

The complaint

Mr J complains about the quality of a used van that was supplied through a conditional sale agreement with Stellantis Financial Services UK Limited trading as Vauxhall Finance (SFS).

What happened

In December 2022, Mr J took a conditional sale agreement with SFS to acquire a used van. The total cash price of the goods is listed on the agreement as £11,995. A deposit is listed as £100. The mileage of the van on the sales invoice is listed as 63,535, and the van was around five years old. Mr J was due to make 60 repayments of £291.08.

In an email to SFS in June 2023 Mr J complained that he was mis sold the vehicle and gave the following examples:

- There was a discrepancy over the deposit he paid
- There was no courtesy vehicle when he needed to have it repaired
- He was mis sold the warranty package.
- They were unable to provide evidence of the pre-sale checks carried out
- There was a discrepancy with the MOT
- There were electrical issues with the interior lights and loose wiring in the rear
- The door was not secure whilst driving
- The parking brake failed

Mr J says his business has suffered as a result and has lost out financially having paid for repairs and vehicle hire. Mr J wants to reject the vehicle and be reimbursed for damages.

In June 2023 SFS issued their final response to Mr J's complaint. It said, in summary, that the dealership and manufacturer were responsible for the vehicle's delivery and repairs. And as the dealership declined a request for rejection, they couldn't overturn the decision as they weren't the regulator. However, SFS offered to extend the term of the agreement by a month without any further costs or impact to Mr J's credit file.

Unhappy with their decision, Mr J brought his complaint to our service for investigation. In November 2023 Mr J also advised that he's had the gearbox and clutch repaired due to it being faulty. He also explained in an email that the warranty didn't approve the repairs.

In their file submission SFS provided a copy of an invoice dated May 2023 confirming works were carried out to the NSR caliper, rear spring, parking brake, cabin light, washer jet, door adjustment and an MOT. The invoice showed the mileage as 70,610.

Mr J also provided evidence of repairs to the headlamp cap, and that he hired a vehicle from 15 May 2023 to 19 May 2023 for a total cost of £210.32.

Mr J also provided an invoice from a third-party garage dated December 2023, and with the mileage recorded as 71.348, which advised of the following:

- Exhaust leaking from front flexi pipe
- Front brake pads wearing low
- Front brake discs pitted on inner face
- OSF & NSF lower arm bushes worn and cracked
- Gearbox has a small oil leak
- Exhaust heat shield was loose
- Both rear tyres are cracked and perishing

The invoice also commented:

'I would advise all items listed above to be repaired or replaced with the gearbox leak to be monitored and repaired if required.'

Another invoice dated June 2023 with the mileage recorded as 71,438 confirmed the NSR door lock along with a full health check was carried out.

In an email to the investigator dated December 2023, Mr J said the following issues were still present despite the involvement from the dealership:

- The interior light is still missing
- The Gearbox is leaking oil.
- The Clutch is slipping and requires a new one.
- Brake pads have been changed
- The headlight cap on the driver's side.
- Both sliding side doors are broken
- Exhaust is still leaking from front flexi pipe
- Both lower arm bushes on the front are worn and cracked

Having considered all the information on file one of our investigators recommended that Mr J's complaint should be upheld. In summary, the investigator concluded that the van wasn't of satisfactory quality due to the issue with the parking brake, the sliding doors and the interior light. The investigator recommended that SFS:

- pay an amount of £400 for any distress or inconvenience that's been caused.
- refund 10% of the monthly rentals from 29 March 2023 to 15 May 2023 to reflect the impaired use of the van
- refund £210.32 for the cost of the hire vehicle
- refund the repair bill of £320.17 for the door repairs
- pay 8% interest on all refunded amounts from the date of payment to the date of settlement

SFS didn't respond to the investigator's assessment, however, Mr J provided further information which satisfied the investigator that the issue with the doors was still present and suggested previous repairs had failed. The investigator concluded it was fair that Mr J be able to reject the van. The investigator amended his assessment to recommend that in addition to the initial recommendations, SFS should also allow Mr J to reject the van.

