

complaint

Mr M complains that a used vehicle he got with finance from Moneybarn No 1 Limited was of unsatisfactory quality at the point of supply and Moneybarn took too long to deal with his complaint.

background

Mr M acquired a used van under a conditional sale agreement (CSA) he took out with Moneybarn in October 2018. He says the supplying dealer told him the van would have a service and MOT before collection. Mr M collected the van in early November and had trouble with the brakes on the journey home. He took the van to a local garage and was told brake pads were completely worn, brake discs were soldered on (so they could not be replaced) and gaskets, various filters, fuel injectors and an EGR valve needed to be replaced. Mr M doesn't think the van should have passed an MOT in this state. He contacted the supplying dealer and the credit broker, who got in touch with Moneybarn in November 2018.

Moneybarn responded to Mr M in early January 2019 to provide referral rights to this service - as the eight weeks it normally allows to investigate complaints had passed. Moneybarn provided a further update to Mr M at the end of January 2019 - after obtaining more information from the broker. It said some of the issues Mr M raised were wear and tear related so it wasn't responsible for those and, whilst Mr M had supplied some evidence about faults in November 2018, Moneybarn didn't think there was enough to show the van was of unsatisfactory quality when it was supplied.

Moneybarn offered to arrange for an independent expert to inspect the van and provide a report, in February 2019 but the van was stolen before the inspection took place. Moneybarn says this meant it couldn't check if the vehicle was fit for purpose and Mr M was in breach of his obligations under the CSA to keep the van insured.

Mr M says he needed a van for his business over the Christmas period and he couldn't use this one - because it was faulty - so he used another vehicle. He couldn't afford to pay for both so he completed a statutory off-road notice (SORN) for this van in January 2019 and stopped insuring it. He thinks it is Moneybarn's fault the van was stolen (given the delay) and he shouldn't be expected to keep insuring a van that he couldn't use, in this situation.

Moneybarn accepted it took too long to respond to Mr M initially and it was understandable that Mr M arranged for some repairs. It offered to

- reimburse repair costs of £495;
- make a goodwill payment of £200, for associated distress and inconvenience;
- write off the interest;
- refund monthly payments made under the CSA; and
- write off one third of the van's value.

Moneybarn calculated that this would leave Mr M to pay £6,796.66 under a payment plan. And it offered to value the van, if it is recovered later, to see if the balance can be adjusted.

Mr M accepted Moneybarn's offer initially - he told us he felt he had no other option at the - but he wants Moneybarn to write off the balance now.

Our adjudicator acknowledges Moneybarn took longer than it should to investigate the complaint and this delay was frustrating for Mr M. But he doesn't think it was unreasonable of Moneybarn to require more evidence in relation to the van's condition at the point of supply. He's not persuaded there's enough evidence to conclude that the van was of unsatisfactory quality then. And, even if we were to accept that it was and find Mr M was entitled to reject, we'd expect the van itself to be returned to Moneybarn. That's not possible because it was stolen. He's satisfied Mr M was required to insure the van under the CSA terms and, while he understands Mr M's reasons for cancelling the insurance, he is not persuaded we can reasonably require Moneybarn to do more than it has already offered.

Mr M didn't agree. He asked for an ombudsman to review the matter and says (in summary)

- this van was of unsatisfactory quality and unsafe when it was supplied which is illustrated by the fact the brakes failed on the journey home from collection – and this is evidenced in paperwork from a third-party garage that checked the brakes;
- he told Moneybarn about these faults in good time and supplied relevant evidence including photographs and video footage that show the rear brake hubs couldn't be removed meaning the van wasn't serviced as the dealer had promised;
- Moneybarn failed to ensure the van was serviced properly and was safe – there should have been an advisory on the MOT about the brakes, the supplying dealer has numerous bad reviews online and Moneybarn should have taken this into consideration before recommending this particular dealer to customers - he's unhappy that Moneybarn has never addressed this part of his complaint in particular;
- it was unreasonable for Moneybarn to expect Mr M to continue to meet monthly payments and insure a van that he couldn't use during a very busy period for his business and Moneybarn should have accepted the van was of unsatisfactory quality based on the evidence he supplied in November - or arranged the expert's inspection much sooner;
- it is unfair to expect him to pay the balance owing under the agreement in this situation.

