

## **The complaint**

Mr K has complained about a van he acquired under a conditional sale agreement with Moneybarn No.1 Ltd.

## **What happened**

In August 2022 Mr K entered into a conditional sale agreement with Moneybarn to acquire a used van. The van was first registered in 2018 and had covered around 97,000 miles when it was acquired. It cost around £10,600 and the agreement was to be repaid over five years with monthly repayments of around £300.

I understand Mr K raised concerns about the van shortly after acquiring it with the broker and Moneybarn. Moneybarn investigated a complaint and sent a final response in December 2022. In summary, it noted Mr K made it aware of:

- Cosmetic issues such as windscreen scratches.
- No service history, even though the advert said it came with service history.
- The van wasn't fit for purpose.
- There was no spare tyre.

Moneybarn said Mr K should have thoroughly inspected the van before acquiring it. And if he was concerned with anything he should have highlighted this prior to or at the point of collection. It said seeing as though Mr K took possession of the van it was unable to ask the supplying dealer to rectify any cosmetic issues. It said Mr K should have checked service history when he acquired the van if it was important to him.

Moneybarn also set out that with regards to the van not being fit for purpose it said the broker had spoken to Mr K about how the vehicle locking works and that it wasn't unfit for purpose. It said it couldn't see the van was advertised as coming with a spare tyre either. So it didn't uphold the complaint.

Moneybarn also highlighted payments that weren't received. It said failure to adhere to payments would result in it reporting arrears to the Credit Reference Agencies (CRAs). I understand that after Moneybarn sent its final response it also sent out arrears letters and court documents. Mr K decided to refer his complaint to the Financial Ombudsman.

I can see a second final response letter was sent in June 2023. Moneybarn said Mr K had made it aware:

- He didn't receive an information pack he was told he'd receive.
- Moneybarn attempted to take a payment from him without him knowing it was due.
- Moneybarn should have tried to take the payment again after it was missed.
- Moneybarn was unresponsive.
- He was told a missed payment would be removed from his credit file within six weeks.

Moneybarn said it sent a welcome pack by email in August 2022 and on 24 August 2022 his direct debit date was changed to the 20<sup>th</sup> of each month. The 20 September 2022 repayment

was unsuccessful. It tried to take the direct debit once and then sent communication asking Mr K to contact it. It contacted him by text and email. It also said it reviewed the communication and it had responded to Mr K's queries throughout the course of the agreement. So it didn't uphold the further complaint.

Our investigator looked into things and said he'd need to see more supporting evidence of the problems Mr K mentioned. He said he'd not seen enough to conclude the van was not of satisfactory quality. But he said Mr K could supply further information if he wanted. Our investigator also said he didn't think the advert had induced Mr K into entering into the agreement.

With regards to the administrative issues our investigator noted Mr K signed the agreement that set out when payments were due. But he agreed that the payment made in September 2022 (albeit a few days late) should not have been recorded as missed. He didn't think Moneybarn had rectified this within a reasonable amount of time, and he thought it should pay Mr K £100 compensation.

Moneybarn accepted the assessment. Mr K said Moneybarn should be responsible for what was said in the advert – as the owner of the van. He also asked about raising a separate irresponsible lending complaint. He didn't think the £100 compensation was reasonable either. Our investigator asked if he had evidence to demonstrate the impact of the missed payment and whether it caused any detriment. In summary he said Moneybarn should've been more responsive. It should not have recorded a missed payment. It's impacted his credit file and has had knock on effects to him personally. He said as far as he could see his credit score dropped and was the reason for being declined credit.

As things weren't resolved, the complaint was passed to me to decide. I understand the court issued a decree more recently. I arranged for our investigator to ask Mr K for:

- A copy of the court decree.
- Confirmation there were no job cards or repair invoices showing the alleged faults.
- Clarification on whether the van had been returned.
- Confirmation the van was bought for business purposes.

