DRN-4902152

The complaint

Miss S is unhappy that a van supplied to her under a conditional sale agreement with Moneybarn No.1 Limited was of an unsatisfactory quality.

What happened

In July 2023, Miss S entered into a conditional sale agreement with Moneybarn for the supply of a used van. She didn't pay any advance payment or deposit and the agreement was for £8,790 over 58 months; with monthly payments of £286.95. The agreement was at an APR of 33.50% with a total amount repayable of £16,356.15. At the time the agreement was entered into, the van was seven years old and had done 119,017 miles (according to the MOT record for 25 July 2023). This van passed this MOT test without any advisories, and it's my understanding that the van was delivered to Miss S around 22 August 2023.

Miss S has said that the van was smoking from the day it was supplied to her, although the supplying dealership reassured her this was because it had just had new heaters fitted – it was the need to replace the heaters that led to the delay in the van being supplied to her.

Miss S says that she took the van to a garage on 12 September 2023, where she was told there was an issue with the turbo injectors. On 26 October 2023, she was told the van needed a new turbo, new fuel injectors, and replacement brake callipers, discs, and pads. She was also advised there was a fault code related to the diesel particulate filter ('DPF').

Miss S complained to Moneybarn about the mis-sale of the van and that it wasn't of a satisfactory quality when it was supplied due to the faults. Miss S also complained that the van wasn't drivable, and that the dealership was refusing to speak to her – having blocked her number. While Moneybarn were investigating her complaint, Miss S also brought the matter to the Financial Ombudsman Service for investigation.

Moneybarn arranged for the van to be inspected by an independent engineer. This inspection took place on 22 March 2024, when the van had done 130,855 miles – 11,838 miles since it was supplied to Miss S. The engineer found fault codes relating to the glow plug circuit, missing undertrays and an inner wheel arch, and a hole in the intercooler pipe (which had since been replaced). The engineer also said that a sheared gearbox mounting bolt had been replaced.

The engineer concluded that the damage to the gearbox mounting, and the missing undertray and inner wheel arch, would be as a result of the van having hit something. They also said that there were no issues with the fuel injectors but, as the van had done over 130,000 miles, the turbo issue would be considered normal in-service wear and tear and the hole in the intercooler pipe would have been caused by wear against the alternator pulley.

However, the engineer said that, because Miss S had been able to drive around 12,000 miles in the van before the turbo and intercooler pipe failed, *"none of these issues would have been present at the point of sale."* Because of this report, Moneybarn didn't uphold Miss S's complaint. However, they did offer her £100 as a gesture of goodwill.

While this matter was being investigated by ourselves, Miss S also told us that Moneybarn had added £2,750 to the finance agreement – in an email dated 23 April 2024 she said *"settlement amount was £9,000 and now it's £14,000."* Because Miss S didn't collect the van after the independent engineer's report had been completed, it was eventually recovered by Moneybarn. Miss S also complained there were personal items in the van at the time of recovery, which they were not letting her recover, and that Moneybarn had charged for the collection and storage of the van.

Our investigator said they hadn't seen anything to show the van supplied to Miss S was advertised as being AdBlue, or that she had ever been advised this was the case. As such, they didn't think the van had been mis-sold to her. The investigator also said they thought the van was of a satisfactory quality when it was supplied to Miss S, and that the faults were due to normal in-service wear and tear.

The investigator also said that Moneybarn collected the van, as Miss S refused to, so it was reasonable for them to charge her for this. Finally, the investigator said that Moneybarn had made Miss S's personal belongings available to her, and that she was free to collect these. As such, the investigator didn't think Moneybarn needed to do anything more.

Miss S didn't agree with the investigator. She provided extensive comments about the additional amount Moneybarn had added to the agreement, how she thought the van had been mis-sold to her, and how she thought she had been *"scammed"* by the dealership.

Miss S also said that she had taken legal advice, intended to take Moneybarn to court, and that she had witnesses who would back up her claims that the dealership had blocked her phone number and lied to her.

