

The complaint

Mr B complains that the specification of a van, supplied to him through a hire purchase agreement with Volkswagen Financial Services (UK) Limited (“VWFS”), was misrepresented.

What happened

In September 2022 Mr B was supplied with a used van through a hire purchase agreement with VWFS. The agreement was over 48 months, with monthly repayments of £419.43. Mr B also paid a deposit of £3,354.60. At the time it was sold, the van was around three years old and had done 42,917 miles.

In June 2023 Mr B was sent a recall notice by the manufacturer of the van. That notice told him that an error had been made during manufacture and an incorrect VIN label had been applied to the van. The VIN label overstated the maximum weight that the van was permitted to carry. It asked Mr B to take the van to an authorised repairer so the label could be replaced.

Mr B says that when he purchased the van he specifically checked the VIN label as he required the van to be able to carry 3,000kg. The VIN label on the van showed a maximum permitted weight of 3,100kg. So he says, on that basis, he proceeded with his purchase. He says that had the VIN label showed the correct maximum weight of 2,900kg he would have chosen an alternative van. He complained to VWFS about the misrepresentation he says occurred when the van was supplied.

VWFS told Mr B that it was unaware of the error made by the manufacturer when the van was supplied. But it said, in any case, that the paperwork given to Mr B at the time, including the hire purchase agreement, correctly described the van as being a Vauxhall Vivaro L2 Diesel 2900 1.5D 100PS Sportive H1 Van. And it noted that the original dealer had offered to repurchase the van from Mr B at its current market value. Unhappy with that response Mr B brought his complaint to us.

Mr B’s complaint has been assessed by one of our investigators. He didn’t think that VWFS had misrepresented the van to Mr B. He said that the van was correctly described on the loan paperwork, and there was no evidence to suggest that VWFS, or the dealer, had advertised the van incorrectly. So he didn’t think the complaint should be upheld.

Mr B didn’t agree with that assessment. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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 deciding this complaint I’ve taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that

have been made by Mr B and by VWFS. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been in if the problem hadn't occurred.

Mr B's complaint regards the misrepresentation of a van supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr B's complaint about VWFS.

Mr B has complained that the specification of the van was misrepresented to him. For me to uphold his complaint on that basis I'd need to be satisfied that both of the following occurred;

- that a false statement of fact was made; AND
- this false statement induced Mr B to buy the van

From the testimony that he has provided it doesn't seem that Mr B discussed the specification of the van with the dealer. He says that he conducted his own investigations by examining the VIN plate on the van. He says he did that so he could be satisfied that the van would be able to carry the weight that he needed for his business. So it seems unlikely that the dealer (or VWFS) provided Mr B with any false statements of fact verbally when he was considering his purchase.

I've looked at the loan and sale paperwork that Mr B was given. They both describe the van as being a Vivaro L2 Diesel 2900 1.5d 100PS Sportive. I understand that the L2 descriptor relates to the dimensions of the load area. The 2900 designation is in relation to gross vehicle weight ("GVW") – a 2900 van would have a GVW of 2,830kg. So I don't think I can reasonably conclude that the loan and sale paperwork provided any false statement of fact in relation to weight the van could carry.

But all parties accept that the VIN plate on the van showed incorrect information. That wasn't something that the dealer would have been aware of at the time. And it seems that understandably Mr B wasn't aware of the error either. It was only in June 2023, when the manufacturer issued a safety recall, that the error was highlighted to either party.

I do think it entirely likely that the incorrect information on the VIN plate was a key reason why Mr B chose to purchase this van. But I am not able to conclude that incorrect information was the responsibility of the dealer, or VWFS. I haven't seen anything to make me think that Mr B made the weight limit he required known to the dealer, and was advised this van would be suitable for his needs. Instead I think that was a conclusion he reached for himself without either verbal, or written, information from the dealer that the van would meet that requirement.

So I don't find that both of the tests I set out above, to conclude a misrepresentation has occurred, have been met. I am not satisfied that Mr B was given any information by the dealer or VWFS that might constitute a false statement of fact. In fact I think that the information Mr B was given by those two parties actually correctly set out the weight capacity of the van.

I appreciate how disappointing my decision will be for Mr B. He took care to check the statutory details on the van to make sure it would meet his needs. But through an error made by the manufacturer, those details were incorrect. And that error wasn't identified until many months after the van had been sold to him. But I don't think that means the van was misrepresented by the dealer when it was sold.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Volkswagen Financial Services (UK) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 June 2024.

Paul Reilly
Ombudsman