my provisional decision

I issued a provisional decision in relation to this complaint on 26 August 2020 explaining why, subject to any further submissions received from the parties, I was minded to find the offer that Moneybarn made to settle this complaint was fair and I've summarised my provisional findings below :-

I could see Mr M went to a lot of time and trouble to provide very detailed submissions in respect of this complaint, I considered everything and, if I didn't address every single point that he raised, that's not because I hadn't thought about it but rather I was going to concentrate on what I considered was key to reaching a fair and reasonable outcome.

I was satisfied that Moneybarn was required to provide goods that were of satisfactory quality at the point of sale here, that includes things like fitness for purpose, appearance and finish, freedom from minor defects and safety and durability. And goods are of satisfactory quality if they meet the standard that a reasonable person would expect, taking all of the relevant circumstances into account - such as the price paid and the age and mileage, in the case of a used vehicle.

This van cost about £10,500, it was five years old and had covered 76,000 miles when Mr M got it. So, a reasonable person would expect there to be some wear and tear present -

meaning parts would have to be repaired or replaced sooner or later. Mr M told us the brakes failed on the journey home the day he collected the van. I thought a reasonable person would not expect that to happen and it was understandable that Mr M was concerned and had the van checked by a local garage.

Mr M supplied a list of faults the garage found - along with some video footage and photographs that he sent to Moneybarn at the time. I understood he considered Moneybarn should have accepted this proved the van was of unsatisfactory quality in November 2018. But I thought some of the issues were likely wear and tear related. And I couldn't reasonably find this evidence alone meant a van of this age, cost and mileage must be of unsatisfactory quality.

I could see the van passed an MOT on 1 November 2018. That would have included a brakes check – amongst other things. And I thought this suggested the brakes (and the van itself) were roadworthy, at that stage. I understood Mr M felt the MOT wasn't carried out properly but I couldn't comment on that - it's something Mr M may wish to take up with the Driver and Vehicle Standards Agency (DVSA).

Looking at the evidence Moneybarn had at the relevant time – the successful MOT, the van's age cost and mileage and the information Mr M supplied - I was not persuaded that it was unreasonable of Moneybarn to want additional evidence and arrange for an independent expert to inspect. It was unfortunate the van was stolen before that happened - as an expert's report is likely to have been useful in establishing if there were quality issues present. But, on the available evidence, I was unable to make a firm finding about this.

I understood Mr M was unhappy with many of the dealer's actions. I explained that I wasn't able to hold Moneybarn responsible for the dealer's after sales service. I could hold Moneybarn responsible for things the dealer said in pre-sale negotiations (under section 56 of the Consumer Credit Act 1974). But, even if I accepted the dealer said the car would be serviced during pre-sale discussions and Mr M relied on that, I wasn't persuaded this made much difference to the overall outcome, in light of my conclusions below.

Mr M brings this complaint to our service because he acquired this van with a finance agreement. When a financial business does something wrong, we generally try and put the borrower back in the position he would have been in, if mistakes hadn't been made. So, if we are satisfied that a vehicle sold or supplied under a finance agreement is of unsatisfactory quality and the borrower should be entitled to return it for a refund, we usually require the lender to collect the vehicle and put the borrower back in the position he would have been in otherwise.

This generally means the finance agreement is cancelled and the deposit refunded - so the borrower doesn't have to pay any more interest. The cost of repairs may also have to be reimbursed and, where there's been some loss of use, monthly repayments may also need to be refunded. We might also find a lender should pay compensation for distress and inconvenience associated with the supply of a faulty vehicle, depending on the circumstances.

