

complaint

Mr F complains about a second hand van supplied to him under a conditional sale agreement with Close Brothers Limited, trading as Close Motor Finance ("CMF").

background

Mr F complains first about the quality of a second hand van supplied to him in December 2013, under a conditional sale agreement with CMF. The price of the van was just over £8,150, and it was over three and a half years old. Whilst the agreement showed its mileage at 60,000 miles, an inspection report carried out eleven days before the sale showed the mileage at 68,387 miles. Mr F complains about faults with the van. The van was taken to the garage which usually serviced his vehicles ("G") (and not to the dealership which sold him the van) on four occasions:-

March and April 2014 – replacement of door check strap, refit of sliding door and driver's door adjusted, repair of peeling paint above windscreen.

July 2014 (two visits) – supply and fit injector connection pipe following van breaking down (cost of £186.34), new brake pads, discs and callipers fitted (cost of £536.16).

Mr F rejected the van in July 2014 and then complained to the dealership about the van for the first time since acquiring it. The dealership paid for half the cost of the brake pads as a gesture of goodwill. But Mr F refused to pay any more for the van, which was ultimately repossessed by CMF and sold for £3,880, leaving Mr F to pay the balance of his agreement. He did not wish to pay this in view of the unsatisfactory condition of the van.

Mr F also complained that he had been told by the dealership before acquiring the van that it had been inspected before sale by the RAC. He later discovered that it had not been inspected by the RAC, although another garage had partially completed a form headed "Periodic Maintenance Inspection". Mr F is unhappy about the misrepresentations made by the dealership.

our adjudicator's view

The adjudicator did not recommend that the complaint should be upheld. She said that she was unable to safely conclude that the faults with the van were present at the point of sale.

Mr F disagreed and responded to say, in summary, that there had been problems with the fuel pipe at the point of sale according to G, who had also confirmed that the van had not been subject to a RAC inspection before sale. Mr F said that he would not have acquired the van if it had not been the subject of a RAC inspection in view of the importance of needing a reliable van for his business.

my provisional findings

After considering all the evidence, I issued a provisional decision on this complaint to Mr F and to CMF on 29 June 2015. I summarise my findings:

As the evidence was incomplete, inconclusive, or contradictory, I reached my decision on the balance of probabilities – in other words, what I considered was most likely to have happened in light of the available evidence and the wider circumstances.

I noted that Mr F had entered into a conditional sale agreement with CMF. Conditional sale agreements are covered by the Sale of Goods Act 1979. The effect of this Act is that the agreement includes conditions that the van will meet its description and be of satisfactory quality at the point of sale.

Satisfactory quality

I noted that Mr F was unhappy about the van needing repairs on four occasions in seven months. Unfortunately, he had not told the dealership or CMF about the need for repairs or given them the chance to inspect or repair the van until after the van's fourth repair visit when Mr F decided to reject the van and stop paying for it.

But, I had seen the evidence of G who said:-

"The mileage covered to the first breakdown was 1724 miles and to the second breakdown it had covered 2107 miles. The total cost to [Mr F] in such a short space of time was £723 plus the cost of his recovery plus the loss of a working vehicle, loss of work for himself and his staff. The ombudsman has asked if the faults were present at point of sale. I cannot speculate on this as I had no involvement at the time of sale. However in my opinion there is a possibility at the time of the fuel filter change, when the system was bled to release air, the injector pipe was not correctly tightened causing breakage 1724 miles later. As for the brakes in my experience I would say at the time of the sale, the pads would have been nearing replacement 2107 miles later which is not a great deal of mileage to loose all of the friction pad and the pad itself."

I also noted that G had told the adjudicator on the phone that he believed that the fuel pipe issue was present at the point of sale, but that the other issues were wear and tear. I noted from the Periodic Maintenance Inspection invoice that the fuel filter was replaced prior to the sale. So, I was persuaded by G's evidence that the breakdown in July 2014 caused by the loose injector pipe might have arisen due to a fault present at the point of sale. I noted that Mr F had paid G £186.34 to rectify this fault. If he had taken his van to the dealership for this fault to be repaired, I considered it might have repaired and paid for it in the circumstances. Although Mr F hadn't given the dealership the chance to remedy this fault, I still considered that it would have been reasonable for the cost to be refunded to him by CMF as, on balance, it was possible that it had arisen from a fault at the point of sale.

