

## **The complaint**

Mr A complains about the quality of a van supplied to him under a hire purchase agreement through Black Horse Limited ("Black Horse").

## **What happened**

I sent Mr A and Black Horse my provisional findings on this complaint on 6 February 2025. A copy of that decision is attached and forms part of this final decision.

I explained why I was not planning to uphold Mr A's complaint and asked both parties to let me know if they had anything to add.

Black Horse agreed.

Mr A didn't respond.

## **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.

As no new evidence has been provided for me to consider following my provisional decision, it follows that there is no reason for me to reach any different conclusion than set out in my provisional decision.

## **My final decision**

My final decision is that I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 March 2025.

## **Provisional decision**

I've considered the relevant information about this complaint.

Having done so, although I've broadly reached the same conclusions as our investigator, I don't consider that the Consumer Rights Act 2015 applies to this case and so, I have considered the relevant law that does apply.

The deadline for both parties to provide any further comments or evidence for me to consider is 20 February 2025. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr A, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

### **The complaint**

Mr A complains about the quality of a van supplied to him under a hire purchase agreement through Black Horse Limited ("Black Horse").

### **What happened**

Mr A acquired a used van under a 60 month hire purchase agreement with Black Horse in November 2021. The van was around four years old and the cost of the van was £25,368. Mr A paid a deposit of around £4,228 towards the agreement. So, the total amount of credit was £21,140. Under the agreement, Mr A was required to make 60 monthly payments of £453.24. The total amount payable under the agreement was £31,422.40, including the deposit and option to purchase fee. The van was supplied from a dealership I'll refer to as "D". At the time the van was supplied to Mr A, the mileage was listed as 65,000.

Mr A says within two months, the van had a water leak, there was an issue with the timing chain, the radiator, battery and the starter motor needed replacing. He says he took the van back to D. He also complained to Black Horse

Black Horse issued its final response in January 2022. It said D agreed there were several things wrong with the van and it agreed to carry out repairs. Black Horse said Mr A confirmed that he was happy to keep the van as repairs were complete and it had no further issues. Black Horse upheld Mr A's complaint and offered him a payment of £354 which included £200 for any distress and inconvenience caused, £150 for a breakdown expense and £4 for statutory interest.

Following this, Mr A said the same faults occurred. So, he complained to Black Horse in September 2023. He said he had taken the van off the road on numerous occasions. He said since February 2023, the business had lost £4,000 in income each month due to the frequent breakdowns. He said Black Horse should provide him with a replacement van whilst repairs were carried out, a substantial gesture of goodwill and an acknowledgement of the losses suffered.

In October 2023, Black Horse issued its final response to Mr A. It said there was no mechanical evidence to show there was a fault present or developing at the point the van was supplied to Mr A. It said none of the previous repairs related to the head gasket.

Mr A took the van for a diagnostic test which he says confirmed the same issues. He said he needed to use the van for work and due to inactivity, he had to purchase a new van and use that one instead. He said he didn't use the van for around a year and this is evident. Mr A said he didn't have the money to pay for a diagnostic report sooner, as he didn't have a van to carry out any employment.

Black Horse reviewed the diagnostic report in December 2023 and said previous repairs hadn't failed or caused the head gasket to fail. It said the fault with the head gasket was raised after 22 months of Mr A being supplied the van and after 37,000 miles. So, it said it wasn't plausible that the fault was present or developing at the point the van was supplied to Mr A. It said should Mr A be able to show otherwise, it would be happy to review its position.

Unhappy, Mr A referred a complaint to this service and reiterated his complaint.

Our investigator looked into the complaint and said she didn't think the van supplied to Mr A was of unsatisfactory quality. She said the issues with the head gasket appeared to be down to reasonable wear and tear.

Mr A provided further information for our investigator to consider.

Our investigator said that whilst comments from a garage showed work was required to the head gasket, previous repairs carried out in 2021 didn't include repairs to the head gasket. So, she said the issues weren't linked. She also said a significant amount of time had passed between the repairs in 2021 and the garage's comments in 2024. So, it wasn't clear what previous work the garage had referred to. She said her outcome remained the same.

Mr A said no independent expert had been sourced by this service to provide an opinion on the matter. He said the life expectancy of a head gasket was around 200,000 miles with regular maintenance, but the mileage of the van was 103,000. He said as the head gasket failed earlier, it suggested that there were deeper engine issues. He said without an independent report, it was impossible to conclusively determine whether previous repairs were done correctly or if they masked deeper engine issues.

