

The complaint

Mr C complains about the quality of a used van he acquired through a hire purchase agreement with Mallard Leasing Limited trading as Mallard Finance ('Mallard'). Mr C says he had issues with the van as soon as he acquired it and so he doesn't think it is of good quality.

What happened

The van Mr C acquired was used, and it was first registered in 2015. So, it was about eight and a half years old when Mr C received it. It had covered approximately 145,000 miles since new. The finance agreement shows the van had travelled 53,000 miles but it was fitted with a new engine in September 2020. And had travelled 53,000 miles since this time.

Mr C acquired the van using a hire purchase agreement that was started in December 2023. The vehicle had a retail price of £10,000. Mr C paid a £1,700 deposit (from a part exchange) meaning £8,300 was financed. This agreement was to be repaid through 60 monthly instalments, there were 59 monthly repayments of £242.02 and then a final instalment of £441.82. If Mr C made repayments in line with the credit agreement, he would need to repay a total of £16,421.

Below is a summary of the issues complained of by Mr C and the investigation and repair work that has been carried out by the dealership, alongside what has happened in respect of the complaint.

- Mr C contacted the dealership in December 2023 saying that he was having problems starting the van. The dealership responded and said this could be due to the cold weather, no work was done on the van at this time.
- In January 2024, Mr C told the dealership that the van had gone into 'limp mode' and had displayed an engine management light ('EML') to '*check injection system*'. The dealership thought this could be due to a blocked diesel particulate filter ('DPF')
- The images Mr C provided show that the van was due a service. As far as I've been made aware the van wasn't serviced at this time.
- Still in January 2024, Mr C said an EML was present that said '*engine failure hazard*'. Mr C also thought there could be a problem with the glow plugs and the engine was '*knocking*'.
- The dealership thought that the engine needed '*remapping*' and this was carried out by an independent third party garage in January 2024. I've not seen details of what exactly was done by this garage.
- In February 2024, Mr C (with the help of a friend) replaced the 'glow plugs' on the vehicle.
- In February 2024 Mr C took the van to another garage to have some maintenance undertaken to the suspension. I've seen that the mileage was 148,569 at this time.
- In March 2024 Mr C said that the engine was '*knocking*' loudly, and it was recovered to the dealership. The dealership has confirmed the van needs a new engine.

Mallard arranged for an independent engineer to consider what had caused the engine failure. This report says it thought the most likely cause of this was due to a lack of oil in the van over time. And using the van in this state had damaged the engine. It thought the engine failure was due to the van not being maintained properly.

Mr C complained to Mallard outlining the problems he'd had with the van. Mallard didn't uphold his complaint. It said that an independent engineer had inspected the van and concluded that it wasn't likely to have been faulty at the time of sale. And that the problems Mr C had with the van were likely to be due to poor maintenance.

Mr C then arranged for an independent engineer to consider the van through a different vehicle inspection business. This second report also concluded that the engine failure was due to a lack of oil. But said the damage was likely to have happened before Mr C owned the vehicle and so would have been present, or developing, at the point of supply. And so was the responsibility of the dealership or Mallard.

The first reporting company has said that, after considering the second report, that it still thought that the engine problems were due to a lack of maintenance. And noted that the van had not been serviced when it should have been, and had work done on it by several garages who did not notice any kind of problem with the engine or the oil levels.

The dealership that has worked on the van has also said that it thinks the engine problems have been caused by a lack of oil in the van and this should be the responsibility of Mr C.

Mr C didn't agree with this and brought his complaint to the Financial Ombudsman Service.

Our Investigator partially upheld Mr C's complaint. She said that Mr C did have some problems early in the life of the van, but these were repaired at the time. He should receive £200 compensation for this. But she wasn't persuaded that the later engine problems were present or developing at the time of sale and were not due to, as the first report said, a lack of maintenance of the vehicle. And she didn't think that the oil problems or engine knock were related to the earlier van issues. She didn't uphold Mr C's complaint about the engine failure.

Mr C didn't agree with the Investigator, and he asked that an ombudsman consider the complaint. Because Mr C didn't agree, this matter has been passed to me to make a final 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Mallard as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that 'the quality of the goods is satisfactory'.

To be considered 'satisfactory', the goods would need to 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 van's history.

The CRA 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.

This van was about eight years old when Mr C acquired it and it had travelled around 145,000 miles. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Mr C should have been able to use it for a reasonable period before it needed significant work.

As I've outlined above it has been established that the van had some problems starting when Mr C first acquired it. And this may have been related to the glow plugs that he replaced later. And following this the van's engine failed due to a lack of oil. There is no dispute that the van had these faults.

I agree that the faults the van developed during the early part of the time after when Mr C acquired it should have been repaired by the dealership. As far as I can see this was done. I agree that Mr C should be paid £200 for any distress and inconvenience this all caused to him. Mr C and Mallard haven't said that they disagree with this.

The crux of the remaining complaint concerns the engine fault that the van developed and whether this meant the van was of an unsatisfactory quality. I've considered whether Mallard should either make further repairs to the van or allow Mr C to reject it.

There have been two independent reports made about the van. They both agree that the engine failure was due to a lack of oil. But they differ in when the damage to the engine was caused by this lack of oil. The first report, and the dealership, think that the damage to the engine happened during the time Mr C owned the van, and was due to Mr C not checking the van had the correct oil levels in it. The second report says that the damage was likely to have been caused before Mr C took ownership of the van.

Having considered both reports, and the comments from the dealership, I think it's more likely that the damage due to the lack of oil occurred during Mr C's ownership of it. This is because he didn't report any significant engine problems (related to this) early on in his ownership of the van. The van was due a service, which would include an oil check and change and this wasn't done. The oil leak that was reported was relatively close to when it broke down, that is in March 2024. And Mr C's van was looked at by several garages and no problems relating to a lack of oil were discovered. And lastly Mr C was able to drive the van for around 4000 miles before it broke down.

I think all these factors indicate that the engine didn't have a serious engine fault at the start of the time he acquired it. I think if the serious engine problems that came about later was present, or developing, at the time of sale I don't think it's likely that he would have been able to drive the van over the distance he did.

I've also thought about if the dealership should have done more when it looked at the car early on in Mr C's period of ownership, bearing in mind he reported a 'knocking' noise to it in January 2023.

But, as far as I can see, the problems Mr C had at this time concerned different issues to the later engine failure. It seems established that the injection system did need some maintenance. This was leading to the engine performing poorly but doesn't seem related to the damage caused by the lack of oil. And so, the dealership would not necessarily have related any problems Mr C was having in late 2023 and early 2024 to an oil starvation problem with the engine. And the problems that became apparent later.

So, can't say it's likely that the problems were apparent or developing at the time the van was supplied to Mr C. It follows that, having looked at everything, I don't think there is enough for me to say that the van was not of satisfactory quality when it was supplied to Mr C.

So, I don't think it's reasonable to say that the car wasn't of satisfactory quality at the point of sale. And whilst the car breakdown was unfortunate, I don't think that Mallard should be responsible for putting the faults with the car right or paying any compensation.

Putting things right

I think Mallard Leasing Limited should pay Mr C £200 compensation for the inconvenience and distress this first problems he had with the car have caused him.

My final decision

For the reasons I've explained, I partly uphold Mr C's complaint.

Mallard Leasing Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 April 2025.

Andy Burlinson
Ombudsman