

## **complaint**

Mr H complains a van he purchased on a conditional sale agreement from Moneybarn No.1 Limited (Moneybarn) wasn't of satisfactory quality. He wants to be allowed to reject the vehicle.

## **background**

I set out the background to this complaint in my provisional decision. I'll repeat it here so that all the relevant information is in this one document.

Mr H entered into a finance agreement with Moneybarn to purchase a van for his business in February 2017.

Within a very short time, he started to experience problems with the vehicle and had to return it to the dealership on several occasions following issues with the starter motor, windscreen and battery. The garage carried out the necessary repairs at no cost to Mr H.

In May 2017, the vehicle broke down on the motorway and Mr H had to be recovered by the RAC. The recovery notes show a potential problem with the system voltage, low fuel level and a suspected timing problem leading to a lack of compression and as a result needed to be taken to a garage for repair.

The dealership inspected the vehicle, found the engine oil to be depleted, believed this to be due to driver neglect, and so refused to carry out any repairs. Mr H was adamant he had maintained the oil levels, there had been no warning indications of low oil levels, and so he complained to the finance company.

The finance company sent an independent engineer to inspect the vehicle. He reported that the engine oil levels were correct, but the dealership advised him this was because they had topped up the engine oil by five litres, they say when the vehicle was recovered there was no oil identified on the dipstick at all.

The engineer noted on starting the engine, it displayed extreme rattling noises before cutting out and he found oil contamination in the front of the sump. He completed the inspection and concluded the engine condition was consistent with being driven on depleted or very low oil levels and this was the most likely cause of the breakdown. He stated, in his opinion, if this was the case it was not likely present at the point of sale but developed after sale.

He went on to say, in a supplementary letter to his report, that it would be necessary to carry out further investigation to be certain of the cause of the engine failure. This would require a full dismantling of the engine and examination of elements such as the sump pan, big end cap bearings and oil pump. Only after a thorough investigation could ascertain the actual cause.

Moneybarn asserted this was sufficient evidence to establish driver error and refused to repair the vehicle but offered to discuss exit options from the finance agreement.

Having reviewed all the evidence, I said the dispute in this case lies with whether, or not, the vehicle had an underlying fault at the point of sale and so wasn't of satisfactory quality. The Consumer rights Act 2015 says that a car can be rejected within the first 30 days if there is a fault. Within the first 30 days, there is no obligation to accept a repair. After the first 30 days, the retailer must be given one opportunity to repair the fault. If the fault isn't successfully repaired, the car can be rejected. Any periods of time during which the car is being repaired don't count towards the 30 days/6 months' time limits.

I found that the vehicle was repaired by the dealership three times before it broke down for a fourth time, when the dealership refused to carry out repairs as on this occasion they cited driver error. I said, although, I appreciate the earlier repairs were not in relation to the oil levels it seems to me that one or more qualified mechanics repaired the vehicle and found no indication of low engine oils levels or oil leaks on these occasions but when the vehicle broke down in May 2016, within 100 days of purchase, there was no oil registering on the dipstick and the dealership confirm they put five litres of oil in the engine before the independent engineer carried out his inspection. This would seem to indicate either the oil levels were insufficient at the point of sale or the engine consumed over five litres within 100 days of purchase. In the case of the latter this seems to be excessive and a possible indication of other issues.

Further, the vehicle had travelled around 7000 miles since purchase and although the engineers report indicates, no evidence of fault at the point of sale it clearly goes on to say that further investigation is required to establish the exact cause of the oil depletion. Moneybarn didn't strip down the engine and seem to have suggested to Mr H, that the engineers report was conclusive in its findings, this was misleading, and left Mr H attempting to arrange further investigation, presumably at his cost, which he didn't manage to do.

The vehicle hasn't been driveable since May 2016 and has been in the possession of the dealership. Following their refusal to repair the vehicle Mr H stopped making the monthly payments. He was wrong to do so as he should have continued to maintain the payments until this matter was resolved, I understand he had to purchase another vehicle to continue working and couldn't afford both and I appreciate the financial pressures of paying for two vehicles.

