

complaint

Mrs L complains that the car she acquired with finance from Close Brothers Limited ("CB") isn't of satisfactory quality.

background

Mrs L acquired the car in June 2017. She later complained to CB about the problems she was experiencing with it. And, being unhappy with its response, she complained to this service.

Mrs L says she took the car to her local garage in January 2018 to investigate a problem with leaking oil and the smell of fumes. And she says the garage advised her that two studs had been snapped off in the cylinder head and that someone had tried to drill them out, snapping the drill bit in the cylinder head in the process.

Mrs L also says she was advised that when trying to drill the studs out the drill had gone into an oilway and that temporary filler had been placed around the missing studs which had failed, allowing oil to seep on to the exhaust manifold causing fumes. And she says the garage advised her that the cylinder head needs replacing.

So, Mrs L says she wants to reject the car and end her finance agreement.

CB says unfortunately Mrs L brought her complaint to it on 15 February 2018, which it says was seven months, two weeks and two days since the car was supplied to her on 29 June 2017. It says Mrs L hasn't given it any evidence to suggest the supplying dealer was made aware of the issue prior to the six month timeframe. And it says with that in mind under the Consumer Rights Act it's Mrs L's responsibility to provide evidence that the fault was present at the point of supply.

CB also says Mrs L sent it the independent inspection report she obtained, but it didn't clarify whether the faults had been present at the start of her finance agreement. It says the report confirmed there'd been a temporary fix. But it says this could've been done at any point during the seven and a half months she'd had the car.

So, CB said it couldn't uphold Mrs L's complaint.

Our investigator thought Mrs L's complaint should be upheld. He said CB should cancel her agreement with nothing further to pay and arrange to collect the car at no cost to Mrs L; it should refund the deposit she'd paid, refund the cost of transferring her personalised registration number, refund the £80 she'd paid to the garage that had diagnosed the fault and refund the payments Mrs L had made under her finance agreement since the car had broken down and been unusable; and it should pay Mrs L interest on each of these sums at 8% simple from the date of payment to the date of settlement.

CB disagreed with the investigator's conclusions. It said as this matter was reported more than six months after the car was supplied to Mrs L, evidence must be provided that the fault was present at that time. And it said it didn't see how our investigator could make a statement that the fault was 'probably' there at the point of supply when a trained mechanic wasn't willing to make such a declaration.

So, the matter's been referred to me to make a final decision.

I recently issued my provisional findings on this complaint. I noted there's no dispute between the parties about the nature of the fault that caused oil to leak on to the exhaust system and ultimately caused Mrs L's car to become unusable. What's in dispute is when the sub-standard repair took place that led to the situation I've described.

I acknowledged Mrs L complained about this matter more than six months after the car was supplied to her. And this means she needs to show it's more likely the sub-standard repair that caused the problem took place before she acquired the car than afterwards. But I said this doesn't mean her complaint can only succeed if she's able to produce an expert's opinion as to when the sub-standard repair took place. Rather, I said I need to determine from all the available information when it's most likely to have happened.

I noted Mrs L's told us clearly and consistently that she didn't have any repair work carried out to the car's engine before the current issue with oil leaking on to the exhaust became apparent. And I could see no reason why she would've taken the car to a third party garage for repairs to the engine. I thought it's most likely she would've reported any problems that developed between June and December 2017 to the supplying dealer or to CB.

So, in these circumstances, I was satisfied it's more likely than not that the sub-standard repair took place before the car was supplied to Mrs L. And that this means the car wasn't of satisfactory quality at the point of supply. But I was minded to conclude it would be fair to give CB an opportunity to repair the car, rather than allowing Mrs L to reject it at this stage. So, I was minded to modify the redress recommended by the investigator, accordingly. And I was minded to partly uphold Mrs L's complaint on this basis.

This was different from the investigator's opinion. So, I invited both parties to comment and provide any additional evidence for me to consider.

A copy of my provisional decision is attached and forms part of this final decision.

my findings

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

In response to my provisional decision Mrs L says she's totally lost faith in the car. She says she's bought another car, so the proposed redress would leave her with two cars. And she says she'd prefer CB to take the car back as she doesn't want to drive it again because she's worried there's something else wrong with it.

