

## **The complaint**

Ms C complains about the quality of a van supplied on a conditional sale agreement by Moneybarn No.1 Limited ('Moneybarn').

## **What happened**

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

I note here Ms C is represented by her son. It appears the van was for his use in connection with his plumbing business. For the purposes of this complaint reference to submissions made by Ms C will also be taken to include those made by her representative on her behalf.

Ms C says that the van was in a very unsatisfactory condition at the point it was supplied. In particular there were four error codes identified soon after supply – and these were confirmed by the main dealer as being significant faults related to safety.

Ms C says the repairs have now been done but her son is out of pocket, and the issues with the van have had a major impact on his business including loss of earnings, impact on reputation and distress and inconvenience.

The complaint came to this service. Our investigator thought it fair that Ms C could reject the van and receive a small amount of compensation. But she was not persuaded that it was fair to pay more – because Ms C was unable to provide sufficient evidence of her loss.

The matter was referred to me for a final 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

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 to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Moneybarn is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Our investigator has referred to the Consumer Rights Act 2015 ('CRA'). However, there is an argument this does not apply because the van appears to have been supplied for business use. However, I note there is arguably a grey area here as Ms C took out the agreement. I also note that Moneybarn has referred to the implied terms under the CRA.

And even if the CRA does not apply – I am satisfied there are relevant implied terms that apply here in respect of the requirement to supply goods of ‘satisfactory quality’. So it doesn’t change my outcome here.

In a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”. The quality of goods will be satisfactory if they 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 take into account might include things like the age and mileage at the time of sale and the vehicle’s history.

The 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 can be aspects of the quality of goods.

On or around 20 July 2023 Moneybarn supplied Ms C with a second-hand van that was around 6 years old and had done around 89,800 miles at the point of supply. The dealer priced it at £13,990 which is notably less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances (particularly noting the mileage) a reasonable person would consider that the car had already suffered significant wear and tear – and was likely to require more maintenance and potentially costly repairs much sooner than you might see on a newer, less road worn model.

However, with that said I would not be expecting several critical issues with the van almost immediately after supply. And that is what appears to have occurred here. I can see that just a week after taking delivery of the van Ms C’s son emailed the dealer about several error codes found on it. These were then confirmed by a main dealer via an official diagnostic carried out on 17 August 2023. They include issues with the EGR/Intake Manifold and Vacuum Pump. These were all marked as ‘red’ on the diagnostic. They were marked as requiring ‘urgent’ repair and ‘unsafe’ on said documents.

Some of the issues shown on the van at an early point (such as worn tyres and a bulb replacement) appear to be reasonable wear and tear. But the issues I have highlighted above seem more significant – and likely present at the point of sale. I say this because Ms C’s son emailed the dealer about the error codes found within the first week following supply– and these were confirmed within the first month of having the van.

I know this is an older and higher mileage van. But the immediacy of the issues and their serious nature leads me to conclude that it was not of satisfactory quality at the point of sale. This is a breach of contract by Moneybarn. Therefore, Ms C is fairly entitled to a remedy.

I can see that Ms C’s son appears to have rejected the car on her behalf to the dealer within the first few weeks of having it (on 15 August 2023 where a request is made to unwind the agreement). Noting this, and the underlying faults identified at an early stage I consider it fair and reasonable that Ms C should have been allowed to hand the car back at the time but was unfairly denied this opportunity. It follows that if Ms C wants to still reject the van she can do and Moneybarn should take it back and end the finance agreement with no further rentals due. I note there was no advance payment in this case so there is no deposit to refund.

I note that Ms C says her son has paid for repairs to the van so he could carry on his business. She has also made a claim for compensation in relation to the impact of the issues on his business including any loss of earnings and damage to reputation. I am sorry to hear about the impact on Ms C’s son and his business. However, it is important to note that Moneybarn’s customer and the eligible complainant here is Ms C and not Ms C’s son. It is

Ms C that took out the loan – not her son. Therefore, I can't make an award against Moneybarn here for losses incurred by Ms C's son (including his business) or any distress and inconvenience he may have suffered.

The position here means I am limited in what I can direct Moneybarn to do. Essentially the impact of the issues with the van, both financially and from a trouble and upset point of view appear to have primarily affected Ms C's son and not her.

I turn to the claimed cost of repairs more specifically. The issue here appears to be twofold. One is that there is no persuasive information (such as invoices/receipts/job sheets) to show the expenses incurred in respect of repairs for inherent faults (e.g. EGR/Intake Manifold and Vacuum Pump). And secondly, even if I had such information, it appears unlikely that the loss was suffered by Ms C as opposed to her son in the course of running his business. There is no persuasive evidence to indicate otherwise.

I can see the van has been in use from inception of the finance and covered notable mileage of several thousand miles since. Therefore, my starting point is I don't think a refund of monthly rental payments is due from Moneybarn here. It is arguable there should be a partial refund to reflect the time the van was being repaired for the initial inherent faults. And compensation for distress and inconvenience caused by this. However, there isn't clear information about how long the van was in for repairs – or how the issues impacted Ms C specifically. So with these considerations in mind I think any additional award fairly has to be modest. I note our investigator has recommended an award of £100 here. And in the circumstances I am not minded to award more.

Ms C does not have to accept my decision – she might choose to reject it and pursue the matter through alternative means and explore to what extent other costs incurred through her son's business could be recoverable. However, considering my remit here – I am directing Moneybarn to take the van back but only fairly able to make a limited financial award to Ms C.

I note that since the complaint has been with this service Ms C has said more things have gone wrong with the van including the turbo and gearbox. It appears this has cost more money to repair. I am sorry to hear about this. But these are new things that don't appear connected to the initial faults and were not the subject matter of this complaint to Moneybarn. These would need to be looked into fully as a new complaint and not something I will be making a decision on here.

### **Putting things right**

I direct Moneybarn to put things right as set out below.

### **My final decision**

I uphold this complaint and direct Moneybarn No.1 Limited to:

- Take back the van at no cost to Ms C and end the agreement with no further rentals due (and ensuring there is no adverse information on Ms C's credit file as a result); and
- pay her £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 4 December 2024.

Mark Lancod  
**Ombudsman**