

complaint

Mr D complains that Close Brothers Limited supplied a car via a conditional sale agreement but refused to allow him to reject it after it developed faults which he says means the car is not of satisfactory quality.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 19 March 2019 – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought this complaint should be upheld and what Close Brothers should do to put things right. I invited both parties to send any additional evidence or comments they wished to make.

Mr D responded and provided evidence of a SORN insurance policy he paid for when he took the car off the road. He'd like Close Brothers to cover the cost of that policy.

Close Brothers told us it didn't receive the provisional decision and another copy was sent along with details of the SORN insurance policy. Close Brothers then confirmed it had nothing further to add other than to say it would cover the Mr D's expenditure for the SORN insurance policy.

my findings

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

Following my provisional decision Mr D sent in evidence of a SORN insurance policy he's paid for and asked for it to be included in his costs. The investigator forwarded details of the SORN insurance policy to Close Brothers and it confirmed it had no concerns considering the additional expenditure Mr D has had. As a result, I will include the cost of the SORN insurance policy in addition to the other elements of the settlement set out in my provisional decision.

For the reasons given above and in my provisional decision, I am upholding this complaint.

my final decision

My decision is that I uphold this complaint and direct Close Brothers Limited to:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Mr D.
- Refund any deposit paid by Mr D, which appears to be £100, and pay 8% simple interest from the date of payment until the date of settlement.
- Refund the £39 administration fee and pay 8% simple interest from the date of payment until the date of settlement.
- Refund repayments to Mr D from the date he registered his vehicle as SORN and pay 8% simple interest from the date of payment until the date of settlement.
- Pay Mr D the cost of the SORN insurance policy.
- Remove all details of the agreement from Mr D's credit file.
- Pay £89.94 for the third party report and pay 8% simple interest from the date of payment until the date of settlement.
- Pay £200 for the distress and inconvenience caused to Mr D.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 August 2019.

Marco Manente
ombudsman

Copy of Provisional Decision dated 19 March 2019

complaint

Mr D complains that Close Brothers Limited supplied a car via a conditional sale agreement but refused to allow him to reject it after it developed faults which he says means the car is not of satisfactory quality.

background

Close Brothers supplied a car to Mr D via conditional sale agreement in April 2018. The car was nine years old and had 67,000 miles.

Around two weeks later Mr D took the car back to the dealer as he said it was using up oil and coolant too quickly and wasn't working reliably. The dealer arranged for the rocker cover gasket and timing chain to be replaced.

Mr D says the problem continued and on 12 July 2018 an inspection was completed which identified excessive oil consumption as well as other significant problems with the car.

Close Brothers went on to arrange another inspection which was completed on 30 July 2018 but didn't find any significant faults. The report Close Brothers instructed said it wasn't possible to check long term oil consumption during the inspection. The inspection noted some blue smoke when the car was idling but found that was in line with its age and condition.

Mr D complained and Close Brothers responded on 8 August 2018 but didn't agree there was a fault with the engine at the point of sale. Close Brothers said the independent report advised any burning oil was likely down to normal wear and offered to refund one monthly instalment as a gesture of goodwill.

As the problem persisted Mr D obtained another inspection, which was completed on 17 September 2018 and noted various problems with the car. The report highlighted that the engine oil level was low but didn't find any evidence of leaks.

Mr D asked this service to look into his complaint and it was passed to an investigator. The investigator thought the reports Mr D had obtained showed the fault relating to the way the car consumed oil had most likely been present when it was sold to him. Mr D has registered the vehicle as SORN and isn't using it due to concerns over its reliability. The investigator recommended Close Brothers should:

- *End the agreement with nothing further to pay.*
- *Collect the car at no cost to Mr D.*
- *Refund the deposit (if applicable) and pay 8% simple interest from the date of payment until the date of settlement.*
- *Refund a month's repayment back to Mr D due to being unable to use the vehicle while SORN.*
- *Remove any adverse information from the customer's credit file.*
- *Pay £89.94 for the third party report.*
- *Pay £300 for the trouble and upset caused and to cover Mr D's increased transport costs while his car's been SORN.*

Close Brothers didn't agree and said the original repairs carried out by the dealer hadn't failed, the third party report didn't show where the oil and coolant leak was coming from and the majority of faults listed weren't included in Mr D's complaint. As Close Brothers didn't agree the complaint's been passed 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.

The finance agreement here is a regulated conditional sale agreement which means this service can consider complaints about it. Mr D can bring his complaint about the quality of the car he bought to Close Brothers as it's the supplier under this type of agreement.

I have to decide Mr D's complaint based on what's fair and reasonable and to do that I have to take account of the relevant law. The Consumer Rights Act 2015 says under a conditional sale agreement there's an implied term that the goods supplied will be of a satisfactory quality. In Mr D's case, the car he acquired was used and had driven around 67,000 miles, but the law says he should still have reasonably expected that its condition was satisfactory.