SFS didn't respond to the investigator's assessment, so as they've not accepted the recommendations made the case has been referred to me for a final decision.

I think it's worth noting here that I can't see that SFS has provided any further information relating to this complaint for a considerable period of time. SFS haven't responded to the investigators' assessments or provided any information to dispute the further evidence Mr J has provided. So, I've been given no reason to doubt what Mr J has said about the issues surrounding his complaint.

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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

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. This reflects the informal nature of our service.

Mr J complains about a conditional sale agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr J's complaint about SFS. SFS is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The sale of Goods Act 1979 (SGA) is relevant in this case. It says that there is an implied term that "*the goods supplied under the contract are of satisfactory quality*". To be considered as satisfactory, the act says the goods need to meet the standard that a reasonable person would regard as satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The act also explains the durability of goods is part of satisfactory quality.

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

Mr J says he was mis sold the vehicle because it wasn't fit for purpose. So, I've focused this decision on whether SFS supplied Mr J with a vehicle that was of satisfactory quality.

My starting point is that SFS supplied Mr J with a used van that was six years old and which had travelled 63,535 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new van with lower mileage; and that there may be visual signs of wear and tear due to its usage. Having said that, the van was priced at around £12,000 which isn't insignificant. So, I think a reasonable person would also expect it could be used free from any major issues for a reasonable duration.

From the information provided I'm satisfied there were faults with the van. This is apparent from the invoices from the dealership dated in May 2023, confirming a number of faults that are consistent with what Mr J had told us. Mr J also provided a further invoice dated in February 2024 detailing the cost for replacement door runners and latches. The van had also failed an MOT in May 2023 (five months after supply) for an issue related to the parking brake efficiency, this is also consistent with what Mr J had told the investigator about the

failed handbrake which led to some third-party property damage. Having considered the van had some faults, I've considered whether it was of satisfactory quality at the time of supply.

Satisfactory quality

In a complaint email to SFS, dated 24 May 2023, Mr J said he experienced issues with the van, which included with the rear side doors. Mr J explained that the door had come off its runners.

I've focussed on this issue because I'm persuaded that there was a failed repair. The fault with the doors of Mr J's van, I'm satisfied, amounts to a breach of the contract, in that the goods were not supplied to Mr J in a condition that would be considered of satisfactory quality. And under the SGA Mr J has the right to reject the goods if they do not conform to the contract

In an email to the dealership dated 3 April 2023, Mr J reported various issues with the van which included a failure of the parking brake and the sliding doors which had fallen off their runners. The invoice from the garage dated 31 May 2023 shows that among other components repaired, was an adjustment to the side door. I've also seen an invoice from a third-party garage, dated 22 June 2023 detailing works carried out to the door lock. So, I'm satisfied there was an attempted repair to the door issue that Mr J reported.

In an email dated 12 December 2023, Mr J told the investigator that the sliding doors were still an issue as they regularly came off their runners. And In January 2024, Mr J provided an image of the sliding door to the van which had come of its runner. I don't see that this image has been timestamped, however I've been given no reason to doubt the validity of the evidence Mr J has provided.

In addition to this, Mr J has provided an estimate for the repairs to the sliding doors from a third-party garage. Although the estimate doesn't specifically confirm the condition of the doors on the van, I'm persuaded this was in relation to a repair as I've been given no reason to consider Mr J would source an estimate for works that weren't required.

I don't think it's reasonable so soon after supply, that the doors of the van were displaying a fault, to the point where they become disconnected from its structure. I think it's reasonable to say this degree of fault is beyond what a reasonable person would consider as an acceptable level of quality, despite the vehicle's age and mileage.

