

complaint

Ms J complains the vehicle she purchased on a conditional sale agreement financed by Close Brothers Limited (CBMF) was misrepresented. She wants compensation.

background

Ms J tells us she acquired the vehicle from a dealer I'll call "L" in November 2016. She says as part of the pre-sale enquiries she asked about the previous ownership history of the vehicle. And if a second key was supplied. She said L told her the vehicle only had two previous owners. And whilst a "spare" key couldn't be found at the time - it would help her to try and find a spare key by contacting the previous owners. Ms J says she's now found the car had more than two previous owners and she hasn't been supplied with a spare key. She thinks the car was supplied under false pretences.

In its final response letter CBFM said it had been informed by L the vehicle had never been advertised as being supplied with a spare key. And it (CBMF) denied there was anything incorrect with the previous ownership details.

I issued a provisional decision on this complaint on 23 August 2018. I said I intended to uphold the complaint and award Ms J £300 compensation. Since then both parties have replied. Ms J has accepted the decision CBFM has said it has nothing further to add and is happy for a final decision to be made. I thank both parties for their replies.

As no new evidence has been provided I see no reason to change the view expressed in my provisional decision. So I'll repeat it in my final decision which is set out below.

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 can see Ms J is very upset at the experience she's had with the supply of this vehicle. And she's got very strong views about the role of L and CBFM's subsequent handling of her complaint. I'm sorry things haven't turned out the way she would have hoped.

Ms J's complaint is about misrepresentation. A misrepresentation is a false statement of fact which induces a customer to rely on it and - in this case - acquire the vehicle. And whilst I don't apply the law I do take it into account. Under present legislation CBFM is equally liable if there's been any misrepresentation by L.

I should also explain where evidence is incomplete, unsubstantiated, or contradictory as some of it is here - I have to decide what probably happened. That's not to say one party is right and the other wrong - it's simply I have decide what's most likely to have occurred.

I'll deal with the two issues separately as it makes for easier reading. There's no documentary evidence to support what Ms J says about the key. It was obviously discussed before the sale - and later efforts were made to contact some of the previous owners. But I've not seen anything to show me it was agreed a "spare" key would be provided. I'm aware CBMF referred to a sign allegedly displayed in the office at L's. This is said to have informed customers that a spare key would not be provided without charge. I've seen no evidence to show this was the case at the time of supply. And no evidence - if there was a sign - to say it was brought to the attention of Ms J.

I accept Ms J's account that she didn't see the sign and it wasn't pointed out to her. And I'm sure - based on the discussions - she presumed the key would be supplied. I've equally no doubt L did nothing to discourage this. But that doesn't alter my view on this aspect of the complaint. Even if there was a sign its content could potentially be overridden by a verbal inducement. But as I've already said there's insufficient evidence to say this happened.

The issue about previous ownership is more straightforward. And I'm surprised CBMF still seems to think Ms J wasn't given incorrect information. L's accepted there was an incorrect (false) statement of fact. The explanation given was an elderly customer purchased the vehicle for cash - but some months later returned it as it wasn't suitable. It's said he hadn't registered the change of ownership - and this led to Ms J being told the incorrect previous history. CBMF has said it doesn't think there was a material effect as a recognised industry guide doesn't change price based on the number of owners. I don't agree with this analysis.

I think this issue was a very important aspect of the pre-sale discussions as far as Ms J was concerned. And L knew this. And if she'd been given accurate information she probably wouldn't have gone through with the agreement. At the very least I think she would've sought a price reduction. Whilst the mileage on the vehicle was correct - the manner and time period over which this had been achieved was misleading. It would have been a normal inference that it would approximate to the miles recorded when the last registered keeper transferred the vehicle to L. In fact the unregistered keeper seems to have covered about 8,000 miles judged by MOT details - which would suggest the most recent use was above average.

So I think there was a misrepresentation and it had a material effect on Ms J's decision.

The nature of misrepresentation is itself important as it can (but doesn't necessarily) affect the mode of redress. In this case I think the nature of the misrepresentation should be seen as careless rather than inadvertent. L had the correct information and either didn't check properly or chose not to inform Ms J. Either way it wasn't merely an oversight.

Whilst the notes taken regarding L's explanation suggest the responsibility was being placed upon the customer who didn't change the registration details on the V5 registration document - I don't accept that's plausible. There's also a duty on a dealer to notify any change - and L failed twice. Firstly, when the vehicle was sold. And when it was returned it could've corrected the registration document - but didn't do so. So I don't accept L wasn't aware of the history when the information was given to Ms J. And having given her inaccurate information I think it chose not to correct this - until Ms J raised the issue after supply.

The usual remedy for misrepresentation is to try and put the customer back in the same position as if the misrepresentation had not occurred. This can mean unwinding the agreement and the car being returned and/ or awarding compensation.

In this case I must take into account the vehicle has been with Ms J for about 20 months. And she did have the opportunity to seek rejection of the vehicle when she first discovered the issue regarding ownership - which was within a few days of acquiring the vehicle. So I think the fairest outcome is an award of compensation. I think a figure of £300 is reasonable as it reflects a modest element of price reduction to deal with the incorrect number of previous owners - and to compensate for the distress and inconvenience resulting from the careless misrepresentation.

my final decision

For the reasons given above my final decision is I'm upholding this complaint.

I'm ordering Close Brothers Limited to pay Ms J £300 compensation in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 10 October 2018.

Stephen D. Ross
ombudsman