

## **The complaint**

Mrs G complains about the quality of a van supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited trading as Moneybarn ("Moneybarn").

## **What happened**

I sent Mrs G and Moneybarn my provisional findings on this complaint on 5 February 2025. A copy of that decision is attached and forms part of this final decision.

I explained why I was planning to uphold Mrs G's complaint and asked both parties to let me know if they had anything to add.

Mrs G agreed. She also reiterated her complaint.

Moneybarn said it had no further information to provide.

## **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.

As no new evidence has been provided for me to consider following my provisional decision, it follows that there is no reason for me to reach any different conclusion than set out in my provisional decision.

## **My final decision**

My final decision is that I uphold Mrs G's complaint. Moneybarn No. 1 Limited trading as Moneybarn should do the following to put things right:

- Report the conditional sale agreement as if Mrs G had been entitled to reject the van in around September 2023 instead of the agreement being terminated;
- Collect no further payments from Mrs G under the conditional sale agreement;
- Update any adverse information reported to the credit reference agencies; and
- Pay Mrs G a further £200 for any distress and inconvenience caused, in addition to any amounts previously paid for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 19 March 2025.

## **Provisional decision**

I've considered the relevant information about this complaint.

Having done so, I'm minded to reach a different conclusion to that of our investigator.

The deadline for both parties to provide any further comments or evidence for me to

consider is 19 February 2025. Unless the information changes my mind, my final decision is likely to be along the following lines.

If Moneybarn No. 1 Limited trading as Moneybarn accepts my provisional decision, it should let me know. If Mrs G also accepts, I may arrange for the complaint to be closed as resolved at this stage without a final decision.

### **The complaint**

Mrs G complains about the quality of a van supplied to her under a conditional sale agreement with Moneybarn No. 1 Limited trading as Moneybarn ("Moneybarn").

### **What happened**

Mrs G acquired a used van under a 54 month conditional sale agreement with Moneybarn in December 2022. The van was around seven years old and the cost of the van was £11,098. Under the agreement, Mrs G was required to make 53 monthly payments of £298.22. The total amount payable under the agreement was £15,805.66. The van was supplied from a dealership I'll refer to as "D". At the time the van was supplied to Mrs G, the mileage was listed as 98,000.

Mrs G says within a week of having the van it had major faults with the engine and the brakes. In March 2023, Mrs G contacted Moneybarn and said the engine management light ("EML") had been appearing, the van was losing power, it was emitting smoke and there was a noise from the back of it. She said D had cleared the faults but a warranty company had advised her that she would need to pay for some of the repairs. Mrs G said she initially complained to D in January 2023 about the problems with the van.

Moneybarn issued its response to Mrs G's complaint in June 2023 and upheld the complaint. It said the broker of the agreement, who I'll refer to as "B", had agreed to refund the cost of the repairs. Moneybarn refunded two monthly payments of totalling £596.44 in April 2023, paid £105 for the cost of diagnostics Mrs G paid to obtain and paid Mrs G £400 for any distress and inconvenience caused.

Mrs G disagreed and said she wanted to reject the van instead. She complained to Moneybarn and said she wouldn't be making any further payments and would take Moneybarn to court if she didn't receive a response from it.

B said D was happy to take back the van if the van was in a fair condition. So, Mrs G returned the van to D.

Moneybarn issued its response to Mrs G's complaint in November 2023. It said following its previous final response letter, an inspection was carried out which showed no EML light but a warning light showing brake pad wear and a service being required. The inspection showed that the van wasn't in a satisfactory condition and listed a number of things that were missing and damage that had occurred to the van after it was supplied. It said Mrs G had the van for eight months before she complained and she had covered 4,235 miles in it. It said the van was of satisfactory quality when it was supplied and the issues Mrs G had now raised were related to wear and tear. It requested that Mrs G collect the van from D and if she didn't, it would determine that the vehicle had been abandoned which may result in the agreement being terminated. It also offered to assist Mrs G in relation to the arrears which had accrued under the agreement.

Unhappy Mrs G referred a complaint to this service. She said she wanted the van repaired or a full refund of the amount repaid with a payment for the inconvenience she had.

In January 2024, the DVLA took possession of the van as it didn't have road tax and in February 2024, it was taken to an auction house. Mrs G told Moneybarn she wanted it to

collect the van. In March 2024, the van was sold at auction and the agreement was terminated.