I also found that Mr F would have suffered trouble and upset arising out of the first breakdown in July 2014. I considered that CMF should pay £100 compensation for his time and trouble caused.

But taking into account G's evidence on the phone to the adjudicator that the other problems were due to wear and tear, I did not consider that it would be reasonable for CMF to write off the balance due under Mr F's agreement, or otherwise compensate Mr F. I was also not persuaded that the problems with the van were sufficient to warrant a rejection of the van.

Misrepresentation

I noted that Mr F said that he wouldn't have bought the van if it didn't have a RAC inspection. I had seen the invoice from the garage (addressed to the dealership) which had carried out the inspection and this referred to a RAC Safety Inspection being carried out. The actual inspection form headed Periodic Maintenance Inspection didn't contain any

reference to the RAC, but did show a number of checks as having been carried out. These included checks to the interior, exterior, engine compartment, road wheels and tyres, steering and suspension, exhaust, and a road test. It had also referred to repair work as a result of the checks. As this was quite a comprehensive check, on balance, I considered that Mr F would have more likely than not bought the van after seeing it, even if it was not a RAC report.

Subject to any further representations by Mr F or CMF, my provisional decision was that I was minded to uphold this complaint in part. In full and final settlement of it, I intended to order Close Brothers Limited, trading as Close Motor Finance to credit to Mr F's account:-

1. £186.34 as a refund for the replacement of the injector connecting pipe; and
2. £100 compensation for trouble and upset.

CMF responded to say that it had no further comments.

Mr F said that there were a lot of things wrong with the van when it was sold to him despite asking for a reliable van with a RAC check. He said that he wouldn't have bought it if he had known it hadn't been properly checked. He intended to seek further advice from the Citizens Advice Bureau as he believed he had been sold a wreck which cost him around £3,000 in lost wages for the days that it didn't work.

my findings

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 – and whilst I realise this will not be the outcome Mr F is hoping for – I have come to the same overall conclusions as set out in my provisional decision.

I note that Mr F believed that there was a lot wrong with the van on supply. I completely understand the problems Mr F has had. But, when acquiring a used vehicle, there is a risk that issues of wear and tear may arise even shortly after it has been bought. In order that I can decide if the used van was of unsatisfactory quality at the time it was supplied, I would normally expect any faults to occur shortly after supply. I accept that the first issues arose around three months after Mr F had acquired the van, and these were repaired by G. But, I've seen nothing to suggest that these issues were present at the point of sale and on balance, it's possible that they may have been caused by wear and tear.

The problems with the pipe and brake pads did not occur until more than six months after supply. G had said that the faults were due to wear and tear and that only the fault with the pipe may have been present at supply. So, on the basis of G's evidence, I decided that it would be reasonable for CMF to provide a refund for this repair. But overall, I do not think that it would be reasonable for CMF to refund the costs incurred by Mr F when his van was not working.

Mr F also reiterated some of his earlier points about not receiving an inspection report from the RAC. But, he hasn't provided any new supporting evidence that I hadn't considered before to show there was a misrepresentation about this, and I cannot be certain what was said prior to the sale. Whilst noting that Mr F says he wouldn't have bought the van without a RAC report, on balance, I'm not persuaded that this is the case, for the reasons set out in my provisional decision.

So having considered very carefully the circumstances of this complaint, overall, and on balance, I think that the conclusions in my provisional decision are fair. I don't consider that I have grounds to find that CMF should pay Mr F £3,000 or that a misrepresentation had occurred. I appreciate that this isn't the outcome that Mr F wants. But he doesn't have to accept my decision and may pursue his case by alternative means should he wish to do so.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of it, I order Close Brothers Limited, trading as Close Motor Finance to credit to Mr F's account:-

1. £186.34 as a refund for the replacement of the injector connecting pipe; and
2. £100 compensation for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 25 September 2015.

Roslyn Rawson
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