Because Miss S didn't agree, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss S was supplied with a van under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the van should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the van must last a reasonable amount of time.

The CRA also implies that goods must confirm to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the van was supplied, unless Moneybarn can show otherwise. So, if I thought the van was faulty when Miss S took possession of it, or that the van wasn't sufficiently durable, and this made the van not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

Mis-sale of the van

Miss S has complained that the van had been mis-sold to her. She says she asked the dealership for an AdBlue van and was told the van that was supplied to her was AdBlue, although she later discovered that it wasn't.

When considering a mis-sale, I'm firstly looking for there to be a false statement of fact. And, if there was a false statement of fact then I'm looking to see if that false statement, in this instance, induced Miss S to choose this particular van instead of a different van.

I can see that both parties have been asked to provide a copy of the original advert for the van, but this isn't available. An advert for an alternate van has been provided but, as this wasn't the van supplied to Miss S, I haven't considered this.

Without an advert, I've considered the correspondence between Miss S and the dealership to try and determine what Miss S asked for, and what the dealership advised her. However, I haven't been supplied with anything that shows either Miss S specifically asked for an AdBlue van, or that the dealership said that the van Miss S was supplied with was AdBlue.

Miss S has provided a screenshot of a conversation she had with the dealership. While there is no date on this conversation, Miss S has referred to the *"September 12 faults."* As such I'm satisfied this took place sometime after 12 September 2023. In this conversation, the dealership say that the only time Miss S contacted them about the AdBlue was in July or August 2023, when she told them the AdBlue warning light had come on.

As the van wasn't supplied to Miss S until 22 August 2023, it's likely that this contact about the warning light took place at some point in late August 2023. In an email dated 23 April 2024, Miss S has confirmed that, during this conversation, the dealership told her that she would need to add AdBlue to the van's fuel tank. In her comments on the investigator's opinion, Miss S has also said that the AdBlue warning light hadn't come on because there was no AdBlue warning light – it wasn't an AdBlue van.

Based on the limited evidence available to me, I'm not satisfied Miss S was advised the van supplied to her was AdBlue. Whether or not Miss S advised the dealership in August 2023 that the AdBlue light had come on (which she says she didn't), it's clear from the screenshot of the conversation that the dealership believed this was what she had said. So, they advised her that, if the AdBlue warning light had come on, she would need to add AdBlue to the fuel tank.

I don't think this advice is sufficient to say that Miss S was advised the van was AdBlue and, given that this took place sometime after the van was supplied, it certainly doesn't show that Miss S was advised the van was AdBlue *before* it was supplied to her, and she therefore made a choice based on this advice.

As such, I'm not satisfied there has been a false statement of fact. And, as I've said, without this there has not been a mis-sale.

Was the van of a satisfactory quality when supplied?

I've seen a copy of the independent engineer's report, dated 22 March 2024. The key findings of this report are detailed above, so I won't repeat them here. However, I have noted that the engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

The evidence I've seen clearly shows there was a fault with the van relating to the turbo, the intercooler hose, and there was damage to the underside of the van. The damage to the van included the gearbox mounting, and the independent engineer has said the engine leaning forward due to the broken mounting was the cause of the intercooler pipe rubbing against the alternator pulley.

The van passed an MOT test on 23 July 2023 with no advisories. Had the damage to the van happened before then, I would've expected this to have been identified at this stage, especially if the engine was incorrectly positioned as a result. Additionally, if the van was emitting smoke due to a failure in the turbo, I would also have expected the van to fail the MOT test. Which it didn't.

As such, I'm satisfied that the van reached at least the minimum legal standards of an MOT test shortly before it was supplied to Miss S, and it's more likely than not that any smoke being emitted at the date of delivery related to the new heaters.

