

## The complaint

Mr C is unhappy that a minibus supplied to him under a conditional sale agreement with Moneybarn No.1 Limited was of an unsatisfactory quality.

## What happened

On 24 June 2023, Mr C was supplied with a used minibus through a conditional sale agreement with Moneybarn. He paid an advance payment of £4,000 and the agreement was for £15,990 over 36 months; with monthly payments of £579.27. At the time of supply, the minibus was around six years old, and had done 62,569 miles (according to the MOT record for 26 June 2023).

When the minibus was supplied to Mr C, there was an issue with it pulling to the left. There was also some internal trim that was missing. The supplying dealership agreed to repair the minibus. On 18 July 2023 the shock absorber and top strut mount were replaced, and the dealership covered the cost of this repair.

On 23 July, a warning light came on, and the minibus was inspected. It appeared damaged underneath, which Mr C acknowledged was caused by someone driving the minibus on his behalf, and the AdBlue injector was damaged. So, the dealership wouldn't cover this repair. However, at the same time, a tyre was also replaced and aligned, along with a replacement track rod end and sensor. The cost of this work was £890.40.

The minibus broke down on 15 August 2023, when it had done 70,570 miles – 8,000 miles since it had been supplied to Mr C. Following an inspection, the minibus was found to need a new clutch, which cost £1,115. Mr C complained to Moneybarn, but they didn't uphold his complaint. They said that, given the mileage that Mr C had done in the minibus, and the minibus's age and mileage, the issues with the minibus were general maintenance and repairs, so not something they were responsible for.

Moneybarn also said that Mr C was using the minibus for commercial purposes, which was a breach of the contract he signed, and they said he needed to cease this immediately. Unhappy with Moneybarn's response, Mr C brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said the dealership had repaired the issues that were present with the minibus when it was supplied to Mr C. They also said that, given that Mr C had been able to do 8,000 miles before the issue with the clutch happened, this wasn't something that was present or developing when the minibus was supplied. So, they didn't think Moneybarn needed to do anything more.

Mr C didn't agree with the investigator's opinion. He said that the dealership didn't cover the costs of the work done to the minibus in July 2023. He also thought the MOT record for 26 June 2023 had been falsified and provided an opinion from a mechanic to support this view.

Because Mr C didn't agree with the investigator's opinion, this matter has been passed to me to make a final decision.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr C was supplied with a minibus under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the minibus should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the minibus must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the minibus was supplied, unless Moneybarn can show otherwise. So, if I thought the minibus was faulty when Mr C took possession of it, or that the minibus wasn't sufficiently durable, and this made the minibus not of a satisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Moneybarn – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

It's not disputed that the minibus was pulling to the left when it was supplied to Mr C. The reasons for this haven't been specified, but there are various reasons this could happen, usually related to the tyres, brakes, steering, or suspension. I've seen evidence that, on 18 July 2023, the nearside front shock absorber and strut mount were replaced at the cost of £215. It's not disputed that the dealership covered the costs of this repair. Given the nature of the repair, I would also expect this to be remedial works for the minibus pulling to the left.

It's also not disputed that Mr C contacted the dealership again on 23 July 2023 about ongoing issues with the minibus. The minibus was inspected by an independent garage, and I've seen an invoice dated 28 July 2023 for the replacement of a tyre, a sensor, a track rod end, and alignment of the wheels. The mileage on this invoice shows as 69,649 miles, so the minibus had travelled around 7,000 miles in the roughly 4-weeks since supply.

It's my understanding, and that of the dealership, that Mr C was using the minibus as a taxi, and this explains the high mileage that was being done in a short period of time. From the evidence I've seen, it's also my understanding that the minibus was being regularly driven by other people in addition to Mr C – it doesn't seem to be disputed that the damage to the underside of the minibus was caused when another person was driving the minibus.

Taking this into consideration, even though the minibus needed repair a few weeks after the first repair, I don't think this means the first repair failed. I say this because the issues raised on 23 July 2023 are ones which are associated with age, mileage, and usage i.e., tyre wear and damage/alignment issues which could likely have been caused by regularly mounting a kerb, something that would typically be associated with taxi use. This would also be the same for the clutch failure in August 2023, as a clutch is not expected to last the lifetime of a vehicle, and the more use it gets, for example a large amount of urban driving that could be expected from a taxi, the more likely it is to fail

In an email to Moneybarn on 12 September 2023, Mr C complained that the minibus was still pulling to the left. He also said that there was an issue with the brakes sticking, a fluid leak, and a noise from the wheel bearings. Mr C has provided both photo and video evidence of an *"engine failure hazard"* warning message, a warning light for engine temperature, and an illuminated stop light on the dashboard. However, both the photo and video show that Mr C was continuing to drive the minibus at speeds between 50 and 60 mph.

From this evidence, it's also reasonable to conclude that Mr C was using the minibus *despite* the warning message and lights. And, in doing so, it's possible that drive-on damage could be caused – something that Moneybarn could not be held responsible for.

The mileage the minibus had done at this point can't be determined from the photo or video evidence provided. However, I'm satisfied this would likely have been around 75,000 miles based on the mileage evidence I've seen and the average weekly mileage this implies.

Mr C has provided a copy of an invoice dated 9 October 2023, where he paid £375 for replacement brakes. I think it's fair to say that the sticking brakes is the most likely cause of the minibus pulling to the left at this point, and not a failed repair in July 2023. What's more, if the repair in July 2023 had failed, I would've expected Mr C to have complained about this sooner, especially given the exceptionally high mileage that was being done.

The brakes are also a serviceable item which, given the mileage of the minibus, most likely failed due to in-service wear and tear and not because of an issue that was present or developing at the point of supply. This also goes for Mr C's needs to replace shock absorbers, springs, and mounts in January 2024.

As such, taking the above into consideration, I'm satisfied that the ongoing issues with the minibus are more likely than not as a result of wear and tear resulting from age and mileage, and not because these issues were present or developing when the minibus was supplied and/or because the repair on 18 July 2023 failed. So, and while I appreciate this will come as a disappointment to Mr C, I'm not asking Moneybarn to do anything more.

Finally, Mr C has said that he believes the MOT record for 26 July 2023 was falsified. He's provided an email from a mechanic, dated 19 March 2024, which states the mechanic has changed the shock absorbers, clutch, and starter motor on the minibus, as well as fixing various water leaks. The mechanic goes on to say that spacers were missing from the shock absorbers, and there were wrong parts fitted to the minibus. As such, the mechanic said, *"I find it hard to see how this vehicle passed a mot with these parts fitted."*

I've also looked at the MOT record for 19 August 2024. The minibus initially failed the MOT test because of a defective fuel filler cap, a missing seat buckle, and the windscreen washer providing insufficient liquid. These issues were fixed, and the MOT test passed. I've noted that Mr C did almost 73,000 miles between the MOT in June 2023 and the one in August 2023 i.e., in the time since the minibus was supplied to him. I've also noted the 2024 MOT took place 14-months after the 2023 MOT, meaning Mr C had been doing an average of around 5,200 miles a month in this period.

Mr C is saying that the MOT records for the minibus have been falsified. This is a criminal matter, so not something suitable for this service to deal with - the Financial Ombudsman Service is an alternative to the courts and because of these we don't make legal determinations. If, based on the information he has, Mr C believes the MOT record for June 2023 was falsified, and the minibus was therefore not in a condition whereby it should've passed an MOT test, this is a matter best dealt with by the courts.

### **My final decision**

For the reasons explained, I don't uphold Mr C's complaint about Moneybarn No.1 Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 October 2024.

Andrew Burford  
**Ombudsman**