I pointed out the sale of the vehicle has prevented the full investigation recommended by the independent engineer and whilst he made preliminary findings, these are not conclusive and the full investigation should have been undertaken. As a result I'm persuaded the engine failure within 100 days of purchase is a sufficient indication that there could have been an underlying fault at the point of sale and I don't accept that Mr H failed to maintain the vehicle so negligently that it would or could seize completely within 100 days solely due to a failure to top up oil levels.

For all these reasons, I intended to make the following award against Moneybarn:

- Cancel the conditional sale agreement with nothing further owed.
- Update Mr H's credit file showing the agreement was settled with nothing further owed.
- Refund any deposit Mr H paid.
- Refund any fee Mr H had to pay for cancelling his car insurance for this van.
- Refund all payments Mr H has made towards the conditional sale agreement from May 2016 until the current date.
- Refund the cost of the two booster seats at £29.99 each.

Interest at 8% simple per year should be added to 3, 4 and 5 above from the date of payment until the date of settlement.

I asked Mr H and Moneybarn to respond to my provisional decision if they wished to do so.

Both parties responded Mr H accepted my decision.

Moneybarn provided some additional information they asked me to take into account and reconsider my provisional decision.

## **my findings**

I thank both parties for their swift response to my earlier decision. I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've looked at the information Moneybarn have provided and there isn't any new evidence here more of a reiteration of the information I was already in possession of when I made my provisional decision. As such, I haven't reached a different conclusion but I will address the points they raised.

Moneybarn have pointed out they carried out three unconnected repairs before refusing to repair a fourth believing this to be down to driver error and a failure to maintain the vehicle. They claim this is evidence of their willingness to meet their obligations under The Consumer Rights Act 2015.

I haven't suggested Moneybarn didn't comply with their responsibilities in addressing the three previous repairs but I did take into account the need to carry out three earlier repairs in terms of any indication of the condition of the vehicle.

I also took into account the fact that Mr H returned the vehicle for those repairs within a few months of purchasing the vehicle and whether, or not, that represented someone likely to neglect maintenance of a vehicle required for his business.

The issue regarding the ACE report is a moot point since I have already established that the decision to take the report as conclusive was an error on Moneybarn's part as the report clearly states the conclusion is only based on probability and a full strip down of the engine would be required to establish the cause. As Moneybarn failed to do this, I don't accept driver neglect as the definitive reason for the complete and total failure of a vehicle within 100 days of purchase.

The crux of the issue here remains the inability to carry out a full investigation of the engine to establish whether the vehicle had an underlying fault at the point of sale. This was due to Moneybarn selling the vehicle at auction after they were aware the complaint had been referred to this service.

Moneybarn asserts this was an unavoidable overlap – the vehicle had already been sent to auction and couldn't be recalled. I'm afraid I don't accept this assertion as this service wrote to Moneybarn on 06 November 2017 and the vehicle wasn't auctioned until 13 November 2017 which I'm persuaded is sufficient notice to withdraw the vehicle pending the outcome of any investigation. As I have said previously Moneybarn, had the right to auction the vehicle but in doing so there was no opportunity to carry out the independent engineers recommendation.

And so I remain persuaded the engine failure within 100 days of purchase is a sufficient indication that there could have been an underlying fault at the point of sale and I don't accept that Mr H failed to maintain the vehicle so negligently that it would or could seize completely within 100 days solely due to a failure to top up oil levels.

Further, I don't find the decision to sell the vehicle, whilst being aware the matter had been referred to the ombudsman, a fair and reasonable action and as I have said resulted in preventing a full and conclusive investigation and on that basis I don't think Mr H should be bound by the conditional sale agreement and should be allowed to reject the vehicle.

**my final decision**

My final decision is that I make the following award against Moneybarn No.1 Limited:

- Cancel the conditional sale agreement with nothing further owed.
- Update Mr H's credit file showing the agreement was settled with nothing further owed.
- Refund any deposit Mr H paid.
- Refund any fee Mr H had to pay for cancelling his car insurance for this van.
- Refund all payments Mr H has made towards the conditional sale agreement from May 2016 until the current date.
- Refund the cost of the two booster seats at £29.99 each.

Interest at 8% simple per year should be added to 3, 4 and 5 above from the date of payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 May 2018.

Wendy Steele  
**ombudsman**