

complaint

Mr S complains that a van that was supplied to him under a conditional sale agreement with Moneybarn No. 1 Limited wasn't of satisfactory quality.

background

A used van was supplied to Mr S under a conditional sale agreement with Moneybarn that he signed in August 2018. He returned the van to the dealer in September 2018 because of a knocking noise and it took the van to a manufacturer's dealer where it was identified that it had a very low oil level. He says that he returned the van to the manufacturer's dealer in January 2019 because it was still making a knocking noise and a piston issue was identified which it said was due to the service history. The van was then taken back to the dealer and Mr S says that the van was with the dealer for about a year before it was returned to him.

He complained to Moneybarn about the van in May 2019 but it said that it had received no evidence to support that the issues that Mr S had raised were inherent or developing when he purchased the van. Mr S wasn't satisfied with its response so complained to this service.

Mr S says that there was damage to the van when he collected it in January 2020. There was a further issue with the van in June 2020 so Mr S stopped making the payments for the van and he arranged for a diagnostic test. The test showed a damaged or broken head gasket. Mr S then voluntarily terminated the agreement and returned the van.

Our investigator recommended that Mr S's complaint should be upheld. She said that Mr S's concerns about the knocking noise from the engine were raised at the outset, an oil service was completed in September 2018 which seemed to have fixed the issue but the knocking noise reappeared in January 2019 causing the van to breakdown with a piston fault. She thought that a reasonable person wouldn't expect a van to break down within six months of purchase and she was persuaded that the issues were related. So she said that Moneybarn should have accepted his rejection of the van and ended the agreement.

She recommended that Moneybarn should:

- waive any outstanding balance on the finance;
- refund the deposit of £400 paid for the van, with interest;
- refund the payments from January 2019 to January 2020 (other than for any time that Mr S was provided with a courtesy van) and from the end of June 2020;
- refund the £240 paid for the rocker cover gasket and injectors and the £120 paid for wiring work on the reversing light in January 2020;
- refund the £40 cost of the diagnostic report;
- remove any default from Mr S's credit file and record the agreement as settled; and
- pay Mr S £300 for the trouble and upset the situation has caused.

Moneybarn says that it doesn't believe that Mr S has provided any evidence to substantiate that the van wasn't of satisfactory quality at the point of sale, in August 2018. It says that Mr S raised his complaint with it over eight months into his agreement and he was asked to provide evidence to support his assertion – but didn't do so. It says that the investigator has accepted the testimony of Mr S rather than being provided with any evidence. It says that it can't see how a determination can be made as to whether any faults were present at the point of sale and are the responsibility of the dealer, rather than Mr S. It says that Mr S

voluntarily terminated his agreement in December 2020 and the outstanding balance on his account is £7,060.35.

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 the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. Having done so, I agree with the conclusions reached by the investigator for these reasons:

- Moneybarn, as the supplier of the van, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr S - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the van and the price that was paid for it;
- satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;
- the van that was supplied to Mr S was about a year and a half old, had been driven for 63,800 miles and had a price of £16,554;
- the dealer's invoice for the van says that the dealer was unable to provide a service history and Mr S has provided a copy of the van's history which shows that its cylinder head gasket and thermostat were replaced in January 2018;
- Mr S returned the van to the dealer in September 2018 because of a knocking noise and it took the van to a manufacturer's dealer where it was identified that the oil level was below the minimum level – the van's mileage was recorded as 65,971 so Mr S had only used the van to drive about 2,000 miles and I consider that it was reasonable for him to expect that the van would have been supplied to him with oil at the correct level;
- he says that he returned the van to the manufacturer's dealer in January 2019 because the knocking had come back but with greater frequency and it said that there was a piston issue which was due to the service history and wasn't covered by the van's warranty – the invoice from that dealer which confirms the piston issue is dated in May 2019 and records the van's mileage as 74,215 but Mr S says that it took place in January 2019 and that the van was then with the supplying dealer until January 2020;
- it's clear that Mr S was provided with a courtesy van for some of that time but neither Moneybarn nor Mr S has been able to provide detailed evidence to show when he had a courtesy van;
- when the van was returned to him in January 2020 he said that it was rusty, damaged and smelly and he paid £240 for repairs to the rocker cover gasket and injectors and £120 for wiring work on the reversing light that was required for an MOT test – and the van passed an MOT test in February 2020 when its mileage was recorded as 75,271 – only about 1,000 miles more than the mileage recorded on the manufacturers dealer's invoice dated May 2019;
- Mr S was able to use the van until June 2020 when he says that it stopped working properly so he stopped making the payments under the agreement to Moneybarn (and he says that it recorded a default on his credit file);

