DRN-4573021

Financial Ombudsman Service

The complaint

Mr H complains about a car supplied on finance by Close Brothers Limited trading as Close Brothers Motor Finance ('CB').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mr H was supplied a car via a conditional sale agreement with CB on 21 May 2023. However, he wrote to CB in early July 2023 to complain about its quality. He said there were problems with it engaging gears and the gearstick and centre panel were getting very hot. And that he had been to a garage who said there was a major fault. He said he wanted to reject the car.

CB wrote back to say that Mr H would have to go to the dealer to give it a chance to rectify issues. However, Mr H says the dealer was not helpful. CB then commissioned an expert report which identified faults with the car.

In summary, Mr H wants to reject the car, but CB considers repair to be the best way forward.

Our investigator upheld the complaint and considered it fair that Mr H be able to reject the car, end the finance agreement and get certain refunds and compensation for distress and inconvenience.

CB did not agree. In summary, it considers that Mr H is only entitled to a repair. It also suggests that Mr H has caused the electrical issues with the car trying to put in an aftermarket radio.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. CB is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is

satisfactory”.

The Consumer Rights Act 2015 says the quality of goods are 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle’s history.

The Consumer Rights Act 2015 (‘CRA from now’) says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

CB supplied Mr H with a second-hand car which was about 8 years old at the time of supply. Despite what appears to be an error on the finance agreement (showing a lower mileage) at the time of supply it appears to have accrued in excess of 125,000 miles at the point of supply. And although the £13,000 price for the car was not an insignificant amount of money it was less than what a new or newer version of the car would have cost.

It is fair to say in these circumstances that the car would be expected to have suffered considerable wear and tear already, and a reasonable person would expect that the risk of costly repairs and maintenance is that much higher than with a newer less road worn car.

While the expectation around the quality of the car would be notably lower in these circumstances– the car would not be reasonably expected to have significant issues with it at the point of supply including those that make it potentially unsafe, or undrivable.

I can see evidence showing that just weeks after the car was supplied to him Mr H wrote to CB to explain that there were problems with the gearbox and panels overheating and explaining that it was diagnosed by a garage as a ‘major fault’. Later on an independent inspection was carried out on the car. The report is credible, detailed and contains the credentials of the assessor and a statement of truth. The report also identifies an overheating issue describing the ‘nearside tunnelling of the vehicle becoming extremely warm’. Alongside this it identifies what appear to be potentially significant safety issues including a faulty speedometer/instrument cluster and a door mirror that would not adjust.

From the evidence I have seen it also appears that Mr H carried out limited mileage himself in the car since supply. CB confirmed there was an inaccuracy with the mileage on the finance agreement – because this was showing as significantly less than the mileage recorded at the MOT the car had several months before. While it appears there is no accurate record of the mileage at the point of sale I note that several months before the sale the mileage was 125,492. So it stands to reason that by the time of the sale the mileage is likely to have been even more. I note that by the time the independent inspection was carried out in late July the mileage was 127,157. Overall, I am satisfied Mr H’s use of the car was likely small before any of the potentially serious faults were identified.

I note that the expert concluded that the faults were the liability of CB and likely present at the point of sale. In the circumstances, although this was an older road worn car, I don’t consider it reasonable that it had what appear to be significant overheating and safety related faults at the time of supply. So I consider that the car as supplied in the particular circumstances here was likely not of satisfactory quality and Mr H is entitled to a remedy.

In the interest of completeness I am aware that there has been some mention of electrical faults and some suggestion by CB that removal of a stereo system by Mr H has caused

these. However, while the expert mentions a lack of stereo system in the car and insecure wiring for the stereo I don't see where he has connected this or any actions by Mr H to potential causes or contributary elements to the faults I have referred to above. I also note that Mr H denies that the car came with a stereo in the first place. So overall I am not persuaded that something Mr H has done has caused the car to be supplied in an unsatisfactory condition.

I don't think that CB necessarily disagree that Mr H is entitled to a remedy here. But it says this should be a repair and not a rejection. However, I note that the CRA says that repairs should be carried out within a reasonable time and without significant inconvenience. And here I am not persuaded that is the case.