So, in consideration that Mr J reported issues with the van, which I've considered to have rendered it not of satisfactory quality, and repairs have been attempted and appears to have failed, I'm satisfied that under the SGA, Mr J should be able to reject the van.

Putting things right

As I've concluded that the van was supplied in a condition that wasn't of satisfactory quality and SFS hasn't repaired it. Its reasonable that they put things right. Mr J has said that he wants to reject the van, and in the circumstances, I'm satisfied that SFS should facilitate this for him.

However, in addition to facilitating a rejection, Mr J has made some payments in an attempt to have it repaired that I think should be reimbursed to him.

The first main fault with the van was related to the parking brake which Mr J told us first occurred on 29 March 2023. Mr J said the van was taken in for repairs on 15 May 2023. The issue with the parking brake resulted in the failure of the van's MOT on 17 May 2023. I don't

think it's reasonable that the parking brake should fail within five months of the van being supplied, and as the advisories on the MOT concluded the parking brake's efficiency was less than 50% of what it should have been, I'm satisfied this issue would also have contributed to the van not being of satisfactory quality when it was supplied to Mr J. And so, it follows that I think it would be reasonable to refund to Mr J 10% of the monthly repayments he was making towards the agreement, for impaired usage from the date of failure in March 2023 to the when it was repaired in May 2023.

Mr J provided us with a rental agreement which showed he hired a van from 15 May 2023 to 19 May 2023. Mr J said he wasn't given a courtesy vehicle whilst his van was being repaired. SFS hasn't disputed this, so I've been given no reason to doubt what Mr J has said here. I also have the evidence that Mr J hired a van during this period. So as the repairs to the van was for a fault which I don't think should have reasonably occurred so soon, I think SFS should also reimburse to Mr J the cost of the hire vehicle. So as detailed on the rental agreement, I'll be instructing SFS to reimburse to Mr J £210.32 for the cost of the replacement hire vehicle whilst his was being repaired.

Mr J also provided us with an invoice from the third-party garage dated 22 June 2023 for the amount of £320.17, which confirms repairs were carried out to the door lock. From what Mr J has said I'm persuaded the repairs are related to the current issues with the doors of the van, and as I don't think the fault with the doors were reasonable in the circumstances, I'll be instructing SFS to reimburse Mr J for this.

Having considered all the information provided and the circumstances of the complaint against SFS, I'm persuaded that Mr J has experienced a considerable degree of distress and inconvenience. Particularly as I'm satisfied the van wasn't of satisfactory quality when it was supplied. Mr J explained the impact to his work and the going back and forth. Mr J also described a scenario of when the parking brake failed and the subsequent problems it caused him. Although I've not been provided with any evidence of financial loss relating to this incident, (for example payment for any property damage etc) I'm persuaded this would have caused Mr J significant worry and concern. Taking all of the above into consideration, I'm in agreement with the investigator that SFS should pay Mr J £400 in compensation to recognise the inconvenience caused.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Stellantis Financial Services UK Limited trading as Vauxhall Finance to:

- End the finance agreement with nothing further to pay
- Arrange to collect the van at no cost to Mr J
- Refund the deposit Mr J paid (if any part of this deposit is made up of funds paid through a dealer contribution, Stellantis Financial Services UK Limited trading as Vauxhall Finance is entitled to retain that proportion of the deposit)
- Refund 10% of the monthly rentals from 29 March 2023 to 15 May 2023 to reflect the impaired use of the van
- Reimburse to Mr J the cost of the hired vehicle as described in my decision
- Reimburse to Mr J the repair bill of £320.17 for the door repairs
- Pay Mr J £400 in compensation for any distress or inconvenience that's been caused.
- Remove any adverse information that may have been recorded with the credit

reference agencies in respect of this agreement.

Stellantis Financial Services UK Limited trading as Vauxhall Finance should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If Stellantis Financial Services UK Limited trading as Vauxhall Finance considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 September 2024.

Benjamin John
Ombudsman