I considered the offer Moneybarn made. According to the CSA the van cost over £10,500, interest payable was nearly £9,000, Mr M paid a deposit of around £400 and agreed to repay the full amount borrowed of nearly £20,000 over five years at over £300 a month. Moneybarn supplied a statement that shows about £18,000 was left to pay under the CSA in

February 2019. And, in the usual course of events, Mr M would be liable to repay that following the theft of the van – with the benefit of any insurance pay out.

I considered Moneybarn's offer represents a reduction of about £12,000 on the amount due under the CSA - and over £3,000 on the original cost of the van which puts Mr M back in the position he would have been in if Moneybarn had agreed to take the van back and provide a refund due to quality issues - insofar as that's reasonably possible, given the intervening events of the theft of the van and the failure to insure.

On balance, I considered Moneybarn's offer was sufficient to mean Mr M won't be out of pocket for the cost of repairs or have to pay interest under the CSA - or pay for the time he had the van and couldn't use it. I think the amount refunded and/or written off also seems to be enough to include a refund of the deposit that Mr M paid, pay interest on any refunds that we might usually require to be paid and provide fair and reasonable compensation for any distress and inconvenience Mr M experienced.

It is unfortunate but the van can't be returned to Moneybarn because it was stolen. I was satisfied the CSA requires Mr M to insure the van for just such an event - and that obligation was ongoing while the van remained in his possession/control. I was not persuaded that I could fairly find Mr M was no longer required to insure the van because it was off the road - or as a result of the complaint he raised with Moneybarn. I didn't think it was unreasonable for Moneybarn to expect Mr M to meet his obligations under the CSA in this situation. And I was unable to fairly hold Moneybarn liable for the theft or the failure to insure. So, even if I were to find the van was of unsatisfactory quality and/or the dealer made misrepresentations pre-sale, I wasn't persuaded that I could reasonably require Moneybarn to do more than it has offered already. If Moneybarn has recorded any adverse information in respect of the CSA on Mr M's credit file, I considered that should be rectified provided the payment plan is maintained.

the responses received from the parties

Moneybarn has not objected to my provisional conclusions. Mr M doesn't think the outcome proposed is fair. In summary, he says:-

- the dealer was un-cooperative even though he was told he had a three months warranty at the outset and he reported the issues straightaway;
- he told Moneybarn all of this and they could have done much more to help – they should have arranged an independent inspection in November, for example; and
- it's unreasonable to expect him to pay for a van that he does not have - given the mistakes made by Moneybarn.

my findings

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 (as some of it is here) I reach my decision on the balance of probabilities. In other words, I consider what is most likely to have happened, in the light of the available evidence and the wider circumstances.

I understand Mr M is disappointed by my provisional findings and I'm sorry about that. As I explained in my provisional decision Mr M brings this complaint to this service because Moneybarn supplied this vehicle under a finance agreement. And I'm looking at Moneybarn's

obligations arising under that finance agreement in this decision. I'm unable to hold Moneybarn responsible for the dealer's actions after the vehicle was supplied or the terms of the warranty that Mr M got from the dealer.

For the reasons I've set out already, I think the offer Moneybarn made is fair in all of the circumstances. I am not persuaded that I can reasonably require Moneybarn to do more. I understand Mr M is finding it difficult to meet the repayments currently due under the agreed plan. If he is experiencing financial problems we would expect Moneybarn to treat him positively and sympathetically which would include ensuring that that repayments remain affordable. Mr M may find it helpful to get some free debt advice and there's more information about how to do this on our website – or we can provide him with useful contact details if he gives us a call.

my final decision

For the reasons I've explained, I find the offer Moneybarn made to settle this complaint is fair in all the circumstances and my decision is that Moneybarn No 1. Limited should (if it hasn't done so already) refund repair costs of £495 along with payments made under the CSA, pay Mr M £200 compensation for delay and write off interest due under the CSA along with one third of the van's value leaving Mr M to pay £6,796.66 under an affordable repayment plan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 December 2020.

Claire Jackson
ombudsman