Our investigator invited Mr A to obtain an independent report and said the life expectancy of a head gasket couldn't be looked at in isolation without considering the totality of the evidence provided.

Mr A said he was looking to provide further information in October 2024. Mr A explained that he was experiencing mechanical difficulties with another of his van's and due to this, he was unable to make any income. However, no further information has been provided by Mr A.

As Mr A remains in disagreement, the case has been passed to me to decide.

### **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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mr A has raised a number of different complaint points. I've concentrated 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. The rules of this service allow me to do this.

What I need to decide in this case is whether the van supplied to Mr A was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. Black Horse is the supplier of the van under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Supply of Goods (Implied Terms) Act 1973 ("SOG") covers hire purchase agreements where an agreement has been entered into for business purposes, but the amount of credit is less than £25,000. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality. The SOG says the aspects of the quality of the goods includes their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this case Mr A complained to Black Horse in 2021 and repairs were carried out. At the time, the thermostat housing, radiator, starter motor, battery, water pump, cam belt, adjuster

and roller were replaced. Mr A says these issues were repaired, but subsequently further faults occurred. Due to the length of time that has passed since the repairs were carried out, I've not considered in depth the faults that occurred in 2021 as part of this decision, although I will refer to them in these findings when discussing the subsequent faults.

After the initial faults in 2021, system notes show the next time Mr A contacted Black Horse about the problems with the van was in 2023. I've seen a copy of an invoice from a garage I'll refer to as "F", from September 2023. This states: *"We have found that the cylinder head gasket test has failed as the chemical test is reacting to gasses in the coolant system."* A further invoice from F, dated May 2024, elaborates and says, *"engine running uneven, once we stripped engine we found some rockers broken, and clearly evidence that engine had been worked on previously as all piston heads had valve damage on them."*

Based on F's observations and the invoices provided, I'm satisfied that there is a fault with the van supplied to Mr A. I've gone on to consider whether this fault makes the van of unsatisfactory quality.

I've seen a copy of Black Horse's system notes showing its repeated attempts to contact F to understand why the issues had occurred to the van supplied to Mr A. In December 2023, F contacted Black Horse and let it know the van's head gasket had failed. It said it couldn't advise when the fault had started developing and that the previous repairs in 2021 hadn't failed and didn't relate to the head gasket.

Mr A sent this service an email which he says was written by F. The email was sent to this service in March 2024. It states the issues with the van and says, *"we can say that failure has occurred from previous bad workmanship, engine has previously been put back together slap dash. I have been advised that you have warranty? I am happy for the engine to be inspected by an independent engineer if need be."* However, the email isn't dated and isn't on letter headed paper or from an email address originating from F.

The email in March 2024 seems consistent with some of the commentary on the invoice from F dated May 2024. This is that the engine had been worked on previously and that there is an issue with the head gasket. However, the previous repairs in 2021 were unrelated to the head gasket and given that around three years have passed since the initial repairs, it's not clear what repairs F is referring to and whether further repairs have been carried out in the three-year period.

Mr A acquired a van that was used – so there would be different expectations compared to a new van. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price.

Mr A has provided no independent supporting information to confirm that any of the issues that occurred in 2023 were present or developing at the point the van was supplied to him. And having considered all the information provided to me, I'm not minded to decide that the issue with the head gasket in 2023 was developing at the point the van was supplied.

F in its testimony to Black Horse stated that it couldn't advise when the fault occurred, that previous repairs in 2021 hadn't failed and nor were they related to the head gasket. I also note that public MOT data shows the mileage of the van recorded in May 2024 as 102,903 miles. This means that Mr A has been able to travel around 38,000 miles in the van in around three years and as repairs were completed shortly after the van was supplied to Mr A, a similar amount since the repairs in 2021 were completed. I wouldn't reasonably expect that Mr A could travel that much mileage in the van if the issue with the head gasket was present or developing at the point of supply, or if repairs in 2021 had failed. And neither do I consider that the van has failed prematurely.

So, having carefully considered everything, I'm not minded to direct Black Horse to take any action given that I'm not persuaded the van supplied to Mr A was of unsatisfactory quality.

**My provisional decision**

My provisional decision is that I'm not intending to uphold Mr A's complaint.

Sonia Ahmed  
**Ombudsman**