

complaint

Mr C is unhappy because Moneybarn No. 1 Limited didn't liaise with his insurance company following a road traffic accident.

background

Mr C took out a conditional sale agreement with Moneybarn in December 2017 to cover the cost of a used car. The amount of credit was £9,495; with repayments of £311.43 a month over 5 years. At the time the car was 7 years old and had travelled around 111,000 miles.

In February 2018 Mr C was involved in a road traffic accident in which his car was damaged. Mr C says the repairs to the car were carried out by a third-party garage, instructed by and paid for by his insurance company. Mr C was unhappy with the quality of the repairs, and said he'd been told the car needed around £10,000 worth of repairs to bring it up to a satisfactory standard.

Mr C raised the quality of repairs with Moneybarn, but they referred him back to his insurers. Mr C then complained to Moneybarn that the terms of his agreement say that Moneybarn will act as his agent to negotiate with his insurers to settle an insurance claim, and they haven't done this. Moneybarn said that this only applied where funds were paid directly to them to settle any claim, and they can't get involved when an insurance company funds the repairs.

Mr C wasn't happy with this response, and he was also unhappy with how Moneybarn dealt with his complaint. So he brought his complaint to the Financial Ombudsman Service.

Our adjudicator said that, because the insurance company paid the third-party garage for the repairs directly, Moneybarn didn't need to be involved with the claim. So he thought they'd acted reasonably and in line with their terms and conditions. And after reviewing Moneybarn's contact notes, he didn't see any evidence they'd taken an unreasonable amount of time to investigate Mr C's complaint.

Mr C didn't agree with the adjudicator. He's said that this all happened at a stressful time for him, and there's nothing in the agreement that says Moneybarn will only liaise with an insurer when they're receiving funds to settle an agreement. He thinks Moneybarn have lied to him, and that they constantly change what they're saying. So he's asked for an ombudsman to make a final decision.

my findings

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 have reached the same overall conclusions as the adjudicator, and for broadly the same reasons. I can understand this is likely to come as a disappointment to Mr C, but I hope my findings go some way in explaining why I've reached this decision. I've also focused my comments on what I think is relevant. 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.

Firstly, I'd like to recognise that this all happened at an already stressful time for Mr C, one which meant he was unable to keep up regular payments to Moneybarn. And I don't doubt that Mr C was unhappy with the quality of the repairs done to his car. But, for me to agree that Moneybarn should do something and/or compensate Mr C for this, I'd need to be satisfied that they should've dealt with the insurance claim on his behalf from the outset. And in this situation, I don't think that's the case.

I've seen a copy of the conditional sale agreement documents signed on 18 December 2017. The relevant terms and conditions of this agreement say:

5. INSURANCE

- 5.5 *You will notify us promptly in the event of the goods being declared a total loss by your insurer and will provide to us on request full contact details of your or any 3rd party insurer and reference number(s) of the claim(s).*
- 5.6 *You promise to pay us for any loss or damage to the goods and for any loss, damage or injury caused by the goods (except for any caused by our own failure to exercise reasonable care) insofar as it is not covered by insurance of the goods.
You irrevocably appoint us as your agent to:*
- 5.6.1 *negotiate with the insurers (yours or a 3rd party) to settle any insurance claim, and*
- 5.6.2 *agree the amount payable in any insurance claim relating to the goods, and*
- 5.6.3 *receive payment of any insurance claim relating to the goods, and*
- 5.6.4 *institute proceedings for the recovery of monies due pursuant to any insurance claims relating to the goods.*
- 5.7 *You will pursue diligently any insurance claim and will cooperate fully with any and all requests for information requested from your or any 3rd party insurer.*
- 5.9 *If the goods are lost, stolen or are considered a total loss by the insurer then the following amounts will become immediately payable ...*
- 5.10 *In the event of the goods being declared a total loss, any insurance monies you receive directly from your insurance company, or a 3rd party insurer, will be payable to us with immediate effect, such as monies being held on trust for us.*

When considering the terms and conditions, it's important they are considered both individually and as a whole. I agree that 5.6 gives Moneybarn the right to deal with a claim. But it doesn't say they will always deal with every claim. And 5.7 says Mr C should pursue diligently any insurance claim. So the presence of 5.7 shows me that Moneybarn wouldn't expect to deal with every claim.

What's more, 5.5, 5.9 and 5.10 (and 5.11 and 5.12 which I haven't quoted as they relate to how a settlement would be applied to any outstanding amount under the agreement) are all concerned with claims where the car is lost, stolen or declared a total loss i.e. where Mr C would no longer have possession of the car.

So it would be fair to say that, when considering the terms as a whole, Moneybarn are more concerned with total loss claims. And it's not unreasonable for them to become involved in this type of insurance claim, while not becoming involved in other types of claim.

I agree with Mr C that the terms aren't specific in saying what circumstances Moneybarn would become involved in a claim. But I wouldn't expect them to list every possible circumstance where they would, would not, may or may not become involved. I think that as the terms don't specify that they would become involved in each and every claim, it's fair for them to make a case by case decision as to whether they would deal with a claim or not.

In this instance, Mr C has told us that his car was damaged but considered repairable. But the repairs weren't done to a satisfactory standard and his car suffered additional damage while in the third-party garage. This is unfortunate, but I can't hold Moneybarn responsible for the repairs or further damage. And I wouldn't expect them to pay to have the car repaired. This is something that needs to be raised with the insurance company.

Moneybarn explained why this isn't a claim they're dealing with - because the insurer paid the third-party garage direct for the costs of the repairs. So there was nothing for them to negotiate or settle. Because of this, it's Mr C's obligation under term 5.7 to pursue the insurance company for any repairs that weren't of a satisfactory quality.

I don't consider that Moneybarn have failed to adhere to their terms, so I won't be asking them to do anything more. But I would expect them to cooperate with any requests made by, or on behalf of, the insurance company while they're dealing with Mr C's concerns. And I would expect them to deal with Mr C's financial difficulties in a positive and sensitive way.

Finally, Mr C is unhappy with how Moneybarn dealt with his complaint. Complaint handling is not a regulated activity, so it isn't something I can decide upon. However, I am glad to see that, in their final complaint response letter, Moneybarn have acknowledged they could've done better. And they've given Mr C some gift vouchers by way of an apology for the time it took them to deal with his complaint.

my final decision

For the reasons explained I don't uphold Mr C's complaint about Moneybarn No. 1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 November 2020.

Andrew Burford
Ombudsman