

complaint

Mr H and Mrs E complain that a car they financed through an agreement with Close Brothers Limited ("Close Brothers") has not been of satisfactory quality.

background

Mr H and Mrs E took receipt of a used car in March 2017. They financed the deal through a conditional sale agreement with Close Brothers. At the point of supply the car had completed about 90,000 miles and was about 14 years old.

Mr H and Mrs E say they had problems with the car from the outset. They contacted the dealership in late March and the dealership referred them to a preferred third party garage who carried out a service and replaced the gearbox oil and filter. They also repaired a radiator leak and Mr H and Mrs E claim they replaced the battery which was too small and the tyres which they say were balding when the vehicle was supplied.

But when they got the car back they were still experiencing a stream of problems including:

- a slipping gearbox
- a radiator that was still leaking
- grinding on one of the wheels
- a broken door handle

They say they reported the issues to the dealership and the car was returned to their preferred third party garage in May 2017. But when it was eventually returned to them at the end of August 2017 the problems weren't resolved and there were further issues identified such as a failing ball joint and parking sensors that would not work.

They therefore complained to Close Brothers and the car was returned to the dealership in December 2017. In February 2018 the dealership explained that the gearbox was broken. They blamed a poor repair by the third party garage who they said had used inferior gearbox oil. Mr H and Mrs E say that the estimated repair cost was £3,500.

Close Brothers tried to organise a third party inspection of the car. But this wasn't possible as the car didn't have an MOT and could not be test driven. When Mr H tried to obtain an MOT the car failed for many reasons including major faults with the suspension; a passenger door that would not open and excessive play in a track rod ball joint. The MOT garage said the mileage at this point was "*unreadable*".

So Close Brothers said that as an independent inspection wasn't possible they could not confirm whether a fault was likely to have been present at the point of supply and they therefore rejected Mr H and Mrs E's complaint.

Mr H and Mrs E referred their complaint to this service and our adjudicator provided an opinion. He thought it was clear the car had first been taken in for a repair in March 2017 but that repair hadn't been successful. He noted that the car had been out of Mr H and Mrs E's possession for many months and he didn't think they'd had much use, if any, from it. So he suggested that Close Brothers allow Mr H and Mrs E to terminate their agreement; refund their deposit and all payments that had been made towards the agreement to compensate Mr H and Mrs E for the loss of use and the distress and inconvenience they'd experienced, and also reimburse the £338 they'd paid the third party garage for the initial repair.

But Close Brothers disagreed. They said the visit to the garage in March 2017 was just for serviceable items and that there was no evidence of a faulty gearbox at that time. So they didn't think there was evidence of a failed repair and they therefore asked for a final decision by an ombudsman.

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 agree with the adjudicator's view. I know that will disappoint Close Brothers so please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr H and Mrs E acquired their car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Close Brother, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is 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.

In a case like this which involves a car the other relevant circumstances would likely include things like the age, mileage and price at the time the car was supplied to Mr H and Mrs E. The car here was around 14 years old and had completed 90,000 miles so I think it's reasonable to suggest there would be signs of wear and tear.

I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the car was faulty when supplied and this fault made the car not of satisfactory quality, I'd think it fair and reasonable to ask Close Brothers to put this right.

But Close Brothers responsibility for the car is not unlimited. Whilst they are responsible for its condition at the point of supply they are not responsible for faults that develop afterwards such as those relating to wear and tear.

I'm persuaded that the first attempt at a repair on this car was in March 2017. I say that because in their final response to Mr H and Mrs E, Close Brothers confirmed that. They said:

"you already had the gearbox serviced by a third party garage recommended by the supplying dealership and this has not resolved the problem, they had advised that a new gearbox was required" they went on to say "the dealer advised you had taken the car for an unauthorised repair on the gearbox, they had used an incorrect gearbox oil which in turn had caused the fault".

Close Brothers then said that they'd consulted with the third party garage who had confirmed that the previous gearbox service had been authorised by the dealership and that "*based on the ongoing fault with the gearbox being evidenced within six months*" they would agree to have the vehicle independently inspected to confirm whether the gearbox problem was evident at the point of sale (supply).

I think the gearbox service referenced by Close Brothers is most likely to be the service that was completed in March 2017. I say that because there have been no other job cards or invoices provided for work on the car.

I therefore don't accept Close Brothers suggestion that the work completed in March 2017 was merely for serviceable items. It appears from their communication with the third party garage that there was an attempt to service the gearbox and that the service was unsuccessful. And it appears from the dealership's defence that they accept the third party garage's repair was unsuccessful.

The dealership say it's because the third party garage put the wrong oil in the gearbox but as Close Brothers have admitted they were the "*third party garage recommended by the dealership*", it's clear they were working on the dealership's behalf; the repair was unsuccessful and in those circumstances Mr H and Mrs E should be allowed to reject the vehicle.

And even if I'm wrong about the gearbox repairs I think the car hasn't proven to be of satisfactory quality because I don't think a reasonable person would think it's proven to be suitably durable. I think it's clear that Mr H and Mrs E have barely driven the car. They say it's done about 6,000 miles in their two and a half year ownership but it's difficult to confirm this as the milometer is no longer readable. I understand that it's quite an old car now and had already completed a reasonably high mileage when Mr H and Mrs E took receipt of it. But in those miles the car has developed a stream of faults. The list includes, but is not limited to; a broken gearbox; suspension faults that are listed as major incidents on the failed MOT; excessive play in the track rod ends; a broken door handle and a leaking radiator.

Mr H and Mrs E have clearly been very inconvenienced by this matter. There's been limited information supplied by the dealership and it's been difficult to establish a complete chain of events. But I am persuaded, from the text messages I've seen, that the car was with the repairer between May and late August 2017 and had failed completely by December 2017. I think it would be fair to refund most of the monthly instalments that Mr H and Mrs E have made to their finance agreement because they've barely been able to use the car and I can see that when the adjudicator also took into account the distress and inconvenience that had been caused, he decided that all the finance instalments should be returned. That seems a fair and reasonable action so I'm asking Close Brothers to do that.

I think it's also right to ask Close Brothers to refund the £338 that Mr H and Mrs E spent on the initial repair which they've provided an invoice for. I'm persuaded that this work should have been refunded at the time as it most probably related to the subsequent gearbox failure and the radiator leak should've been repaired free of charge as it was most likely there from inception, given the short period of time that had elapsed.

In line with this service's usual approach Close Brothers should also refund the deposit with the requisite interest and they should remove any adverse reports they've made to the credit reference agencies as I'm persuaded the car should have been rejected much earlier and before Mr H and Mrs E missed any payments on the agreement.

my final decision

For the reasons I've given above I uphold this complaint and tell Close Brothers Limited to:

- refund the deposit and add 8% simple interest from the date of payment to the date of settlement
- terminate the agreement and collect the car at no further cost to Mr H and Mrs E
- refund all monthly payments that have been made to reflect the loss of use and distress and inconvenience caused
- refund the £338 repair invoice from march 2017
- remove any adverse information from the consumer's credit file in relation to this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs E to accept or reject my decision before 2 January 2020.

Phil McMahon
ombudsman