

## The complaint

Mr B complains about the quality of a used van he acquired through a hire purchase agreement with Volkswagen Financial Services (UK) Limited ('VWFS'). Mr B says that the vehicle he acquired had significant defects and was not fit for purpose.

## What happened

Our Investigator thought the complaint should be upheld. Mr B didn't entirely agree with the Investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Mr B's complaint should be upheld. And I said that the compensation should be altered. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

## What I said in my provisional decision:

*Mr B's complaint is about the quality of a van he acquired in October 2022. The van was used, and it was first registered in September 2017. So, it was five years old when Mr B received it. It had covered 70,400 miles.*

*Mr B acquired the van using a hire purchase agreement that was started in October 2022. The vehicle had a retail price of £29,366. Mr B paid a £4,000 deposit meaning £25,965 was financed. This agreement was to be repaid through 59 monthly instalments of £554.76 with a £10 option to purchase fee on the last repayment. If Mr B made repayments in line with the credit agreement, he would need to repay a total of £36,740.84.*

*Mr B has complained to VWFS saying that the van wasn't of satisfactory quality. VWFS considered this complaint, and it partially upheld it. It said that as the van needed significant work within six months then it should pay some compensation. But it didn't think the van it was faulty at the time of sale and so it didn't think that Mr B should be able to reject the vehicle.*

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

*Our Investigator upheld Mr B's complaint. He said that he didn't think that the vehicle was of satisfactory quality. And given all that has gone wrong with the van, and the repairs undertaken, he should be able to reject it. Our investigator recommended that Mr B receive back a proportion, that is 10% of the finance repayments, over the time when he needed to use a courtesy car. And some compensation for the distress and inconvenience this has all caused him.*

*VWFS agreed with what our investigator said.*

*Mr B, and his representative, agreed in the main with our Investigator. However, they thought that:*

- Mr B should receive a greater amount back than the 10% of the finance repayments. This was because the courtesy car was 'worth less' than 90% of the value of the van he purchased as it was much smaller.*
- There was a capital element to the finance repayments which will not be part of the compensation and Mr B will not benefit from the strong residual value the van would have had if it was not faulty.*
- The £350 distress and inconvenience payment was on the low side*

*There was some further correspondence. I can see that Mr B has stopped using the van and purchased another one. VWFS has calculated the compensation. It's not clear if this has been provided to Mr B but I'll ask our Investigator to provide a copy of this to Mr B.*

*VWFS has reduced the compensation payable to Mr B due to the cost of some repairs that were completed alongside the engine change and turbo work. I've seen the correspondence where Mr B agreed to have these completed and that he would pay 50% of some of the total costs of these, the amounts Mr B agreed to pay were for a clutch and flywheel, an MOT, a service, a cambelt, a water pump and a tyre.*

*Our Investigator thought that VWFS could separately bill Mr B for these, but VWFS has proposed to alter the compensation to reflect these costs. Again, I can't see that Mr B, or his representative, were made fully aware of this and I'll also ask that this is provided to Mr B. But I have considered this below.*

*Because agreement hasn't been reached, this matter has been passed to me to make a decision.*

### **What I've provisionally 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. VWFS 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 consider 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.*

*This van was about five years old when Mr B acquired it and it had travelled around 70,000 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 B should have been able to use it for a reasonable period before it needed significant work.*

*There isn't now any disagreement that the van was faulty, and that Mr B should be able to reject it. So, I won't detail all the issues Mr B has had with the van, and the repairs. But briefly:*

- *The history of the van shows that in 2019 the Exhaust Gas Regeneration ('EGR') system was faulty and parts of it were replaced and or repaired. There is also evidence of poor engine compression.*
- *The service history of the van shows that it was only serviced twice, once at 29,000 miles and once at 70,000 miles.*

- Mr B first noticed a problem with the van in October 2022 as it had low coolant and deposits in the oil filler pipe. It was determined that there was a problem with the EGR system again. A repair was made to this by a third party (Volkswagen) garage which I understand was approved by the manufacturer and or dealership.
- Mr B continued to experience problems with the engine and says it was consuming more oil than it should. He brought this to the dealership's attention in January 2023. But I understand the dealership didn't think any further work was needed to the van at this time.
- In June 2023 Mr B again raised the problems he was having with the van and in August 2023 the dealership thought that these may have been related to the earlier EGR work and the poor compression the engine had.
- In August 2023 the van was returned to the dealership as the engine had failed. Whilst it said this was not covered under the warranty, the dealership went on and replace the vans engine with a reconditioned one.
- The van was not returned to Mr B but the correspondence shows that there were also some problems with the van turbochargers, and they needed significant work.
- The dealership thought this was due to wear and tear, but Mr B thinks this was also related to the EGR problems, as they would contaminate the engine with coolant causing damage to it, including the turbochargers.

