

complaint

Mr and Mrs B, represented by Ms B, complain Close Brothers Limited didn't handle the rejection of their vehicle that was subject to a hire purchase agreement (HPA) correctly and have not compensated them fully for the issues that arose.

background

Mr and Mrs B entered into a HPA with Close Brothers in September 2017 to acquire a vehicle. They experienced issues with the vehicle and notified the retailer about these on 12 September. Discussions were entered into but a resolution wasn't agreed. Mr and Mrs B instructed solicitors and on 29 September a rejection letter was sent. The retailer didn't accept the rejection letter and contact was made with Close Brothers.

On 18 October 2017, an email was received that confirmed Close Brothers had spoken with the retailer and agreed to unwind the deal and return the former vehicle (which had been part exchanged). An indemnity was requested in relation to the condition of the part exchanged vehicle that was being returned. At this point Mr and Mrs B were threatened with legal action if payments weren't maintained.

On 30 October 2017, a letter was received from Close Brothers' solicitors confirming the rejection had been accepted and that the parties should be put back in the position they would have been had the HPA not been entered into. It was then agreed that if any damage was found with the part exchange vehicle a claim could be brought against Close Brothers.

By the time the rejection was put into action, Mr and Mrs B say they had been without the vehicle for six weeks. Mr and Mrs B say that there was then a long delay before Close Brothers responded to the other issues involved in the complaint. It then didn't uphold the complaint in regard to Mr and Mrs B not being supported by Close Brothers; compensation for being without the vehicle; and the threats of legal action.

Mr and Mrs B say that Close Brothers said that an alternative vehicle had been offered by the retailer but that no offer was made and they also say that given the breakdown in relationship with the retailer Close Brothers shouldn't have expected them to accept this.

Mr and Mrs B want an apology from Close Brothers about the way the rejection was handled and also compensation for the stress caused and loss of use of the vehicle. They also say they experienced a number of additional losses due to the issues with the vehicle for which they want to be refunded. These were listed as:

1. Vehicle Registration Retention Cost: £80
2. Vehicle Tax: £267
3. Insurance: £267.07 (£853.83 repaid)
4. Loss of Earnings for a family member who had to collect the vehicle: £180
5. Fuel: £198

Following our investigation Close Brothers offered to refund the following amounts subject to evidence being provided:

1. The private registration for the part exchanged vehicle - retention cost of £80
2. £250 for the retention of the log book
3. Vehicle tax at - £267

4. Loss of insurance - £267.07

Mr and Mrs B didn't accept the offer made by Close Brothers as they said no offer had been made in respect to the loss of a day's wages; fuel for the journey to and from the retailer or compensation for the stress and inconvenience caused and the lack of use of the vehicle. Ms B also noted that the £250 for the log book had been reimbursed by the dealer.

Our adjudicator thought that the actions taken by Close Brothers in regard to Mr and Mrs B's vehicle and the offer it had made to refund the cost of the private number plate retention, vehicle tax and insurance costs was reasonable. She didn't require it to do anything further.

Ms B raised a number of issues in response to our adjudicator's view. She was concerned that actions of the retailer had been confused with actions of Close Brothers. She said that the vehicle was rejected within the first 30 days and so there was no need for any investigation to take place or any reason for Mr and Mrs B to consider repairs. She said that had the rejection been dealt with properly Mr and Mrs B wouldn't have been without a vehicle for six weeks or suffered the stress and inconvenience of dealing with the complaint through an extended period. She said that given all the issues, Mr and Mrs B hadn't been put back in the position they would have been prior to the HPA.

Ms B said that Close Brothers threatened legal action after the vehicle had been rejected and when Mr and Mrs B were no longer liable for any payments.

my findings

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

A number of issues have been raised and I have considered all of these. This complaint is against Close Brothers. Under the regulations Close Brothers can be held liable if the vehicle was not of satisfactory quality at the point of supply. It can also be held liable for representations made by the dealer in regard to setting up the HPA and any statements made that induced Mr and Mrs B to enter into this. I cannot hold Close Brothers responsible for the ongoing actions of the dealer. I note there was a break down in relationship with the dealer and that this has caused some distress and upset but this is not something I can hold Close Brothers responsible for.

Mr and Mrs B entered into a HPA in September 2017. There were initial issues regarding the mileage of the part exchanged vehicle but this was an issue between Mr and Mrs B and the dealer and so I haven't commented on this further. Following collection of the vehicle Mr and Mrs B raised a number of issues. They sent a solicitors letter to the dealer dated 29 September 2017 listing their concerns. The issues listed included damage to the vehicle; oil leaks, a banging noise; and corroded exhaust. This letter refers to the previous contact that had been made with the dealer and also set out Mr and Mrs B's request to reject the vehicle.