Our investigator looked into the complaint and said he wasn't persuaded there was anything wrong with the van. He said D had agreed to take the van back as a gesture of goodwill but following a 20 minute road test, it was found the van was performing satisfactorily. He said a number of areas of damage and missing items were found with the van and the total repair quote was £3,779.45. Our investigator said images showed the van wasn't returned to D in an acceptable manner and due to no faults being identified, D withdrew their offer to take the van back and asked Mrs G to collect it. However, Mrs G didn't collect the van. He didn't uphold Mrs G's complaint.

Mrs G disagreed. She said that independent evidence showed there were faults with the van.

Our investigator said that various reports showed that the van was performing satisfactorily, which suggested any issues Mrs G had complained about had been resolved.

Mrs G suggested that D had withheld information as it knew it was fully responsible for the faults with the van which is why it accepted it back.

Moneybarn sent a copy of an independent report that was carried out by a business I'll refer to as "F" in April 2023. F's report stated that the van was performing as expected but there were fault codes stored, which required further investigation. It said it considered faults were developing at the point of supply.

Our investigator issued a revised view and said that once D had refused to accept rejection of the van, repairs should have been carried out instead to the van. He said this was no longer possible as the van was sold at auction. He said to put things right, Moneybarn should reassess the arrears considering the price of the van sold at auction and that the outstanding repairs weren't carried out. He said this should be offset against the condition the van was returned to D in.

Moneybarn said the van sold for £2,450, the average price for the van was £3,750, the clean guide price for the van was £4,500. It said there was no way of knowing what the van would have sold for if it had no issues, but it would apply the value of £4,500 and so, reduce Mrs G's outstanding liability by £2,050. So it said the outstanding balance for Mrs G to pay was £9,949.18.

Mrs G disagreed. She said the van wasn't fit for purpose and there were many faults with it. She said Moneybarn should give her a full refund and provide her with a roadworthy van.

As Mrs G remains in disagreement, the case has been passed to me to decide.

### **What I've provisionally 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 evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mrs G has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

The finance agreement in this case is a regulated conditional sale agreement. So our service is able to consider complaints relating to it. Moneybarn is the supplier of the van under this type of agreement and so is responsible for dealing with a complaint about its quality.

What I need to decide in this case is whether the van supplied to Mrs G was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The Consumer Rights Act 2015 ("CRA") covers conditional sale agreements. Under a conditional sale agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

In this case, it appears that initially there was no dispute that the van wasn't of satisfactory quality. However, this was then later disputed by D and Moneybarn after the van was returned to it. For clarity, I've considered whether I think the van had faults which made it of unsatisfactory quality at the point of supply.

The van broke down and a breakdown recovery service inspected it in February 2023. A fault code relating to the turbo charger was found. On 24 April 2023, an independent inspection of the van was carried out by F and the mileage reported at the time was 99,903, which was around 1,100 more miles than the reported delivery mileage on F's report. F described the overall condition of the van as average. It said it carried out a diagnostic interface test and it found multiple fault warnings relating to the glow plug cylinders, exhaust gas temperature sensors, controller area network communication, lost communication with steering angle sensor module and invalid data received from electronic control module/power train control module A. I've also seen a number of videos of the van that show the exhaust emitting a significant amount of smoke.

Based on all this, I'm satisfied that the van supplied to Mrs G had faults. I've gone on to consider whether I think these faults made the van of unsatisfactory quality.

Mrs G acquired a van that was used – so there would be different expectations compared to a new van. Having said that, the van's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

F in its report said, *"We then conducted a 4-mile road test at speeds of up to 50-60mph and we can confirm that no warning lights illuminated on the dashboard and the vehicle did perform as expected."* It went on to say it couldn't identify a fault with the turbo, it noted that when a breakdown service went out to look at the van after it broke down, it retrieved a fault code which required further investigation. F said, *"Based on the fact that the vehicle has covered 1,407 miles since policy inception, the current issues were developing at sale and are the selling agent's responsibility.... There were no faults we consider to be wear and tear related."*

Following this, D said it couldn't find any problems with the van when Mrs B returned it for repairs. However, this is consistent with what F said as it confirmed the van drove as expected to and no warning lights appeared. However, further testing by F showed the stored fault codes and these fault codes are consistent with those found by a roadside recovery company prior to F's inspection.

