

## **The complaint**

Mr W is unhappy that a van supplied to him under a hire purchase agreement with MI Vehicle Finance Limited (MIVF) was of an unsatisfactory quality.

When I refer to what Mr W has said and what MIVF have said, it should also be taken to include things said on their behalf.

## **What happened**

In early February 2023, Mr W was supplied with a used van through a hire purchase agreement with MIVF. The cash price was £17,500. Mr W paid an advance payment of £2,000.00 and the agreement was for £15,500.00 over 60 months, with 59 monthly payments of £363.94 and a final payment of £364.94 which included the Option to Purchase fee. At the time of supply, the van was around four and a half years old and had done 41,722 miles.

In October 2023 Mr W complained to the Financial Ombudsman that the van he had acquired was faulty and had been involved in an accident and was cheaply repaired. He said from day one he had problems. Mr W did not state exactly when he complained and took the van back to the dealer on the first occasion but said shortly after he acquired the van he complained to the dealer and was told to take the van to a garage, but that after two weeks the van had broken down again. An invoice provided by Mr W dated March 2023 states:

“problem with DPF [diesel particulate filter] anti pollution system

Carry out repairs and flush using wynns dpf cleaner

DPF problems caused by short journeys and exhaust system not allowed to get to operating temperature.”

This invoice was for £60 and was paid by the dealer who supplied the van. A summary of all the invoices issued in relation to this van by the garage who carried out the repairs and provided by them in March 2024 also states that front brake pads were supplied and fitted in March 2023.

A further invoice from the same repair garage is dated in May 2023 and was to supply and fit a DPF pressure sensor and regeneration of DPF. This invoice was for £120 and paid for by Mr W.

In June 2023 Mr W complained to MIVF. Mr W has not provided details of exactly what he complained about but in their Final Response Letter MIVF stated they were responding to Mr W's complaint about the Engine Management Light, issues with the bonnet and back bumper and that Mr W believed the van had been in an accident previously which had not been disclosed. Mr W has also raised concerns that the recorded mileage may have been tampered with.

MIVF provided a copy of the HPI check which showed the van was clear for Insurance damage write off, the Condition Check and that there was no mileage discrepancy with the National Mileage Register.

In June 2023 the van passed its MOT. The recorded mileage was 45,848. There were advisories relating to tyre wear and damage and rear brake pads and discs and nearside front inner play in steering rack inner joints.

There is a further invoice from the same garage who completed the earlier repairs, from July 2023, which says:

“customer arrived with diagnostic report from another garage ..., supply and fit Exhaust Temperature Sensor. Carry out forced DPF regeneration.”

This invoice was for £150. Mr W did not pay this invoice immediately as he did not believe he should have to. The garage passed the debt to an enforcement agency which increased the total cost to £225 and this was later paid by Mr W.

Following his initial complaint to MIVF, Mr W raised more complaints with them including issues to do with bodywork, tyres and the second key not working, air conditioning not working, fault codes and issues with the turbo. MIVF asked Mr W for a diagnostic report but as this was not provided MIVF requested an independent report to be carried out on the van by DEKRA. This was completed in August 2023 at which point the mileage was recorded as 47,906.

The engineer who completed the independent report recorded that he entered the vehicle and attempted to start the engine, the vehicle would not start and the dash illuminated with a warning of engine failure hazard. He reported he then ran a diagnostic scan which produced three fault codes which related to a DPF fault and also oil dilution.

The report concluded:

“The vehicle bodywork does not appear to be detrimental to the structure and appears to be of a cosmetic issue, the issue related to the DPF is an ongoing issue which would not be expected...”

...It is the engineers opinion this issue has/was present/developing at POS [point of sale] as the customer claims to have reported this after roughly two weeks of ownership.”

MIVF noted from the photographs of the van contained in the DEKRA report the bonnet appeared to have been modified since Mr W acquired it with the addition of fins. Mr W said these were simply stuck on so did not affect the engine and that he had not modified the van. A photograph of the van attached to the earlier invoice for DPF work does not show any fins.

MIVF issued their final response letter in October 2023 stating they would not be upholding Mr W 's complaint. They said that around four weeks after acquiring the van Mr W had reported an issue to the dealer and that after an inspection it was found that the AdBlue was low and the van required a regeneration. The dealer had booked the van in and paid for the AdBlue and regeneration so the initial problem with the DPF had been repaired. They also noted the repairing garage had said the fault was due to driving short distances. They said Mr W had subsequently confirmed this problem had been rectified.

In relation to the bodywork MIVF stated the van is a commercial vehicle and would not be in the same condition as a new vehicle and that Mr W had inspected the van before acquiring

it. Regarding the other issues Mr W raised, MIVF pointed out the van had passed an MOT and that the DEKRA report had only identified issues with the DPF and oil dilution and that as Mr W had driven over 6,000 miles they had asked for evidence of the other faults, but Mr W had not provided any.

Mr W was unhappy with this response, so he referred his complaint to the Financial Ombudsman Service for investigation.