Mrs L also says she might have to put the car into storage with resulting cost to her, as it's currently parked outside someone else's house and that person's complained to her about it. And she says the car's not driveable at the moment, so there'll be cost involved in moving it. In addition, Mrs L says she still thinks it's relevant that the log book information's wrong.

I've noted Mrs L's comments and I understand her concerns. But I don't have enough information to hold CB responsible for any errors in the log book. And, taking all the circumstances into account, it remains my view that it would be fair to give CB an opportunity to repair the car, rather than allowing Mrs L to reject it at this stage.

So, I partly uphold Mrs L's complaint on the terms set out in my provisional decision.

my final decision

I partly uphold Mrs L's complaint against Close Brothers Limited. It must repair Mrs L's car at no cost to her; refund the £80 she paid to the garage that diagnosed the fault; and refund Mrs L's payments under her finance agreement from the date her car broke down and became unusable until the date the repairs are completed. And it must pay her interest on these sums at 8% simple from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 30 September 2018.

Robert Collinson
ombudsman

copy of my provisional decision

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CB says unfortunately Mrs L brought her complaint to it on 15 February 2018, which it says was seven months, two weeks and two days since the car was supplied to her on 29 June 2017. It says Mrs L hasn't given it any evidence to suggest the supplying dealer was made aware of the issue prior to the six month timeframe. And it says with that in mind under the Consumer Rights Act it's Mrs L's responsibility to provide evidence that the fault was present at the point of supply.

CB also says Mrs L sent it the independent inspection report she obtained, but it didn't clarify whether the faults had been present at the start of her finance agreement. It says the report confirmed there'd been a temporary fix. But it says this could've been done at any point during the seven and a half months she'd had the car.

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CB disagreed with the investigator's conclusions. It said as this matter was reported more than six months after the car was supplied to Mrs L, evidence must be provided that the fault was present at that time. And it said it didn't see how our investigator could make a statement that the fault was 'probably' there at the point of supply when a trained mechanic wasn't willing to make such a declaration.

So, the matter's been referred to me to make a decision.

my provisional 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 currently minded to partly uphold Mrs L's complaint and to require CB to repair the car at no cost to her; to refund the £80 she paid to the garage that diagnosed the fault; and to refund Mrs L's payments under her finance agreement from the date her car broke down and became unusable until the date the repairs are completed. And I'm minded to require CB to pay Mrs L interest on these sums at 8% simple from the date of payment to the date of settlement. I'll explain why.

CB supplied Mrs L's car under a conditional sale agreement. So, it was responsible for ensuring the car was of satisfactory quality.

There's no dispute between the parties about the nature of the fault that caused oil to leak on to the exhaust system and ultimately caused Mrs L's car to become unusable. What's in dispute is when the sub-standard repair took place that led to the situation I've described.

I acknowledge Mrs L complained about this matter more than six months after the car was supplied to her. And this means she needs to show it's more likely the sub-standard repair that caused the problem took place before she acquired the car than afterwards. But this doesn't mean her complaint can only succeed if she's able to produce an expert's opinion as to when the sub-standard repair took place. Rather, I need to determine from all the available information when it's most likely to have happened.

Mrs L's told us clearly and consistently that she didn't have any repair work carried out to the car's engine before the current issue with oil leaking on to the exhaust became apparent. And I can see no reason why she would've taken the car to a third party garage for repairs to the engine. I think it's most likely she would've reported any problems that developed between June and December 2017 to the supplying dealer or to CB.

So, in these circumstances, I'm satisfied it's more likely than not that the sub-standard repair took place before the car was supplied to Mrs L. And this means the car wasn't of satisfactory quality at the point of supply. But I'm minded to conclude it would be fair to give CB an opportunity to repair the car, rather than allowing Mrs L to reject it at this stage. So, I'm minded to modify the redress recommended by the investigator, accordingly. And I'm minded to partly uphold Mrs L's complaint on this basis.

my provisional decision

For the reasons set out above but subject to both parties' responses to this provisional decision I'm currently minded to partly uphold Mrs L's complaint against Close Brothers Limited. I'm minded to require it to repair the car at no cost to her; to refund the £80 she paid to the garage that diagnosed the fault; and to refund Mrs L's payments under her finance agreement from the date her car broke down and became unusable until the date the repairs are completed. And I'm minded to require it to pay Mrs L interest on these sums at 8% simple from the date of payment to the date of settlement.

Robert Collinson
ombudsman