A report was conducted by a company I'll refer to as "M" in response to F's report. It is dated 16 May 2023 and states that the turbo failed due to *"partial hydraulic from being driven through water/deep puddle...wires on sensor have been stretched/damaged due to resistance of water...air filter shows clear water saturation."* However, F's report stated no issues were found with the turbo. And M's report focused on the turbo and air filter. So I'm not persuaded F's report is relevant as it states it is responding to F's report which didn't

mention any ongoing issues with the turbo or air filter. So, I've not placed any weight on M's report.

Based on all this, I'm satisfied that the van supplied to Mrs G wasn't of satisfactory quality. I note it had completed around 98,000 miles at the time it was supplied to Mrs G. However, there were clearly a number of problems with the van, as evidenced by F and the breakdown company, that I don't consider make the van of satisfactory quality.

I've gone on to consider what, if anything, Moneybarn needs to do to put things right.

D agreed to repair the faults highlighted in F's report in April 2023. It then agreed to take back the van upon Mrs B's request. However, after Mrs B had delivered the van to D, it declined take the van back as it said the van wasn't in a fair condition and there was nothing wrong with it.

However, as D had already agreed to repairs prior to this and I've explained why I think the van was of unsatisfactory quality, I think that it should have carried out the repairs to the van and returned the van to Mrs G. As the van has now been sold at auction, it is no longer possible for D to carry out repairs. So I've considered what it is now fair and reasonable for me to require Moneybarn to do in order to put things right here.

Mrs G was supplied with a van that was not of satisfactory quality. The CRA permits a supplier a chance to repair a van. However, the CRA makes it clear that where a repair is carried out it must be done so within a reasonable time and without significant inconvenience to the consumer.

In this case, I think given that D had agreed to carry out repairs and it didn't do this, I'm satisfied that any repair was not (and now cannot be) carried out within a reasonable period of time and without any inconvenience to Mrs G. The alternative to repair is rejection. I'm therefore satisfied that it would be fair and reasonable to place Mrs G in the position she would now be in had she had rejected the van at the point she returned it to D. This means that the conditional sale agreement should also be treated as if it ended at that point. Any adverse information relating to this conditional sale agreement that has been reported to any credit reference agencies should also be removed from the point the van was returned to D by Mrs G.

I've seen a copy of the quotes for missing items and damage repair that have been provided by D. I've also seen a copy of the photographs which have been provided. The quotes state that damage totalling £3,779.48 was identified. But this includes wear and tear items such as brake pads, discs and sensors and an MOT. It also includes repair of damage such as a front right door repair and a burnt seat replacement. However, the pictures provided don't evidence the damage being alleged. Instead, the van looks as it is in a reasonable condition given its age and mileage. Furthermore, F in its report also stated that the overall condition of the van was average. If there had been damage which wasn't consistent with the age and mileage of the van, which in 2023 was around eight years old and around 100,000 miles, I would have reasonably expected F to identify this or supporting information to be provided which showed the alleged damage.

So, I'm not persuaded that the van was unreasonably damaged when it was returned to D or that it was in an unreasonable condition and I don't consider that Mrs G needs to pay for any of the damage that D has alleged and which now cannot be independently verified.

I can see that Mrs G made around nine payments to Moneybarn whilst she had the van. I understand that Mrs G received a refund of two monthly payments due to her complaint. During the time Mrs G had the van, she completed around 2,000 to 4,000 miles in the van. Having considered Mrs G's use of the van, I'm minded to decide that Moneybarn should be entitled to retain the payments Mrs G has made for the use of the van. This means that Mrs G has nothing further to pay to Moneybarn.

Having said this, I consider that Mrs G has been caused distress and inconvenience. Mrs G has explained the extent of her medical history and she required the van to stay mobile due to her conditions. I'm sorry to hear about the impact of the faults with the van to Mrs G's health. I'm minded to decide that Moneybarn should pay Mrs G a further £200 for any distress and inconvenience it caused her.

### **My provisional decision**

My provisional decision is that I intend to uphold Mrs G's complaint. I'm minded to decide that Moneybarn No. 1 Limited trading as Moneybarn should do the following to put things right:

- Report the conditional sale agreement as if Mrs G had been entitled to reject the van in around September 2023 instead of the agreement being terminated;
- Collect no further payments from Mrs G under the conditional sale agreement;
- Update any adverse information reported to the credit reference agencies; and
- Pay Mrs G a further £200 for any distress and inconvenience caused, in addition to any amounts previously paid for distress and inconvenience.

Sonia Ahmed  
**Ombudsman**