

## **The complaint**

Mr E complains that a used vehicle supplied by Moneybarn No. 1 Limited under a conditional sales agreement (CSA) is of unsatisfactory quality.

## **What happened**

Mr E took out the CSA in February 2021 for a van with about 112,000 miles on the clock. He experienced problems very soon after - he found it was juddering on collection and lost power for a short period. He raised several issues with Moneybarn in March 2021 including juddering, acceleration and ECO system faults, a fuel contamination warning light and issues with stop/start. Moneybarn said he should return the van to the dealership for repairs and the dealer did some work to the van in May 2021. Problems persisted however and new issues appeared so Moneybarn arranged for an independent expert to inspect the van in June 2021 – when it had covered about 118,000 miles.

The expert found no evidence of misfire but a mis-fuel contamination message was illuminated, one of the fuel injections had (reportedly) been replaced and previous repairs were unsuccessful. He thought the van's condition was due to ongoing issues - not wear and tear – and the supplier was responsible. Moneybarn accepted the expert's conclusions and asked Mr E to get a quote for repairs. Mr E struggled to do so - due to work and other pressures. But he supplied paperwork from a third party garage (TPG) in September 2021 that showed more than thirty fault codes were present, the van had an oil leak, a possible wiring fault and further investigation was needed. Mr E says he was told this would be costly and uneconomic and he wants to reject the vehicle.

Moneybarn issued a final response at the end of September 2021 upholding the complaint on the grounds of an inherent or developing fault at the point of sale and failed repairs by the supplying dealer. Moneybarn said it was unable to resolve the matter however because a quote for repairs hadn't been supplied. And it advised Mr E to stop using the van for safety reasons and to ensure no further damage occurred.

Mr E referred the matter to our service and our investigator recommends the complaint should be upheld. She's satisfied it's not in dispute that there's something wrong with the van and it was of unsatisfactory quality at the point of supply. She acknowledged Moneybarn offered repairs but she doesn't think that's fair - as the dealer had the opportunity to repair already and she's not satisfied repairs would be cost effective or resolve things. She thinks it's reasonable for Mr E to be allowed to reject the van and have his deposit (of £2,800) back, plus interest. She didn't recommend a refund for loss of use - as Mr E was able to travel about 20,000 miles or so after supply. But, she considered Moneybarn should refund one monthly payment to compensate Mr E for inconvenience and distress caused and remove any adverse information from his credit file.

Mr E accepted the investigator's recommendations but Moneybarn didn't so the matter was referred to me for a 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.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Moneybarn supplied this vehicle under a finance agreement and it was required under the Consumer Rights Act 2015 (CRA) to ensure (amongst other things) that the van was of satisfactory quality at the point of supply. What amounts to "satisfactory" quality will vary depending on individual circumstances but it's generally considered reasonable to take the age, cost and mileage at the point of supply into account in the case of a used vehicle. This van was around four years old, cost nearly £10,000 and had about 112,000 miles on the clock. As such, I think most people would accept it was likely to have some parts that were worn and would need replacing or repairing sooner or later – which is reflected in the lower price paid compared to the price of a brand new vehicle. But, I think Mr E had a reasonable expectation that the van would be fairly durable.

There seems to be no dispute that the van has faults present that are likely to have been there when it was supplied. From the evidence I've seen (including the expert's report) I'm satisfied it was probably of unsatisfactory quality when Mr E got it. I can see Moneybarn offered to pay for relevant repairs but I don't think that's fair in the circumstances. The CRA says (broadly speaking) a supplier should usually be allowed one chance to fix things in this situation. And (according to Moneybarn's contact notes and final response letter) the dealer had that opportunity in May 2021. It looks as if those repairs were unsuccessful - I'm satisfied the van still had faults present when the expert inspected in June 2021.

I find it understandable that Mr E is concerned about things that have gone wrong so far and the durability of the van going forward. Having considered the evidence carefully, I'm not satisfied that the current issues are likely to be fixed easily. And, given the dealer has already had the van back once for work, I can't safely conclude that further repairs would resolve things without additional delay and significant inconvenience to Mr E.

Bearing in mind the time that's passed since Mr E first complained, the extent and nature of the problems he had with the van and the efforts undertaken already to try and fix it, I don't think it's fair to expect Mr E to wait any longer. I agree with the investigator it is reasonable to allow Mr E to reject the van and I find Moneybarn should terminate the CSA and refund his deposit (plus interest).

It looks as if Mr E was able to drive the van some distance after supply. I understand he did so reluctantly but felt he had no choice - as he wasn't offered a replacement and he needed transport for work. I think it's fair that Mr E should pay for the use he had of the vehicle. So, I can't fairly require Moneybarn to refund any monthly payments for loss of use. I think it's likely however that Mr E experienced considerable frustration, upset and inconvenience as a consequence of being supplied with this faulty van. I find it is reasonable for Moneybarn to refund one monthly payment to compensate him for that. And I think it's fair for Moneybarn to remove any adverse information recorded on Mr E's credit file.

## **My final decision**

For the reasons I've given, my decision is I uphold this complaint and I require Moneybarn No. 1 Limited to:-

1. end the CSA and collect the van at no additional cost to Mr E;
2. refund the deposit paid of £2,800, plus 8% simple interest a year from the date of payment until the date of settlement;
3. refund one monthly payment to compensate Mr E for distress and inconvenience; and
4. remove any adverse information from his credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 12 May 2022.

Claire Jackson

**Ombudsman**