used as it normally would have (were it not for the pandemic) the engine issues are more likely to have come to light within the early months of ownership and been fully investigated with the help of MI. I have factored this into my overall findings here and in doing so I do not think it is fair to place further burden on Mrs W to pay for further investigations.*

*In deciding what is ultimately fair and reasonable I underline the following:*

- Despite its age the van cost around £6,000 and in the first year of use it was discovered that the engine requires replacing (and were it not for the pandemic would likely have come to light sooner) which is now probably going to cost the same as the van to replace.*
- Mrs W has recounted issues with the van since purchase which appear to be related to the discovery of the serious engine issues later – furthermore from photographic evidence and testimony there are unanswered questions around pre-existing issues with contamination and excessive deposits in the engine.*
- There is no evidence of misuse of the van and the nature of the vehicle along with Mrs W's credible testimony would indicate that it isn't used for large loads.*
- The expert report is inconclusive and based on generalised statements which do not appear to be backed up with persuasive evidence of misuse or overloading.*

*While this case is not clear cut I decide matters on the balance of probabilities. Here I consider it fair to conclude that on balance the van was likely not of satisfactory quality at the point of sale either due to a pre-existing fault with the engine or because components had prematurely failed at a later stage. I also consider that directing MI to pay for an engine*

*replacement at this stage is likely to be disproportionate as a remedy. So it appears fair to allow Mrs W to reject the van.*

*Mrs W should pay for the fair use of the van up until it was no longer driven due to the serious engine issue (which I believe was around the start of October 2021). I don't know the exact date use was discontinued but it seems fair for MI to refund payments relating to use during October 2021 onwards. I also note that Mrs W paid a £500 upfront deposit to the dealership for the van – I consider it fair that this is refunded too in the circumstances.*

*Mrs W has shown repairs for the van were paid for in October 2021 which did not rectify the underlining issues with the engine and total £538.16. Mrs W has said these came from the joint financial account she shares with her partner and has provided evidence to support this. Overall, I am satisfied that these losses are as a result of the goods not being of satisfactory quality, and that Mrs W has not benefited from them in any way. Therefore, I think it is fair and reasonable if MI refunds her for this extra cost.*

*Because of the circumstances here (and noting the involvement and impact on her partner who I cannot award compensation to as he is not an eligible complainant) I am not recommending that MI pays an additional amount to Mrs W for distress and inconvenience here. I also don't have persuasive information to show that MI acted particularly unreasonably in the way it handled the issue with the van – and I note it did arrange a report to try and explore matters.*

I said the complaint should be upheld and set out the redress. In response Mrs W did not have anything further to add. MI did not respond by the deadline set.

### **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.

Neither party has given me cause to depart from my provisional findings. I still consider it fair to uphold this complaint for the same reasons given above.

### **Putting things right**

MI should put things right in accordance with the redress direction below and taking into account my provisional findings (above) now forming part of my final decision.

### **My final decision**

I uphold this complaint and direct MI Vehicle Finance Limited to:

- take back the van at no extra cost to Mrs W;
- end the agreement and remove any adverse information from Mrs W's credit file;
- refund Mrs W the £500 deposit and any payments she made to the agreement relating to the rental period from (and including) October 2021 onwards;
- refund Mrs W the cost of repairs being £538.16; and
- add 8% yearly simple interest to the refund of the deposit calculated from 1 October 2021 and to other refunds calculated from date of payment to date of settlement.

If MI considers it is required to deduct tax from the interest award it should provide Mrs W a statement of tax deduction so she may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 July 2023.

Mark Lancod  
**Ombudsman**