The dealer, in its letter dated 2 October 2017, disputed that the vehicle wasn't of satisfactory quality at the point of supply. It also said that offers had been made to Mr and Mrs B including loan vehicles, exchange vehicles and to unwind the deal but says these were refused.

Close Brothers has shown evidence that it was contacted about the issues at end September 2017 and was informed on 6 October 2017 that Mr and Mrs B had rejected the vehicle. Mrs B says that she contacted Close Brothers on 6 October and was asked to provide further information which was provided. I understand that Mr and Mrs B had stopped using the vehicle at this point. However, based on the information I have seen it doesn't appear that the vehicle was unsafe to drive but that Mr and Mrs B had chosen to stop using it due to the issues and outstanding dispute.

I can see from the notes provided by Close Brothers that it was working to identify how to resolve the issue during October and it contacted Mr and Mrs B on 18 October 2017 confirming the unwind of the HPA and the return of the part exchanged vehicle. Having looked at the contact notes provided I think Close Brothers provided a fair offer to resolve the issue within a reasonable timeframe.

Mrs B requested that an indemnity be provided in regard to the condition of the returned part exchange vehicle. I understand why this was requested but it isn't unreasonable that this needed to be considered and that meant further time passed.

A letter was sent to Mr and Mrs B dated 30 October 2017 confirming the unwind of the HPA and saying that the parties should be put back in the position they were in prior to the HPA. I understand the vehicle was collected on 9 November.

I can see that the dealer didn't accept the rejection of the vehicle at the start and that it tried to suggest repairs should take place. Under the Consumer Rights Act 2015 there is a short term right to reject when there is a fault that was present from the point of supply. Given the nature of the issues and the dealer's comments about when damage occurred and wear and tear on a used vehicle I do not find it unreasonable that it wished to discuss options such as repairs. However, Mr and Mrs B made it clear they wished to reject the vehicle.

Having looked through the evidence provided, I can see that Close Brothers accepted that the vehicle could be rejected and arranged for the part exchanged vehicle to be returned and other adjustments to be made. I find that these actions were fair and did attempt to return Mr and Mrs B to the position they were in before the HPA.

The outstanding issues relate to additional costs Mr and Mrs B incurred, the loss of use of the vehicle and the trouble and upset caused.

In regard to the refund amounts that have been requested, Close Brothers has accepted a number of these subject to evidence being provided. I find this reasonable. Close Brothers has offered to refund £250 for the retention of the log book. Mr and Mrs B say this refund has been made by the dealer but Close Brothers says the £250 refund was not for this item. In the event this refund has not been made then I find it reasonable that Close Brothers provides this.

An outstanding issue relates to the loss of wages to a family member and that family member's fuel costs. While I understand why a request has been made about the family member's costs, the complainants in this case are Mr and Mrs B and it is only Mr and Mrs B who can be awarded compensation for distress and inconvenience caused. I have no evidence that Mr and Mrs B incurred any costs for the vehicle to be collected and therefore I do not find that costs to a family member need to be refunded.

Mr and Mrs B also say they should be refunded for the loss of use of the vehicle. As I have mentioned previously I haven't been provided any evidence to suggest the vehicle wasn't safe to drive. The issues listed do not seem to be issues that would stop the vehicle being able to be used. Also, while I appreciate the comments Mr and Mrs B have made about not being offered a loan vehicle, the information provided by the dealer suggests offers were made in the early discussions. Also I find that Close Brothers acted in a timely way and accepted the rejection on 18 October after being made aware of this request on 6 October. The vehicle wasn't collected until 9 November but I don't find that Close Brother's actions caused any unnecessary delays in this process. Therefore, on balance, do not find that a refund for the loss of use is required in this case.

Mr and Mrs B have also complained that they were threatened with legal action after the vehicle had been rejected. I have not heard the call on which this was discussed but have seen the email sent on 18 October which refers to legal action. I have considered what was said and it is clear that if the suggested resolution isn't accepted then litigation is likely to follow. I appreciate that the comments about legal action must have been upsetting but I don't find it unreasonable that Close Brothers set out their position in the event of the resolution not being agreed.

Raising a complaint does involve time and inconvenience however in this case I think that Close Brothers did act to try to resolve the issues raised in a timely way. I appreciate there were other issues with the dealer but as set out previously the ongoing service provided by the dealer is not the responsibility of Close Brothers.

Overall, I find that the unwind of the HPA was reasonable and that the offer by Close Brothers to refund certain costs subject to evidence is a reasonable resolution to this complaint.

my final decision

My final decision is that Close Brothers Limited should, as it has offered, refund Mr and Mrs B the following costs subject to evidence being provided:

1. the private registration for the part exchanged vehicle - retention cost of £80
2. £250 for the retention of the log book (in the event this hasn't been returned)
3. vehicle tax at - £267
4. loss of insurance - £267.07

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 18 May 2019.

Jane Archer
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