

complaint

Miss M complains about a car she obtained via a conditional sale Agreement with Close Brothers Limited. She says the car wasn't of satisfactory quality when she got it and she wants to reject it.

background

The background to this decision is set out in the provisional decision (PD) which is attached below and should be read in conjunction with this decision.

Close Brothers have not responded to the PD.

Miss M has informed this service that she did not have use of her car for 4 weeks in total between August and September 2017.

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'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 taking into account what Miss M has said about the limited usage for 4 weeks, I uphold this complaint for the reasons set out in my provisional decision below. It is fair and reasonable to order Close Brothers to take back the car.

my final decision

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

1. take back the car at no cost to Miss M and cancel the conditional sale agreement with nothing further owed.
2. update Miss M's credit file showing the agreement was settled with nothing further owed.
3. refund any deposit Miss M has paid.
4. refund 1 months payments under the agreement.
5. refund any car repairs Miss M has paid for herself (if any) (Miss M must provide receipts)

Interest should be paid on items 3, 4 and 5 at 8% simple from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M name to accept or reject my decision before 29 September 2018.

Clare Hockney
ombudsman

Copy of provisional decision

complaint

Miss M complains about a car she obtained via a conditional sale Agreement with Close Brothers Limited. She says the car wasn't of satisfactory quality when she got it and she wants to reject it.

background

In August 2017, Miss M got her car with from a dealership with finance from Close Brothers. She says she noticed a noise on the test drive, coming from the engine, but says she was told it would be repaired before she collected it.

The noise continued after she collected the car, and she returned it to have an exhaust part fitted. The clutch was also repaired in October 2007. Miss M remained unhappy with the car and complained to Close Brothers at the end of October 2017 about: a raspy noise, no turbo noise, loss of power and excessive fuel consumption.

The car was inspected by a third party in January 2018. This report noted that non genuine parts had been used for the clutch and exhaust. Based on this report Close Brothers did not allow her to reject the car.

The investigator upheld the complaint in part. She did not think there were any grounds to say the car wasn't of satisfactory quality at the point of sale, or the repair had failed. But, on balance, she concluded Miss M was told the exhaust would be repaired by the dealership before she collected it and this wasn't done to a satisfactory standard. She didn't think the car should be rejected, but thought Close Brothers should arrange to have the exhaust properly repaired.

The third party noted the clutch did feel soft, but the investigator did not think this was sufficient to indicate the clutch was faulty or repairs had failed. Furthermore, the car was eight years old and had travelled 76,000 miles on the clock, so the clutch issues may have been the result of wear and tear.

Close Brothers is prepared to accept the investigators findings. Miss M was unhappy; she felt the car was faulty when she got it. She maintained the repairs have failed. She wants to reject the car.

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. Having done so I am minded to uphold this complaint.

Under present legislation Close Brothers, as the supplier of the goods under the finance agreement, is responsible for the quality of the car supplied. The Consumer Rights Act 2015 states if a fault arises within six months of supply it's presumed to be present at the point of sale - unless it's established otherwise. The Consumer Rights Act 2015 says that a car can be rejected within the first 30 days if there is a fault. Within the first 30 days, there is no obligation to accept a repair. After the first 30 days, the retailer must be given one opportunity to repair the fault. If the fault isn't successfully repaired, the car can be rejected. Any periods of time during which the car is being repaired don't count towards the 30 days/6 months' time limits.

I find from looking at the information provided by Close Brothers and Miss M that there was a problem with the exhaust on the test drive. I find she was told this would be repaired before she got the car, it wasn't. Miss M took the car back and the exhaust was repaired. Based on the report by the third party this repair was not carried out properly and needs to be done again. I don't accept that this problem has arisen due to wear and tear as it appears to have been a problem from the start. The clutch problems also arose within 6 months of her getting

the car and are presumed to be present at the point of sale. The noise was still there so the clutch was repaired. The third party report does not say whether or not the faults were present at the point of sale. Notes provided by Close Brothers suggest that the third party told the dealership that faults may not have been present when the car was supplied. But this is not in the report. I find that faults arose within 6 months, the noise was present from the test drive, and was not resolved following repair. The dealership appears to have not repaired the faults properly and also used non genuine parts. The independent inspection had to be stopped as certain parts on the car were condemned including the exhaust. I find, based on this information that the car was not of satisfactory quality at the point of supply. Repairs have failed and parts used are non genuine. Miss M has lost faith in any further repairs due to earlier problems she has experienced.

Before the final decision is issued. Miss M should provide details of periods when she has not had use of the car, including any documentary evidence to support this. For all these reasons, I intend to uphold this complaint.

my provisional decision

My provisional decision is that I uphold this complaint. Subject to any further representations that I receive, I intend to make the following award against Close Brothers Limited:

1. take back the car at no cost to Miss M and cancel the conditional sale agreement with nothing further owed.
2. update Miss M's credit file showing the agreement was settled with nothing further owed
3. refund any deposit Miss M has paid.
4. refund any payments under the agreement where Miss M has not had use of the car.
5. refund any car repairs Miss M has paid for herself (Miss M must provide receipts)

Interest should be paid on items 3, 4 and 5 at 8% simple from the date of payment to the date of settlement.