

complaint

Mr W complains that a van he financed through an agreement with Moneybarn No. 1 Limited ("Moneybarn") was of unsatisfactory quality.

background

Mr W took receipt of a used van in October 2018. He financed the deal through a conditional sale agreement with MoneyBarn. At the point of supply the van had already completed 92,825 miles and was about six years old.

Mr W had problems with the van. He complained to MoneyBarn the following month saying there was a:

- chipped windscreen and worn wipers;
- judder in first gear;
- dents in the loading door and paint damage on the roof;
- no spare wheel, jack, spanner or brace;
- violent vibrations from the wheels;
- issues with the brakes;
- the number plate light didn't work;
- tyres were not the correct size, were worn and cracked;
- there were diesel fumes in the cab.

MoneyBarn commissioned an independent inspection. The inspector noted several faults with the van. He said the windscreen was cracked; all the brake discs were badly worn and not operating effectively; there were several fault codes relating to cylinder and glow plug circuit faults; the van was in limp mode; the engine management light was illuminated and there was damage to the door and roof.

He said:

"...on the balance of probabilities, the brakes, wheels and front screen may have been developing ... at finance inception" but he did note that Mr W had completed about 5,500 miles in the van since he'd taken receipt of it and suggested further supportive evidence may be required.

Our adjudicator thought that some issues, such as the windscreen crack and door dent, may be fairly attributed to wear and tear as the van had completed significant mileage when Mr W took receipt of it. But he thought there was evidence that the brakes were failing as he noted the MOT had identified they were in a poor condition in June 2018, only a little under 600 miles before Mr W took possession of the van. He was also persuaded that the tyres were the wrong size when Mr W agreed the finance. He said that because he noted the photograph Mr W provided of his blown tyre showed it to be a 235 and he'd referred to that in his original complaint when he had told MoneyBarn the size was wrong. He contacted the manufacturer's technical team and they confirmed that the correct size should have been 195's.

So the adjudicator thought there was evidence this van was not of satisfactory quality when supplied and that MoneyBarn should therefore allow Mr W to reject it; refund his deposit with interest; and pay Mr W £150 to compensate him for the distress and inconvenience he'd been caused.

MoneyBarn didn't agree with the adjudicator's opinion. They said the van had actually completed about 950 miles when Mr W reported the brake problem to them and they suggested the fault was likely to have developed, to an unacceptable position, during that time. They noted that the independent inspector had provided further comments about the tyre sizes but whilst they accepted the wrong tyres had been fitted, they didn't think it would be fair to suggest this made the van of unsatisfactory quality. They said they'd pay to have the brakes repaired and would refund the cost of tyre replacement. But Mr W didn't accept that offer and MoneyBarn therefore asked for a final decision by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with the adjudicator's view. I know that will disappoint MoneyBarn so please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments 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.

Mr W acquired his van under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the van should have been of satisfactory quality when supplied. If it wasn't then MoneyBarn, who are also the supplier of the van, are responsible. The relevant law also says the quality of goods is 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.

In a case like this which involves a van the other relevant circumstances would likely include things like the age, mileage and price at the time the van was supplied to Mr W. The van here was around six years old and had travelled 92,825 miles. I'd expect some wear and tear in a vehicle of that age and mileage. I think that would fairly include some bodywork damage such as that reported by Mr W. But I think a reasonable person would expect the van to be safe; driveable and without significant mechanical issues.

I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the van was faulty when supplied and this fault made the van not of satisfactory quality, I'd think it fair and reasonable to ask MoneyBarn to put this right.

Mr W had a short term right to return the van to MoneyBarn if it developed a fault within 30 days. Mr W reported a fault on 4 November 2018 which was within 30 days.

Legislation would encourage us to assume that if a van developed a fault in the first six months it was likely to have been there from the point of supply. The relevant legislation says that:

“...goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day.”

The independent inspector has confirmed many of the faults Mr W reported at that time to have still been present in February 2019 when the inspection was completed. In particular the inspector noted that all brake discs were severely worn and would not pass an MOT. The inspector said there was a “heavy vibration” from the brakes. Mr W reported the same thing to MoneyBarn only a few days after he took receipt of the van. The MOT completed only 600 miles before Mr W took receipt of the vehicle also reported brake disc wear. I think, on the balance of probability, it's most likely the brakes were failing at the point of supply and I don't think a reasonable person would think this acceptable. So MoneyBarn should have allowed Mr W to reject the vehicle at that point.

And even if I'm wrong about that there appears little dispute that the tyres fitted to the van when Mr W took receipt of it were the wrong ones. The independent inspector has said:

“...changing the tyres can have a substantial effect on the vehicle's road holding ... we would never recommend that the tyres are changed ...changing the specification is not an acceptable practice”.

I don't think a reasonable person would accept that a van was of an acceptable quality if it was supplied with the wrong tyres, especially as the inspector has confirmed they could have a “substantial effect on vehicle handling”. I think vehicle handling is an important feature of a van, regardless of its age or mileage. And I can see that Mr W was complaining of the handling in his initial communication with MoneyBarn. So I think this is a further reason MoneyBarn should have allowed Mr W to reject the van.

MoneyBarn put the onus on Mr W to prove there were faults with the vehicle. I don't think that was reasonable in the circumstances. The relevant legislation suggests that we should assume the faults were there from the beginning if they become apparent in the first six months. I think it is therefore fair to suggest if MoneyBarn wished to contest the rejection of the van they should have provided their own evidence sooner. Mr W has clearly been inconvenienced by the delay. In those circumstances I would agree with the adjudicator that MoneyBarn should pay Mr W £150 to compensate him for the distress and inconvenience their actions have caused.

my final decision

For the reasons I've given above I uphold this complaint and tell Moneybarn No. 1 Limited to:

- end the agreement with nothing further to pay;
- refund Mr W's deposit and add 8% simple interest from the date of payment to the date of settlement;
- remove any adverse reports they may have made to Mr W's credit file in relation to this issue;
- collect the van at no further cost to Mr W;
- pay Mr W £150 to compensate him for the distress and inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 April 2020.

Phil McMahon
ombudsman