Mr H appears to have already suffered significant inconvenience and an unreasonable wait for something to be done about the issue – and CB despite having liability for the quality of the car appear to have sent him back to the dealership who appear not have been helpful. CB themselves have accepted that the supplying dealership have not been responsive or co-operative so it has more recently had to look to third party garages to carry out repairs.

Furthermore, I am not entirely persuaded the precise cause of the problems with the car are known at this stage, particularly with the issues with the overheating and instrument cluster. So I am not confident that repairs will resolve the issues or that Mr H won't suffer more inconvenience going forward waiting for things to get sorted out.

I know that more recently CB appears to have collected the car to take it for repairs. But from what Mr H has said to this service it appears he still wanted to reject the car but felt pressured by CB to go down this route. So I am not persuaded that Mr H has fairly accepted repair as an alternative to rejection. So I think that he should still be allowed to reject the car here and draw a line under this matter before he suffers further inconvenience.

I also note there has been some discussion of the discrepancy with the mileage of the car on the finance agreement and how it appeared to mistakenly show significantly less mileage than the car had done at the point of supply. We don't appear to have the advert for the car from that time (only ones from December 2022 which are not really useful as the car was supplied to Mr H several months later) and I am not entirely clear what Mr H saw at the point of sale as to the advertised mileage. CB has pointed out that he could have seen the precise mileage on the vehicle at the supplying dealership. However, I think Mr H also might have reasonably relied on what he was told and what was written on the documentation. So it is very possible the mileage was misrepresented – and could be a reason it is fair to simply hand the car back here. However, I think that even if there wasn't a misrepresentation of the mileage – rejection is fair in any event for the reasons I have already specified.

So, in summary I consider it fair that CB end the agreement, accept the car back with no further liability for Mr H. It should also refund his deposit and ensure that he doesn't have adverse information on his credit file in respect of this agreement, because even if he has stopped paying – this has come about through CB's breach of contract.

It appears Mr H has informed our investigator he stopped using the car on 14 July 2023 due to concerns about safety. So if he has made any payments that relate to a time after this he should fairly be refunded these plus interest.

I am also persuaded that during the limited time he was using the car his use was impaired by the issues that had been identified. Our investigator has estimated a fair refund of 5% of the payments made relating to the time Mr H was using the car (up to 14 July 2023) to reflect this. Mr H has not contested this as unfair, and while it is not a science overall I consider this isn't unreasonable in the circumstances.

I note that CB tried to assist Mr H to an extent – and paid for its own expert report. However, I think it should have supported Mr H more from the start by taking on more responsibility for the quality of the goods and ultimately accepted rejection sooner when it was clear how difficult it would be addressing the faults that had been identified. The experience has no doubt been inconvenient and stressful for Mr H. I have thought about our scale of awards for distress and inconvenience on our website and after doing so I think the £150 recommended by our investigator is fair. I also note that Mr H has not come back saying he doesn't consider it unfair.

Putting things right

CB should put things right in accordance with my direction below. It has come to my attention that more recently CB has paid Mr H £310 and not explained to him what this is for. I am not entirely clear what this amount is for either from CB's response – however, if it transpires that the amount is intended as compensation in relation to this complaint then CB can fairly deduct it as money already paid from the amount due to resolve things (as directed below).

My final decision

I uphold this complaint and direct Close Brothers Limited trading as Close Brothers Motor Finance to:

- End the agreement with nothing further to pay and remove any adverse information (if there is any) in relation to said agreement from Mr H's credit file;
- take back the car (if it hasn't already) at no further cost to Mr H;
- refund Mr H's deposit of £1,400;
- refund Mr H all rentals paid for the period from 14 July 2023 onwards;
- refund 5% of rental payments Mr H made in respect of the period from the supply of the car up to the 14 July 2023;
- pay 8% simple yearly interest on all refunds calculated from the date of payment until the date of settlement; and
- pay Mr H £150 compensation for the distress and inconvenience caused to him.

CB should provide Mr H with a certificate of tax deduction if applicable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 June 2024.

Mark Lancod
Ombudsman