

## **The complaint**

Mr D is unhappy with a vehicle supplied under finance by FCE Bank Plc trading as Ford Credit ('FC').

## **What happened**

The parties are familiar with the background of this complaint so I will only summarise what happened briefly here.

FC supplied Mr D a van on hire purchase. Mr D is unhappy with it. In particular he says:

- The dealer led him to believe it had heated passenger seats and seats which were finished in part leather; and
- the van lets a lot of wind noise in through the driver side door – he suspects the issue is with insufficient sealing.

FC has not agreed that it is at fault – but Mr D wants it to put things right and escalated his complaint to this service.

Our investigator did not agree there was sufficient evidence to show an inherent fault with the door seals. However, they concluded the van had likely been misrepresented and said Mr D was entitled to reject it with a refund of his deposit. FC would keep most of the monthly payments made to date to reflect fair use – but there would be a 5% refund for Mr D to reflect impaired use. The investigator also thought FC should pay £200 compensation to Mr D for distress and inconvenience to date.

Mr D doesn't want to give the van back at this stage – because of how long things have gone on he says this would cause him significant financial detriment. Mr D would prefer compensation or a replacement.

FC said it was willing to honour a payment equivalent to 5% of each instalment Mr D had paid to date (£348.80).

Mr D refused this. He says, in summary:

- he was denied his right to return the van and thinks that his complaint has been handled poorly – he thinks things have been dragged out needlessly;
- the issue has caused him stress and impacted his business as he was unable to sign write his van while everything was going on;
- the cost of the seats that were advertised and should have come with the van would be more than double the offer from FC; and
- he has been messed around in respect of the issue with the door as well.

The matter has come to me to make a decision on as the final stage in our process.

I issued a provisional decision on this case as follows:

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

*I will only comment on the matters I consider key – this reflects my role resolving disputes informally.*

*I am able to consider a complaint about the quality of the van against FC because it is the supplier of the van under the finance agreement.*

*There is a question mark as to whether when Mr D was transacting for the van he was acting 'wholly or mainly' outside his 'trade, business, craft or profession'. If he were not then the Consumer Rights Act 2015 ('CRA') would not be the relevant law here. However, Mr D has explained that the van is his only vehicle and he sold his car so he could get a better van for work and social. So there is an argument to say the CRA does apply here and therefore I will refer to it here. However, even if it does not apply I consider there to be other relevant law that would not likely result in a different outcome here in any event.*

*Was the van mis-described?*

*There is a dispute over this from both sides and of course I was not there at the time of sale to hear everything discussed. However, where things are unclear I make my decision on the balance of probabilities.*

*Mr D has provided credible and persuasive testimony to say that he was led to believe by the dealer that the van he was buying had part leather seats and heated passenger seats (in addition to heated driver seat). He has backed this up with screenshots from the manufacturer website which appear to show that the model he was buying came with these features as standard.*

*I also note that Mr D has shown follow up emails between him and the dealership where the salesperson appears to be confused as to why Mr D's model does not match the specification on the website. He doesn't outright say that Mr D's purchase doesn't have this specification and says he will follow up with the manufacturer whether there is an error on its website or even if Mr D's model is an early production model without the full features. Either way he appears surprised. This evidence is persuasive in showing me that it is more likely than not that during the sale the salesperson acted in the belief that the van had the particular specification in dispute.*

*I also think it is more likely than not that Mr D would have discussed the importance of the heated seats in particular at the time of sale – and that it would have been a key factor in his decision making. This is based on his credible testimony about the importance of this feature to him when he is using the van to transport his family members. Because the comfort of his family was a factor here, and noting how strongly he has conveyed the importance of this feature in his testimony I think on balance he discussed the specification of the seats during the lead up to the sale. And I think based on the latter emails – the salesperson (acting as agent for FC) would have been under the impression that these were included and confirmed this to Mr D at the time of supply.*

*However, in any event, putting aside what was likely discussed with the dealer I also note that the website for the manufacturer appeared to be advertising the wrong specification for*

*Mr D's model. I consider these representations are fairly considered to be representations made on behalf of the FC via Section 50 of the CRA and therefore form part of the contract for goods here.*

*FC has pointed out that Mr D could have examined the van before he agreed to the sale. However, Mr D has said he wasn't able to due to restrictions due to the pandemic. He accepts he visited the dealer and spoke to the salesperson on the phone. However, he says he was prevented from test driving the van due to the restrictions.*