I understand some off the repairs needed have been done and some other maintenance and servicing, but the van wasn't returned to Mr B in a useable condition before he said that he wanted to reject it.

And I've noted the dealership offered to buy back the van from Mr B at a 'fair market price' But the terms of this couldn't be agreed and Mr B said in early 2024 that he did not want to spend further amounts on the van. I understand Mr B hasn't been able to drive the van since August 2023 and it has remained at the dealership since this time.

Mr B has gone on to purchase a new vehicle and the courtesy car he was using was returned to the dealership on 18 November 2023.

It has been agreed that Mr B should now be able to reject the van because of these faults as the vehicle was of unsatisfactory quality. I agree compensation should be based on Mr B being able to reject the van.

Mr B has been unable to use the vehicle for a long period of time due to the repairs it has needed. He has been given the use of a courtesy car, but this has been a smaller vehicle and didn't always best meet his needs.

Our Investigator thought that a refund of 10% of the finance repayments Mr B has paid over the period he wasn't able to use the van was reasonable. Mr B and his representative don't think this is enough. I do agree that Mr B bought a large vehicle with seven seats to accommodate all his family (and pets) and he was supplied with what was, in the main, a small to medium family car instead. And this couldn't accommodate everything he wanted it to. Added to this I think the courtesy cars generally had a lower specification than the vehicle Mr B acquired.

I agree that these vehicles represented a considerable loss of utility and it's likely that the courtesy car wouldn't have always met Mr B's needs. So, I think a refund of 20% of the repayments from August 2023 is reasonable for this.

I don't think this refund should be increased due to what Mr B's representative has described as a 'capital element'. This assumes that the van will have a certain value in the future which it very well may not. And this uncertainty will be removed when Mr B no longer owns the vehicle.

I also don't agree that Mr B should retrospectively pay for the repairs that were undertaken to the van, that remained unpaid, and that VWFS thinks should be taken from the compensation. This is because I think it should have been evident that the van was not of satisfactory quality at this point, and it should either have been repaired at no cost to Mr B or he should have been allowed to reject it. And as he didn't regain use of the van he will not benefit from these. Asking Mr B to now pay for

*repairs to a vehicle that wasn't of satisfactory quality, that he won't benefit from, seems unreasonable to me.*

*VWFS has agreed to remove any negative entries from Mr B's credit file when the compensation is accepted. I also agree this is reasonable.*

*Mr B was inconvenienced on several occasions by having to take the van back and forth to the garage. He was, kept mobile in a courtesy car, but ultimately that wasn't the van he was paying for. What's more, it seems his van has been in the dealership for extended periods, and I understand he had had to modify some travel arrangements. I can also imagine it would have been very frustrating and stressful for the problems to keep re-occurring as they did. So, I think the £350 suggested by our Investigator for the distress and inconvenience he experienced is fair, in addition to the above compensation.*

## **Developments**

VWFS, and Mr B's representative received my provisional decision. VWFS agreed with what I said. Mr B, and his representative, didn't comment on my provisional 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.

VWFS and Mr B didn't raise any new points after receiving my provisional decision. So, I've reached the same conclusions I reached before, for the same reasons. I still think the van wasn't of satisfactory quality and that the compensation below is an appropriate way to put this right.

## **Putting things right**

I uphold this complaint against Volkswagen Financial Services (UK) Limited trading as VWFS and tell it to:

- End the agreement with nothing further for Mr B to pay.
- Collect the van (if this has not been done already) at no further cost to Mr B.
- Refund Mr B's deposit/part exchange contribution of £4,000.
- Pay a refund of 20% the finance repayments between August 2023 to November 2024.
- Refund any payments Mr B made after November 2024.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay a further amount of £350 for any distress or inconvenience that's been caused due to the faulty goods (less the previously offered amount of £150, if this has already been paid).
- Remove any adverse information from Mr B's credit file in relation to the agreement.

If VWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**My final decision**

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

Volkswagen Financial Services (UK) 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 B to accept or reject my decision before 23 May 2025.

Andy Burlinson  
**Ombudsman**