Moneybarn supplied part of a court document that dismissed certain craves of the initial writ against Mr K but granted the crave setting out Mr K owed Moneybarn around £15,500. It said it found Mr K liable to Moneybarn in the expenses of the action as taxed as well. But it said the decree should not be enforced until the proceeds of the sale of the van are ascribed.

I've not seen a further response from Mr K.

### **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 want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to resolve complaints quickly and with minimum formality. I want to assure Mr K and Moneybarn that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr K acquired the van under a regulated conditional sale agreement. Our service is able to consider complaints relating to these sorts of agreements. For the avoidance of doubt, I'm only considering the complaint that's been referred to in the background.

Relevant legislation sets out, amongst other things, that goods supplied should be as described and of satisfactory quality.

In Mr K's case, the van supplied was used and had covered around 97,000 miles. There'd be very different expectations of it than if it was a brand-new van. But I'm conscious it cost around £10,600. So I can understand why Mr K would be unhappy with any significant issues that occurred straight away.

I don't think Mr K would have had grounds to reject the van for any cosmetic issues that would have been apparent during a cursory inspection of it. Like our investigator pointed out, I've also not been supplied sufficient evidence of faults with the van. Or evidence that Mr K validly sought rejection of it through Moneybarn within the first 30 days. I'd need to see evidence that firstly there was a fault with the van, and secondly that the fault made the van of unsatisfactory quality taking into account its age and mileage. As Mr K hasn't supplied that information, I don't think there's grounds to uphold the complaint on that basis.

With regards to the van not being as described, I've not seen it was described as having a spare tyre. But I note Mr K has highlighted the advert said it came with service history. The broker said to Mr K that *on a recorded call*, [the supplying dealer]...*have completed a service only on the vehicle and suggested it may have a service from* [the manufacturer]. Moreover, Moneybarn's argument that if the service history was important to Mr K, he had the opportunity to review the van and associated documents before deciding to take possession of it doesn't seem unfair.

I've not seen enough to know whether the van had been serviced or not. The evidence is incomplete. I'd like to have been more certain there was a misrepresentation, or that the van was not as described. But even if I were to find that the van was misrepresented and that Mr K would not have acquired it, I have to bear in mind that I understand a court has issued a decree. I've got no power to change that. Mr K hasn't shown us the full decree despite our requests but, from what I can see, he's been told to return the van, and the sale proceeds will be taken off the outstanding balance. So that's not something I can direct Moneybarn to change because it's been decided in court.

From looking at the contact notes, I think Moneybarn has, in the round, been responding to Mr K's contact and complaints. But the other outstanding point is with regards to the administration of the agreement. I agree Mr K was notified when the payments would be taken by signing the agreement. And I note Moneybarn said it emailed him a welcome pack. It doesn't seem to be in dispute that Moneybarn shouldn't have recorded a missed payment on his credit file. And that it took too long to resolve that. I don't think Mr K has done enough to show he's been caused a financial detriment as a result of the missed payment, but it must have been frustrating. And it took some time to be changed. It's unlikely a single missed payment being changed to late has had a significant impact in the grand scheme of things. I agree the £100 recommended by our investigator broadly seems like a fair way to recognise the mistake.

All things considered, while I'm sorry to hear Mr K was unhappy with the van, there's insufficient evidence it was of unsatisfactory quality. The evidence around the service history is incomplete. Even if I were to agree Mr K should be able to return the van, I'm conscious there's been a court decree issued, which I don't have the power to direct Moneybarn to amend. I'm conscious that Mr K had the opportunity and raised certain issues in his defence to Moneybarn's claim that may have been considered in court. And I think our investigator's recommendations with regards to the administration of the agreement seems like a fair way to put things right.

### **My final decision**

My final decision is that I uphold this complaint and, to the extent not done so already, direct Moneybarn No.1 Ltd to remove the missed payment from September 2022 from Mr K's credit file and pay him £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 June 2024.

Simon Wingfield  
**Ombudsman**