And that's the main focus of Mr D's complaint. He says the car wasn't of a satisfactory quality when supplied because it quickly showed signs of unusually high levels of oil consumption and was unreliable. As a result of the problems Mr D's experienced, three inspections have been done. But I think it's also important to note that before any inspections were completed Mr D took the car back to the dealer because of the excessive oil consumption and they replaced the rocker cover gasket and timing chain to try and fix it.

Despite taking this step, the problems continued. In this case three independent inspections have been completed, only one of which suggests the car was of satisfactory quality. In cases where I receive information that's unclear or contradictory I'll base my decision on the balance of probabilities. That is, what I consider most likely to have happened in light of the evidence supplied and the circumstances of the complaint.

The first inspection of 12 July 2018 lists various issues but clearly shows there was an unusually large amount of oil being consumed by the engine with 1.5l being used in around 21 miles. The report also noted blue smoke coming from the exhaust.

Close Brothers instructed another inspection which was done on 30 July 2018. This inspection didn't highlight excessive engine wear and whilst it did note some blue smoke it said that was in line with standard wear and tear for a vehicle of that age. But the inspection specifically noted that it wasn't possible to check the long term oil consumption so I wouldn't have expected it to have found evidence of the fault Mr D reported.

Close Brothers went on to reject Mr D's complaint on the basis of information contained within this inspection report.

Mr D then arranged a third inspection by an independent garage. The inspection report said the oil level in the engine was very low and that there weren't any signs of coolant or oil leaks. The report advises further investigation to see whether oil and coolant is being burnt internally by the engine.

I understand that the second report didn't find any faults with the vehicle but I think the fact that two other independent inspections highlighted concerns about the level of oil in the engine and rate of consumption is important. I also note that the report obtained by Close Brothers said it wouldn't have found evidence of long term oil consumption. That means we've got two inspections that indicate there was a fault in relation to oil consumption and one that says the limitations of the inspection meant it wasn't possible to say. From what I've seen, I'm satisfied that it's more likely than not that the car Mr D bought did have an existing fault at the point of sale which meant it was consuming more oil than it should have and was not of a satisfactory quality.

In its response to the investigator, Close Brothers said it didn't accept because the original repairs the dealer had arranged hadn't failed. Whilst that may be the case, the point here is that even though the original repairs didn't fail they also didn't resolve the problems Mr D reported.

I can see that the third report has highlighted several issues that weren't previously reported by Mr D or shown in the other inspections. I'd like to make clear to all parties that I'm focusing on the initial problems Mr D had with the car in relation to its oil and coolant consumption and reliability.

After the investigator's initial recommendations Mr D said he'd had to pay additional transport costs as he wasn't able to use his car. Mr D registered the car as SORN as he says it isn't driveable so hasn't had the benefit of using it while this dispute's been ongoing. As a result, the investigator asked Close Brothers to increase the settlement in a follow up email. From what I've seen I think it's more likely than not that Mr D's car wasn't sufficiently reliable for it to be driven so I think it's fair that Close Brothers refunds any payments Mr D made after the date it was registered as SORN.

But once the vehicle was SORN and no longer being driven there were no running costs. Mr D would always have had transportation costs so I'm not telling Close Brothers to pay additional compensation to cover the transport costs he paid once he stopped using the car.

That being said, I'm satisfied Mr D experienced distress and inconvenience because of what happened. He's been unable to use a car that was acquired for commuting purposes. In addition, Mr D had a reasonable expectation that the vehicle he was supplied with would be reliable but that hasn't been the case which is clearly disappointing. I've thought carefully about the level of compensation to award here. And I think £200 fairly reflects the impact of the problems on Mr D without taking into account the additional travel costs he paid.

Taking everything I've seen into account, I don't think the car was of satisfactory quality when it was supplied to Mr D. Given the dealer has already unsuccessfully attempted to repair the car I agree with the investigator's view that it's fair and reasonable that Mr D be allowed to reject the car.

my provisional decision

My provisional decision is that I uphold Mr D's complaint and direct Close Brothers Limited to do the following:

- *End the agreement with nothing further to pay.*
- *Collect the car at no cost to Mr D.*
- *Refund any deposit paid by Mr D, which appears to be £100, and pay 8% simple interest from the date of payment until the date of settlement.*
- *Refund the £39 administration fee and pay 8% simple interest from the date of payment until the date of settlement.*
- *Refund repayments to Mr D from the date he registered his vehicle as SORN and pay 8% simple interest from the date of payment until the date of settlement.*
- *Remove all details of the agreement from Mr D's credit file.*
- *Pay £89.94 for the third party report and pay 8% simple interest from the date of payment until the date of settlement.*
- *Pay £200 for the distress and inconvenience caused to Mr D.*

Mr D and Close Brothers Limited have until 19 April 2019 to send me anything further they'd like me to consider before I make a final decision.

***Marco Manente
ombudsman***