

complaint

Mr A complains that a van he has been financing through an agreement with Moneybarn No. 1 Limited ("Moneybarn") has not been of satisfactory quality.

background

Mr A took receipt of a used van in December 2017. He financed the deal through a five year conditional sale agreement with Moneybarn. At the point of the supply the van was three years old and had already completed 37,000 miles.

Mr A says he noticed a few problems with the van when he first took receipt of it. He says there was some evidence of a previous repair as the back doors would not close properly and he also noted that there was a chip to the windscreen; the bumpers were damaged; the grill wasn't retained properly and there were issues with a fog light. But Mr A says he persevered and went ahead with the agreement.

In April 2018 Mr A experienced some problems with the van. The Engine Management Light (EML) illuminated and when a diagnostic failed to identify the problem the warranty company suggested the Diesel Particulate Filter (DPF) would need regenerating. Unfortunately, this regeneration didn't work and the van was returned to Mr A still in limp mode.

He complained to Moneybarn and they organised an independent inspection of the van. The engineer who completed the inspection in late May 2018 said that:

"the engine fault issues in our opinion would not have been present or developing (at the point of supply) as the vehicle could not have been driven any distance if at all".

Moneybarn explained that their responsibility was only for faults that were present or developing on the vehicle when they supplied it to Mr A. So they didn't think they needed to take any further action. Mr A subsequently failed to make payments towards his agreement and the van was repossessed later that year. He was unhappy with Moneybarn's response and he therefore referred his complaint to this service.

Our adjudicator thought that if the engine had been failing at the point of supply Mr A wouldn't have been able to drive the van for the 9,500 miles he did in the 14 weeks he had it before it broke down. He noted that the independent inspector hadn't thought that was the case either so he didn't support Mr A's complaint and didn't think Moneybarn needed to take any further action.

But Mr A disagreed and he 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 Mr A 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 A 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 A. The van here was around three years old and had travelled 37,000 miles. So I'd expect some wear and tear to have taken place.

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.

But Moneybarn's responsibility for the van is not unlimited. Whilst they are responsible for its condition at the point of supply they are not responsible for faults that develop afterwards such as those relating to wear and tear.

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."

They are also not responsible for faults accepted when the van was supplied to Mr A and I think the faults Mr A noted with the fog lights, windscreen chip; bumper damage and door closure amongst others that I've highlighted in the background to this complaint, were examples of faults Mr A accepted. He has explained that he noted the faults but "*persevered*" with the deal.

The fault with Mr A's van happened after he'd had the van for about four months so the relevant legislation would encourage us to consider the fault was there from the beginning. The onus would therefore be on Moneybarn to demonstrate that wasn't the case and here I think they've provided sufficient evidence to show that was the case.

They organised an independent inspection and it's their assertion that this inspection demonstrates there was nothing wrong with the van when it was supplied to Mr A.

The independent inspector explained that he didn't think the van could have been driven such a distance with the engine management light illuminated. I don't think Moneybarn have been unreasonable when accepting the independent engineer's opinion. He's an expert in these matters and whilst the van had admittedly only been in Mr A's possession for about

three months it had completed a significant mileage in that time. Mr A had covered about 9,500 miles in that period. The average *annual* mileage is less than 8,000 miles. I'd agree that this would not seem likely if there was an engine management fault present or developing at the inception of the agreement. So I don't think Moneybarn need to take any further action.

my final decision

For the reasons I've given above I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 December 2019.

Phil McMahon
ombudsman