After making his complaint Mr W informed us of further problems he was having with the van. In early April 2024 Mr W told the Financial Ombudsman Service that the engine warning light was on and later in the month contacted us again to say the van was undriveable. Three days after this the van broke down and Mr W provided a report from the breakdown service who attended which showed that as they could not repair the van, they took it to his home address.

Two days later Mr W informed us the van needed a new engine. During a follow up phone call with the Financial Ombudsman Service Mr W said he did not want to reject the van but wanted the repairs to be paid for. Mr W said he had arranged for a new engine to be fitted and was asked to provide an estimate of costs which he later did, the quotation was for £5,800. He later submitted evidence of a payment to a garage for £2,400 which he said was for a replacement engine but provided no invoice. He provided a quotation for fitting a replacement engine and associated costs for £1,220.04 but has not provided any evidence of payment.

Our investigator noted that there had been conflicting items of information received from both parties as well as unclear evidence. Our investigator said that despite asking for clarity on these issues it had not always been forthcoming, from both parties, and so they had to base their outcome on the evidence they had received as both parties had had ample opportunity to answer the relevant questions. Our investigator initially expressed an intention to uphold Mr W's complaint. They did not support his complaints about the bodywork, and highlighted that there had been conflicting information, as well as evidence that was requested but not provided, but they did accept his complaint about issues relating to the DPF. The investigator suggested that MIVF should pay for repairs including the cost of replacing the engine and two invoices from 2024 totalling £285, with an amount for distress and inconvenience.

At first Mr W did not accept this was enough and wanted MIVF to pay for work to the bodywork and an increased amount of compensation, but he later said he would accept this outcome.

MIVF did not accept our investigator's initial view. They queried what repairs to the van had been carried out after it could not be started by the DEKRA engineer in August 2023 and who had undertaken the work. They also queried whether Mr W had continued driving the van, as the dealer who supplied it felt they had seen the van being driven on several occasions. MIVF asked for a mileage check and for any servicing history since the van was supplied.

Mr W said that repairs had been done by a local mechanic who works for himself but provided no information on what work had been required or undertaken between August 2023 and January 2024, or quotations or invoices for that time. He did supply an image of the odometer showing mileage of 52,417 following the replacement of the engine. Our investigator queried the odometer reading as the mileage shown was lower than the mileage recorded by the breakdown service in their report at the end of April. Mr W said this mileage related to the new engine that had been put in the van.

As a result of this additional information, and information and evidence that was not available, our investigator reassessed their initial view deciding they could no longer uphold the complaint. Our investigator said that as Mr W had not provided evidence of what repairs had been carried out since the van could not be started in August 2023 by DEKRA, or who had done the work, they could not say that the issues Mr W had experienced in April and the requirement for a new engine, related to faults present or developing when Mr W had acquired the van. This is because the faults could be as a result of work carried out since August 2023, of which Mr W had provided no evidence. Our investigator also queried the explanation for the reduced mileage as the odometer should relate to the van and not the engine.

Mr W didn't agree with the investigator. He said the AdBlue was 'near full' and repeated his belief that the engine had been faulty from day one. He said he did not have time to complete a regeneration and that the garage he had taken the van to for the replacement engine said the original engine had been in an accident.

### **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 issued a provisional decision on 9 January 2025, where I explained my intention to uphold the complaint. In that decision I said:

If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is more likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr W was supplied with a van under a hire purchase agreement. This is a regulated consumer credit agreement which means we can investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr W entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances.

I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the van and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the van was faulty when Mr W took possession of it, or that the van wasn't sufficiently durable, and this made the van not of a satisfactory quality, it would be fair and reasonable to ask MIVF to put this right.

I have also found that there is conflicting information received from both parties as well as unclear evidence, and despite our investigator asking for clarity on these issues it has not always been forthcoming, from both parties, so I have similarly had to base my decision on the evidence received as both parties have had ample opportunity to answer the relevant questions.

First, I considered if there was a fault with the van. I've considered evidence provided by both sides and the independent report and it is not in dispute that there was a fault with the van as it has required a new engine. But just because there are or were faults found with the van, does not automatically mean that the van was not of satisfactory quality at the point of supply or that the need for a new engine relates to faults with the van at the time of supply or failed repairs authorised by MIVF. So, I've gone on to consider if the van was of satisfactory quality when it was supplied to Mr W and whether there is evidence the later issues are as a result of faults in existence when Mr W acquired the van.

Mr W experienced a problem with the van shortly after he acquired it, he returned to the dealer who authorised and paid for the addition of AdBlue and a forced regeneration. So, I am satisfied that although there was a fault, it was dealt with promptly.

Turning to Mr W's complaints about the bodywork. The van is a commercial vehicle and was over four years old and so a reasonable person would not expect the bodywork to be in the same condition as a brand-new van that had not been driven or used. Mr W had the opportunity and responsibility to inspect the van before he acquired it and did not raise any concerns with the dealer at that time, only doing so approximately four months later in his complaint to MIVF. In their report, DEKRA described the bodywork issues as cosmetic and therefore I do not believe it would be fair to ask MIVF to undertake any work on the bodywork.

