

complaint

Mr R, represented by Mrs C, complains that the car he acquired through a conditional sale agreement with Close Brothers Limited (trading as Close Brothers Motor Finance (CBMF)) was not of satisfactory quality or fit for purpose.

background

Mr R entered into a conditional sale agreement to acquire a used car. At the time of acquisition the car was over ten years old and had been driven over 91,000 miles. Mr R says that he took the car to a local garage shortly after acquisition. The car did not have a valid MOT at that time and a number of faults were found. Mr R contacted CBMF asking to reject the car.

Mr R returned the car to the dealership on 10 March while CBMF were reviewing his case. He says that he was then told repairs would be undertaken and he thought that this was his only option.

Mrs C raised a complaint on Mr R's behalf in April 2018. Mr R's car was repaired and passed an MOT on 11 May. It was then returned to Mr R.

CBMF says that Mr R entered into a conditional sale agreement on 24 February 2018. Mr R then contacted it asking to hand back the car due to it having faults. It says it explained Mr R's rights to him in regard to rejecting the car and asked for proof of the faults. Mr R provided evidence of the faults and while CBMF was reviewing this Mr R returned the car to the dealership. CBMF says that Mr R did not tell the dealership that he wanted to reject the car and the dealership undertook repairs. It says Mr R accepted the repairs.

CBMF says in its final response letter dated 25 May 2018 that the car had been repaired and a MOT carried out. It says the car was delivered back to Mr R with the keys being posted through his letterbox.

Our investigator upheld this complaint. She was satisfied that there were faults present with the car which Mr R made CBMF aware of within 30 days of acquisition. She thought that Mr R's initial request to reject the car should have been accepted. Because of this she recommended that Mr R was now allowed to reject the car and have his payments towards the agreement refunded. She also recommended that Mr R be paid £200 compensation for the trouble and upset he had been caused.

CBMF did not accept our investigator's view and arranged for an inspection report to take place to identify if faults still remained.

CBMF said that the issues Mr R had raised shortly after acquisition had been repaired and that the inspection report said these repairs were successful. It said that further issues had been raised but these were new and so it had the opportunity to attempt to repair these before Mr R had a right to rejection. CBMF also raised concerns about the car having been taken to a third party garage.

my findings

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

Mr R entered into a conditional sale agreement to acquire a used car. Under the regulations, CBMF is liable if the car was not of satisfactory quality at the point of supply. Satisfactory quality takes into account factors such as the age and mileage of the car. In this case the car was over ten years old and had been driven over 91,000 miles at the point of acquisition.

The car acquired by Mr R did not have a valid MOT. It had failed a MOT just before it was provided to Mr R. Mr R took the car to a local garage shortly after acquisition and was told that there were a number of faults with car. Mr R contacted CBMF about the issues with the car and asked to reject it. He provided evidence of the faults.

Based on the information provided it is reasonable to accept that the car was not fit for purpose or of satisfactory quality at the point of supply. As Mr R raised his concerns within the first 30 days of acquisition and provided proof of the faults it would have been reasonable to allow him to reject the car at that time.

Contradictory evidence has been provided about whether or not Mr R accepted that repairs could take place on the car instead of him rejecting it. Mr R says he returned the car to the dealership and thought his only option was to accept repairs. CBMF has provided copies of its system notes on which it says it advised Mr R not to return the car to the dealership while it was looking into his case and that if the car was returned then Mr R should make it clear that he wished to reject the car.

CBMF says that Mr R did not tell the dealership he wanted to reject the car but set out the faults and that the dealership undertook the repairs. Mrs C says that Mr R did tell the dealership he wanted to reject the car.

Where the evidence is incomplete, inconsistent or contradictory, I have made my decision based on the balance of probabilities - that is what I consider is most likely to have happened in light of the available evidence and the wider circumstances. In this case I accept Mr R returned the car to the dealership while CBMF were investigating his case. However given his clear instructions to CBMF about wanting to reject the car I find it more likely than not that Mr R would have told the dealership he wished to reject the car if he felt this was an option.

However, even accepting that a misunderstanding may have occurred in regard to whether or not repairs were authorised by Mr R, as it appears that the repairs did not resolve all of the issues with the car, I find it is reasonable that Mr R is allowed to reject the car.

CBMF says that rejection should not be allowed as the issues raised shortly after acquisition were repaired and that the independent inspection confirmed this. It says that the other issues were raised after these repairs and that it has the right to attempt a repair.

I assess each complaint based on its individual merits. I take relevant regulations into account but my decision is based on what I consider fair and reasonable in each case. In this case repairs were undertaken and can see these took a number of weeks.

CBMF has said that the inspection report confirmed the repairs were successful. However I note that the issue with the air conditioning was raised at the outset and the report says this was not resolved. The report also notes that the engine had been extensively modified or tampered with. It later says that the issues and modifications were most likely present at the point of supply. The dealership had the car for an extended period of time to carry out

repairs and I think it reasonable to expect that it would have addressed all issues present at that time. As the inspection reports a number of outstanding issues that were more likely than not present at the point of supply and that the air conditioning issue was not resolved, I think it is fair to say the car was not of satisfactory quality at the point of supply and that the repairs have not resolved all issues. Because of this I find it reasonable that Mr R is allowed to reject the car.

The conditional sale agreement does not record any deposit being paid however Mrs C has said that Mr R paid a deposit of £200 to the dealership. Any deposit paid should be refunded along with interest as part of the resolution to this complaint.

Mr R did not have use of the car from 10 March until it was returned on 23 May. He then says he did not use it because of the issues he had raised and I note the car was not taxed. Because I find that Mr R should have been allowed to reject the car in early March when he first raised the issues and he has not had use of the car or been provided with a courtesy car while repairs took place I find it reasonable that his repayments are refunded along with interest.

Mr R has had to spend time dealing with the issues despite his initial request to reject the car. Because of the trouble and upset he has been caused I agree with our investigator's recommendation that he be paid £200 compensation.

my final decision

My final decision is that I uphold this complaint. Close Brothers Limited should:

- end Mr R's agreement with nothing further to pay;
- collect the car at no further cost to Mr R;
- refund Mr R any deposit he paid (we have been told he paid £200) plus 8% simple interest from the date of payment until the date of settlement;
- refund Mr R all the premiums he's paid towards the agreement to date and pay 8% simple interest from the date of each payment until the date of settlement;
- pay Mr R £200 for the trouble and upset caused and inconvenience experienced; and
- remove any adverse information from Mr R's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 November 2018.

Jane Archer
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