

complaint

Mr S complains the vehicle he acquired on a conditional sale agreement financed by Moneybarn No.1 Limited was not of satisfactory quality. He wants to end the agreement and reject the vehicle. He also seeks compensation for loss of earnings.

background

Mr S tells us he acquired the vehicle at the start of July 2018 through a dealer I'll call "C". And he says that almost immediately he experienced problems with it. He says he took the vehicle in for repairs several times. As a result of this - and not having been provided with a courtesy vehicle - he says he was unable to work. He's told us he's also attempted to have various repairs to the vehicle undertaken at his own cost during the subsequent period.

Moneybarn told us it had accepted there were problems with the vehicle and that following an independent inspection by A, a company, it had offered to either end the agreement or have the vehicle repaired. But Mr S had accepted neither offer and instead had just brought his complaint to this service.

I issued a provisional decision on this complaint on 13 May 2019. In that provisional view I indicated that I was minded to uphold the complaint. But I said I wasn't going to award any compensation for loss of earnings, as the invoices supplied by Mr S to show these losses were those of a limited company. And - whilst Mr S was the sole director and person with significant control of the company - the company has a separate legal entity and is not a party to this complaint.

Both parties have now replied to my provisional decision. Moneybarn says it accepts the provisional decision except for the return of the deposit. Mr S has expressed his disappointment that I did not intend to award compensation for the consequential losses he says he incurred. He says these have caused him serious financial difficulties.

I thank both parties for their replies. It's now accepted that no deposit was paid - despite the agreement indicating the contrary. Other than this I see no reason to alter my provisional view which is largely repeated in my final decision which is set out below.

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'm sorry Mr S has experienced the inconvenience of the vehicle proving to be unreliable. And that it's affected his ability to undertake his employment which was heavily dependent on his having his own means of transport.

In broad terms the facts of this complaint are not in dispute - namely that the vehicle was faulty at the point of supply and attempted repairs did not resolve all the issues. So I don't need to go into further detail about that.

In practical terms this complaint now centres on the nature of the redress which should be offered to Mr S to bring about a resolution which is fair and reasonable to both parties. I should explain our approach where a vehicle is faulty at the point of supply and this leads to the ending of the agreement.

Ideally, we'd like to be able to put the parties back to the position they were in immediately before the agreement commenced. But this isn't possible here - as several months have passed and the vehicle has been used in that time. And - despite the issues and time under repair - the vehicle has covered around 16,000 miles between July 2018 and April 2019. Whilst that's above the general average I'd have expected, it's in line with the earlier history of this vehicle, which was recorded as having mileage of 66,000 at the time it was supplied to Mr S. The vehicle had first been registered in 2014.

I'll deal with those aspects of redress which are not likely to be contentious. Mr S has had the use of the vehicle and so it's only correct this should be reflected in any settlement. So he should pay the monthly payments (pro rata for any period of less than one month) from the commencement of the agreement to the date the agreement is ended. From this can be subtracted the £312.61 which Moneybarn agreed as reflecting loss of use whilst the vehicle was under repair. It also agreed to pay Mr S £150 for distress and inconvenience.

I'll deal briefly with the issue of the advance payment (deposit). The copy of the agreement provided to me showed a deposit of £1,920 had been paid. Mr S has always maintained he did not pay this sum. I've now been told by Moneybarn that the dealer made an error and assumed that Mr S would pay the deposit - but this never happened. As both parties agree the deposit was not paid I shan't make any order in respect of this.

I'm aware Mr S thinks he should also have the costs of insurance and road tax refunded for the period the vehicle was not available to him. I'm not making any award in respect of these items for reasons I'll explain. The insurance was required under the agreement and covered such issues as theft and damage which were still relevant even when the vehicle was not in use. And road tax applies to any period when the vehicle is not subject of a SORN notice.

This leaves two areas of contention surrounding the issues of loss of earnings and whether the depreciation in the value of the vehicle should be taken into account.

The agreement made no reference to limits on mileage or depreciation charges. But it was subject to a general requirement for Mr S to maintain it in good condition. So no deductions based solely on mileage and/or depreciation are justifiable. But the vehicle will presumably be inspected upon return and any damage above fair wear and tear (in line with industry standards and guidelines) would potentially be recoverable under the terms of the agreement.

I also don't think that any award related to loss of earnings should be made. Mr S expressed his disappointment about this when he replied to my provisional decision. As it's a substantial part of his claim for compensation I'll explain in more detail why I take this view.

When Mr S submitted proof of loss of earnings - he supplied invoices of work he'd undertaken. And he claimed these showed the level of earnings he would have expected to make had it not been for his vehicle being unavailable. As such he wished to claim consequential losses.

But the invoices related to a limited company. It seems Mr S is the sole director and only person with significant control of this company. A limited company has a separate legal entity - even if it's wholly owned by an individual. And whilst I don't apply the law - directly - I do take it into account.

It's quite common for individuals to provide services through a company - rather than act as a sole trader. It's a perfectly legitimate means of conducting business and there are, no doubt, advantages to such arrangements. But there are also drawbacks as this complaint amply demonstrates.

The company is not a party to either the agreement or this complaint. Whilst I accept Mr S suffered an indirect loss - as funds he would no doubt expect to draw from the company were not available - I cannot make financial awards to non-parties (whether individuals or corporate legal entities).

For completeness, I would add that if the agreement had been in the company name this service would not have even been able to consider the complaint - as the finance agreement would not be a regulated agreement.

So whilst I'm upholding Mr S's complaint - in part - I realise he will be disappointed that I'm not awarding compensation at the level he would wish.

Finally, I understand Mr S is in arrears with the payments due on the agreement. So it's only fair and reasonable that Moneybarn should be able to deduct any arrears due before it makes any refund (if any is still due).

my final decision

For the reasons given above my final decision is I'm upholding this complaint.

I now require Moneybarn No. 1 Limited to take the following action to settle this complaint:

1. End the agreement with nothing further (other than any arrears which have become due) for Mr S to pay from the date of termination;
2. Arrange collection of the vehicle at no cost to Mr S;
3. Refund one monthly payment of £312.61 and pay simple interest of 8% per year from date of payment to date of settlement;
4. Pay £150 for distress and inconvenience to Mr S.

Subject to the payment of all arrears and charges arising under the agreement - to arrange for the record of the agreement to be removed from Mr S's credit file.

Moneybarn No. 1 Limited may deduct any sums owing on the agreement (if any) prior to paying the sums due under items 3 and 4 above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 July 2019.

Stephen D. Ross

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