Mr W experienced more issues in May and the invoice from work completed at this time states 'DPF pressure sensor, regeneration of DPF'. Although in June 2023 the van passed its MOT with no advisories relating to the engine or DPF, early in July further work on the van relating to the DPF was carried out by the same garage. This suggests to me that at that time it is more likely than not that the DPF issues Mr W had experienced shortly after acquiring the van were still present.

MIVF reported that later Mr W confirmed to them that all faults had been rectified, though he was still complaining about the bodywork, bald tyres and second key not working. So, I am satisfied that Mr W indicated the earlier problems he had experienced relating to the DPF issues were resolved.

I understand that problems with DPF can often arise, sometimes quickly, because of driving patterns, particularly where only comparatively short distances are driven which do not allow the engine to reach a high enough temperature to allow the DPF to regenerate successfully. And that the problems may continue and repeat if the driving pattern remains the same.

However, Mr W experienced several DPF related faults in short succession within the first six months of acquiring the van. Even allowing for driving style, given the frequency of these issues and given an independent inspection concluded there was likely a fault present when the car was supplied, I am persuaded the van was not of satisfactory quality when Mr W acquired it and that there was a fault with the DPF that was not resolved by the first repair.

I think MIVF should reimburse Mr W for the costs of the repairs he paid for in May and July 2023 (though not the additional cost for the debt enforcement agency as this was incurred as Mr W chose to delay making that payment). In addition, as Mr W had to take the van in for repairs on several occasions during this time which caused him inconvenience, I also think MIVF should pay him £150 for his inconvenience.

I shall now turn to the issues Mr W has reported following the DEKRA report carried out in August 2023. This stated that when the inspection was carried out the van:

“would not start and the dash illuminated with a warning of engine failure hazard.”

From the time the van would not start in August 2023 to the time of the breakdown in April 2024, by which time the mileage on the van had increased by over 6,000 miles, Mr W has not provided any evidence of what repairs were needed to get the van back on the road, or who carried them out or to what standard.

So, I do not have information to show whether the faults Mr W experienced after August 2023, including the engine failure, were because of related DPF issues or whether they were due to repairs Mr W had arranged, or repairs that should have been carried out but weren't, or were due to repairs that were carried out but not to industry standard. I also have no evidence to confirm that Mr W did not drive the van while a fault was present or while warning lights were displayed, which could then have made the problem worse.

The latest recorded mileage provided by Mr W also raises questions as to the quality of repairs as an odometer should record the mileage of the vehicle it is in, not the mileage of the engine in the vehicle, and so should not show mileage lower than was previously recorded, even if an engine is replaced.

Without evidence of what faults were identified or what repairs were undertaken from August 2023 to April 2024, I do not believe it would be fair or reasonable to ask MIVF to pay for the cost of the repairs that followed including a replacement engine. Nor do I think it would be fair to allow Mr W to reject the van now when he has carried out repairs, including replacing the engine, without the involvement or authorisation of MIVF.

I appreciate Mr W may be disappointed with my decision but for the reasons stated I don't think it would be right to ask MIVF to do anything further in respect of repairs from August 2023 onwards where Mr W has not provided evidence of what the issues were or how they were addressed up to the point of engine failure.

### **My provisional decision**

For the reasons explained, I intend to partially uphold Mr W's complaint. And I intend to ask MI Vehicle Finance Limited to:

- Pay Mr W a total of £270 for the two repairs carried out in May and July 2023
- apply 8% simple yearly interest on the refunds, calculated from the date Mr W made the payment to the date of the refund<sup>†</sup>
- pay Mr W an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If MIVF considers that tax should be deducted from the interest element of my award, they should provide Mr W with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

I asked both parties to provide me with any additional comments or information they would like me to consider by 23 January 2025. However, as Mr W provided us with new contact details on 10 January 2025, I have extended this to the 28 January 2025.

### **Putting things right**

Mr W has not responded.

MIVF said they accept my decision.

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also considered again my provisional findings.

As Mr W hasn't said anything to the contrary, I'm taking this to mean he doesn't object to my provisional decision.

In view of the response to my provisional decision, I've no reason to depart from the findings I've already reached in my provisional decision. So, my decision remains the same.

### **My final decision**

For the reasons explained, I uphold Mr W's complaint about MI Vehicle Finance Limited and they are to follow my directions in my provisional decision which are to:

- Pay Mr W a total of £270 for the two repairs carried out in May and July 2023
- apply 8% simple yearly interest on the refunds, calculated from the date Mr W made the payment to the date of the refund<sup>†</sup>
- pay Mr W an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If MIVF considers that tax should be deducted from the interest element of my award, they should provide Mr W with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 February 2025.

Jo McHenry  
**Ombudsman**