- Mr S paid £40 for a diagnostic test on the van in July 2020 which identified a damaged or broken head gasket – Mr S says that he then stopped using the van and he returned it and the conditional sale agreement was voluntarily terminated in December 2020 with an account balance of £7,060.35;
- I consider it to be more likely than not that the van hadn't been serviced properly before it was supplied to Mr S, that it was supplied to him without enough oil and that there were engine faults that were either present or developing – a cylinder head gasket and thermostat had been replaced in January 2018, the engine was making a knocking noise in September 2018 and I consider it to be more likely than not that a piston issue was identified in January 2019;
- Mr S then didn't have the van until January 2020 and it stopped working with a damaged or broken head gasket in June 2020;
- I don't consider that it's reasonable to expect a van of this age and mileage and that cost £16,554 to have so many issues in this time frame – and I consider it to be more likely than not that the van wasn't of satisfactory quality when it was supplied to Mr S and that Moneybarn should have allowed him to reject it in May 2019 when he complained to it;
- Mr S has returned the van and voluntarily terminated the conditional sale agreement and I find that it would be fair and reasonable for Moneybarn to waive the outstanding balance on his account;
- I find that it would also be fair and reasonable for it to refund the deposit of £400 that Mr S paid for the van, with interest, and for it remove any default that it's recorded on his credit file relating to the agreement and to show the agreement as settled;
- I find that it would also be fair and reasonable for it refund to Mr S the monthly payments that he made under the agreement for the period from January 2019 to January 2020 (when the van was with the dealer) - other than periods for which Moneybarn is able to show that Mr S was provided with a courtesy van – and for the period after the end of June 2020 when the van stopped working (all with interest);
- Moneybarn says that a courtesy van that was provided to Mr S was returned with damage caused when being driven by a third party to whom Mr S had lent the van – but I haven't seen enough evidence to persuade me that it would be fair or reasonable for me to deduct any cost of that damage from the payments to be made to Mr S;
- I consider that it's fair and reasonable for Moneybarn to keep the other monthly payments that Mr S has made under the agreement as payment for the use that he had from the van;
- I find that it would also be fair and reasonable for Moneybarn to reimburse Mr S for the £360 that he paid for work on the van after he collected it in January 2020 and the £40 that he paid for the diagnostic test (all with interest); and
- these events have clearly caused significant distress and inconvenience for Mr S – and I find that it would be fair and reasonable for Moneybarn to pay him £300 to compensate him for that distress and inconvenience.

my final decision

My decision is that I uphold Mr S's complaint and I order Moneybarn No. 1 Limited to:

1. Waive the outstanding balance on Mr S's account.
2. Refund to Mr S the deposit of £400 that he paid for the van.
3. Remove any default that it's recorded on Mr S's credit file relating to the conditional sale agreement and to show the agreement as settled.
4. Refund to Mr S the monthly payments that he's made under the agreement for (a) the period from January 2019 to January 2020 (when the van was with the supplying dealer) - other than periods for which Moneybarn is able to show that Mr S was provided with a courtesy van; and (b) the period after the end of June 2020.
5. Pay £360 and £40 to Mr S to reimburse him for the cost of the work on the van after he collected it in January 2020 and the cost of the diagnostic test.
6. Pay interest on the amounts at 2, 4 and 5 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
7. Pay £300 to Mr S to compensate him for the distress and inconvenience that he's been caused.

HM Revenue & Customs requires Moneybarn to deduct tax from the interest payment referred to at 6 above. Moneybarn must give Mr S a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 April 2021.

Jarrold Hastings
ombudsman