*FC denies that Mr D wasn't able to examine the goods - but I find what Mr D says persuasive and see no reason not to consider it accurate. However, I think FC's point falls away even if Mr D could have examined the goods. I say this because Mr D was placing reasonable reliance on what the salesperson told him and what the manufacturer had advertised on its website. I don't see how he would reasonably have been expected to scrutinise the seats before taking delivery based on these factors.*

*A misrepresentation is a false statement of fact which induces a person into entering a contract when they would have acted differently had they known the truth. I think the evidence here indicates that Mr D was told a false statement of fact about the features of the seats. I also think, from what he has said he would not likely have purchased the van had he known the truth.*

*The remedy for misrepresentation is usually rescission of the contract to put the consumer back in the position they would have been in had it not been for the false statement. It is not to give the consumer the benefit of the false statement.*

*Mr D has explained that due to the passage of time (several years) where he has been disputing this issue he is now in a position where handing back the van is going to cause him significant financial detriment due to the payments he has made to date. Therefore, it appears he would rather hold on to the van and look at a different remedy.*

*I don't think Mr D is being unreasonable in his comments regarding rejection, noting how long things have gone on for. I don't think his view on this undermines how strongly he felt about the seats, because had he been allowed to reject earlier I think he likely would have. It is just that now things have moved on somewhat and he is concerned about the financial implications of rejecting. Therefore, noting his comments, rather than a remedy for misrepresentation, I have looked at a remedy for breach of contract, namely for goods which are not as described. In doing so I note that the requirement for goods to be as described is implied into the contract between Mr D and FC by the CRA. Where this term is breached the CRA affords Mr D several remedies including repair, replacement or monetary awards such as damages.*

*My role is to resolve disputes informally so I think the most practical and fair solution here (rather than rejection) is an award of damages. This will reflect the fact that Mr D has lost out on particular features he was expecting to have which have impaired his ongoing use of the van.*

*I recognise here that had things gone as they should have he would likely have had to pay for the increased specification. However, when considering the misdescription here and the situation Mr D has been put in by being denied a valid opportunity to reject, I think it is not unfair to look at what Mr D was expecting and didn't receive in gauging an appropriate damages award here.*

*Before I go on I want to note that I don't think repair or replacement are practical or likely fair remedies at this stage. I think there are question marks about how easy it would be to upgrade or replace the vehicle. And it is likely to cause Mr D further inconvenience in any event. Furthermore, sourcing upgraded models is likely to result in unjust enrichment here as these will likely come with additional specification benefits.*

*Deciding what is a fair award of damages is not a science. I think it is very important to emphasise that in order to be fair I have looked at matters broadly. There are some external factors I have considered in arriving at a fair amount. I would also underline that my redress is not intended to give Mr D exactly the cost of missing features nor am I intending to give him precisely the cost to fit the missing features either (or recommending he does this). However, in order to decide a fair award of damages for loss of expectation/impaired use in the particular circumstances here I consider it relevant to factor in the perceived value of the misdescribed specification.*

*I note the specification of the seats is important to Mr D, and I acknowledge the loss of expectation and impaired use he has experienced through this situation and will continue to. However, I also have to take into account that they don't cause substantial impairment to his day to day use of the van particularly as the driver seat is heated. So I don't think his claim for 2 years of finance payments is proportionate to what has happened here.*

*In order to determine a fair award of damages and assess the loss of expectation/impairment through the misdescription I note the price to retrofit heated seats starts at around £550. I also note that the dealer price to add a heated 'seat pack' to certain new builds of van in the range is around £600. Aftermarket leather seat covers range in price significantly from around £50 to £150 or more.*

*All things considered, and noting this is not a science, I think that £650 would be a broadly fair value to use in regard to a payment of compensation to remedy the breach of contract here.*

*Mr D has claimed business losses due to the situation. However, after considering the matter of causation I do not accept it is fair to claim these here. Firstly, there is no persuasive evidence showing that the lack of features has directly led to a loss of profits for Mr D or that he wasn't able to reasonably mitigate the issues of sign writing (for example with a non-permanent solution). Nor do I think it is a reasonably foreseeable consequence of not having these features in any event.*

*I do think the issue has had an impact on Mr D's wellbeing though and has caused him inconvenience. He has explained how stressed it has made him and how he has had to go back and forth to try and get a resolution to the issue over a prolonged period.*