Miss S has said she had the car diagnosed for faults on 12 September 2023, but she hasn't provided a copy of this report. She has provided a copy of a repair quote dated 23 October 2023, which indicates issues with the turbo, fuel injectors, DPF, and brakes. But the independent engineer's report says there are no issues with the fuel injectors and doesn't refer to any fault codes with the DPF. As I've said, the engineer is independent of all parties, but the garage who provided Miss S with the quote for repairs would benefit from doing the work to the van. So, I'm not satisfied the repair quote is sufficiently independent and therefore overrides the contents of the engineer's report.

The van was delivered 22 August 2023, and Miss S has confirmed that she stopped using the van no later than 26 October 2023 (although this date could actually be sooner). Given this, I'm satisfied that the mileage when Miss S stopped using the van would be virtually unchanged from the mileage recorded by the independent engineer in March 2024. This means that Miss S drove the van almost 12,000 miles in the no more than two months between delivery and when she stopped using it.

The engineer's report is clear in that the failures with the van are as a result of wear and tear, and not as a result of issues that were present or developing at the point of supply. While Miss S only used the van for two-months, she did drive 12,000 miles in that period. And, had there been faults with the van at supply, I would have expected the issues to arise before 12,000 miles.

In her comments on the investigator's opinion, Miss S has said that an engine should not be expected to fail after just 12,000 miles. While that's the case, the engine had done over 130,000 miles, and parts failure due to wear and tear would reasonably be expected given that amount of mileage.

As such, I'm not satisfied that the van was of an unsatisfactory quality when it was supplied to Miss S. And I won't be asking Moneybarn to take any further action.

Charges and personal belongings

Based on what I've seen, Miss S seems to believe that an amount had been added to her finance agreement for repairs to the van that haven't taken place. And she considers this to be fraud. As the investigator noted, this is not something Miss S has complained to Moneybarn about, nor have they dealt with this in any of their complaint correspondence.

Miss S has provided a snapshot of her account with Moneybarn in March 2024 which shows an outstanding balance of £14,058.35. She's also provided a snapshot dated April 2024 which shows an outstanding balance of £16,638.35 and arrears of £2,577.80. The settlement amounts on these snapshots also increase from £9,075.40 in March 2024 to £14,050.71 in April 2024. Moneybarn have also provided a Statement of Account which shows that a £2,680 recovery agent charge was applied on 15 April 2024, which was reduced by £100 for the gesture of goodwill offered in their complaint response letter.

Given what I've seen, I'm satisfied that a charge has been applied that has increased the amount owing by Miss S, although this wasn't for the repairs to the van as she believed. I've noted that term 9.1.4 of the agreement Miss S signed on 25 July 2023 stated that Moneybarn are entitled to charge fees for:

> "a*ll costs associated with finding you/or the goods, recovery, refurbishment and repairs, insurance, storage, sale, agents fees, cherished plate removal, removal of any badges, emblems, logos, advertising livery or wraps applied to the goods, replacement keys, costs associated with obtaining service history for the goods and in relation to obtaining a duplicate V5 registration certificate."*

The terms are also clear that these costs become immediately payable and added to the total amount repayable. As such, I'm satisfied that Moneybarn are able to make certain charges and request payment for these from Miss S, in line with the terms she agreed to.

However, as Miss S hasn't specifically complained to Moneybarn about the £2,680 charges they have applied to her account, and whether this is fair or not; this isn't something I have considered as part of my decision – our rules don't allow us to consider something where the financial business hasn't been given the opportunity to deal with it first.

Finally, Miss S has said that Moneybarn won't return the personal items she left in the van before they recovered it. However, Moneybarn have said that she's able to collect these. I would expect these items to be made available for Miss S to collect, and I would also expect Moneybarn to co-operate with Miss S, allowing her to collect them. If they haven't done so, and Miss S has been refused access to her personal belongings, this again is something she would need to complain to Moneybarn about in the first instance, before we can get involved.

So, and while I appreciate this will come as a disappointment to Miss S, I'm not asking Moneybarn to take any further action.

My final decision

For the reasons explained, I don't uphold Miss S's complaint about Moneybarn No.1 Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 18 October 2024.

Andrew Burford
Ombudsman