*I have noted our website which explains how we might make awards in respect of distress and inconvenience in different circumstances. In doing so I consider that the matter has caused Mr D more than the level of frustration and annoyance he might expect reasonably day to day, and the impact on him has been more than minimal. I note that FC appears to have taken a long time to look into things which prolonged the frustration and annoyance here. However, I also have to factor in that this did not reasonably stop Mr D from using the van, so I do have to temper the level of distress that this would reasonably have caused in the circumstances. Overall, I think the £200 the investigator proposed is reasonable here.*

*Wind noise issue*

*Mr D has claimed that the van has suffered from excessive wind noise from the moment he was supplied it which has irritated him.*

*The CRA is of particular relevance here. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”. The CRA says the quality of goods are 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 vehicle, 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 CRA 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.*

*Mr D was supplied with a new van – so the expectations around quality would be high. However, here I do not consider there to be persuasive evidence that the van was faulty at the point of sale. I note that the dealer offered to look into it but couldn’t find any faults. And the evidence that Mr D has provided (such as a video and pictures) is not compelling in showing that the van is faulty in the circumstances here (noting that the supplier has inspected it and claimed there is no fault).*

*While I am sorry to hear this, Mr D finding the noise unacceptable does not necessarily mean it renders the van of unsatisfactory quality. I think in the circumstances here something like an expert report would have been more persuasive, particularly noting that an issue of this nature is likely to have certain tolerances before it is classed as a defect.*

*I know Mr D has mentioned that he paid for a courtesy car while investigations were ongoing into this issue – but because I am not persuaded there is a breach of contract rendering the van of unsatisfactory quality I am not minded to say that this is something that should be refunded to him. Nor am I minded to award distress and inconvenience in respect of this issue as I still consider the award I have made in respect of the issues stemming from the misdescription to be fair and reasonable.*

*In summary, and noting what Mr D has said about his position on rejection of the van and the financial impact on him I consider a payment of compensation to be the fairest resolution to the van not being as described. I hope this can bring the matter to a fair conclusion, however, if Mr D is not satisfied with my decision he is not prevented from seeking legal advice in respect of taking the matter for a formal resolution through the court instead.*

### ***My provisional decision***

*I direct FCE Bank Plc trading as Ford Credit to:*

- Pay Mr D £650 in compensation; and*
- £200 for the distress and inconvenience caused.*

*FC agreed with my decision but Mr D raised some further points.*

*Mr D says in summary:*

- Not having a sign on his van during the period of the dispute has adversely impacted his business, and a magnetic sign would be expensive and leave visible marks from the sun once removed.*

- The photographic evidence should suffice to show that there is a fault with the van causing wind noise.
- The compensation has been greatly underestimated and does not reflect the trips to the dealership to resolve the wind noise issues, the hire cars, the level of correspondence and the mental exhaustion caused by it.

### **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 thank the parties for their comments. I note that Mr D does not consider the compensation I am proposing fair. He points particularly to business losses and the stress and inconvenience caused by the alleged issues with the door.

Regarding his business losses, I am still not entirely convinced that Mr D wouldn't be able to reasonably mitigate not having a permanent sign on the van in some way. Even if he were to claim any associated additional costs back as part of his overall claim against FC. However, even if this were not the case I think there are still fundamental issues in him claiming loss of profit here. I say this because there is no persuasive evidence showing that the lack of features has directly led to a loss of profits for Mr D nor do I think it is a reasonably foreseeable consequence of not having these features in any event.

Regarding the wind noise issue, as I have said in my provisional decision I don't think his evidence is compelling here, particularly as the van was inspected and no fault was apparently found. So it follows that I can't fairly make an award in respect of this, nor the associated distress and inconvenience which Mr D has also detailed.

Overall, I consider my provisional decision to be fair and reasonable, and I am not persuaded to change it. While I am sorry that Mr D considers the compensation I am proposing insufficient I remind him that he does not have to accept my decision and is free (should he so wish) to seek independent legal advice and take action through the courts against the supplier instead.

### **Putting things right**

For the reasons detailed here and incorporating my provisional decision (as copied above) I consider that FC should put things right as I have detailed below.

### **My final decision**

I direct FCE Bank Plc trading as Ford Credit to:

- Pay Mr D £650 in compensation; and
- £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 April 2024.

Mark Lancod  
**Ombudsman**