

complaint

Mr J is complaining about the quality of a car he acquired through Close Brothers Limited on a hire purchase agreement.

background

In October 2018 Mr J entered into a hire purchase agreement with Close Brothers to acquire a car. Mr J started to have issues with the car around a week after receiving it. He said the car was losing power, smoke was coming out of the exhaust, coolant was leaking from the engine and he said the engine management light was on.

Mr J contacted Close Brothers and the supplying dealership as he said that he didn't want to keep the car any longer and he said he wanted to reject it. He says the supplying dealership told him to take the car to a local manufacturing dealership to get the faults diagnosed before he could reject it. So Mr J took the car to the manufacturing dealership. But the dealership carried out the repairs under the car's warranty. Mr J says he didn't authorise it to do so.

Close Brothers then told Mr J that he couldn't reject the car any longer because the faults had been repaired. Mr J was unhappy with this because he said he hadn't consented to the dealership repairing the car. But Close Brothers said it was his responsibility to ensure that he explained to the dealership that the car was only having a diagnostic check carried out.

Mr J also explained that, when he bought the car, the dealership also agreed to repair a dent and refurbish two alloy wheels. But he said that the dealership hadn't done so. Close Brothers said that Mr J would have to raise this with the dealership. It also advised him that he would have to collect the car from the dealership as it had been repaired.

Mr J later contacted Close Brothers to say that the issues had reoccurred. And he said he still wanted to reject it. Close Brothers said that Mr J would need to take the car back to the dealership that did the initial repairs and advise that the repairs had failed.

Close Brothers maintained that, as the repairs were carried out a third party garage without its authority, it can't be held responsible if those repairs have failed.

I issued a provisional decision upholding this complaint. And I said the following:

"Mr J acquired the car under a hire purchase agreement. Legislation – in this case the Consumer Rights Act 2015 (CRA) – implies a term into the hire purchase agreement that the car must be of satisfactory quality. As the supplier and finance provider, Close Brothers is responsible for the quality of the car it's provided under the agreement. There's no dispute that there were faults with the car and Close Brothers have accepted that the faults would have been present or developing at the point of sale given they arose eight days after Mr J acquired it. But Close Brothers said that Mr J couldn't reject the car because it had been repaired.

I'm satisfied that Mr J bought a car that wasn't of satisfactory quality at the point of sale. Mr J paid £28,500 for the car. The car was around three years old and had travelled around 33,400 miles at the point of supply. I don't think it's reasonable to have expected the issues Mr J had with the car to have arisen so soon after he acquired it. So I don't think the car was of satisfactory quality at the point of sale.

The CRA gives a consumer a short-term right to reject a car in these circumstances if they do so within 30 days of receiving it. Mr J first asked to reject the car within a few days of receiving it. So he says Close Brothers should have allowed him to reject it. I understand Close Brother's stance that, because the car was repaired by a third party garage, Mr J has lost his right to reject. But it also needs to be noted that Mr J seems to have followed the supplying dealership's instructions to take the car to a local manufacturing dealership. So I don't think Mr J can reasonably be held responsible for what happened after that. And I haven't seen anything to say that Mr J acted unreasonably in this respect.

The CRA sets out that a consumer can't exercise their short-term right to reject the goods if they require or agree to the repairing of the goods. But I'm satisfied that Mr J didn't require or agree to the car being repaired. And he'd made it clear to Close Brothers before the repairs were carried out that he wanted to reject it. So I think it was unfair for Close Brothers to say that Mr J had lost his short-term right to reject the car because the repairs were carried out against his wishes.

But, irrespective of this, the CRA further sets out that the 30 day time limit for exercising the short-term right to reject stops for the length of time the car was waiting to be and actually repaired. Mr J's car initially went in for repair on 7 November 2018 and it appears that the repairs were completed on 13 November 2018 – a time period of six days. So I think Mr J's time limit for being able to exercise his short-term right to reject should be extended by six days – i.e. until 1 December 2018.

While I accept that the repairs were carried out, I also note that the car broke down again on 26 November 2018 and Mr J asked to reject the car again the next day. So I still think Mr J was within the timescale to be allowed to exercise his short-term right to reject. Given this, I think Mr J was still entitled to exercise his short-term right to reject the car for the reasons I've set out above. So I think Close Brothers should have allowed Mr J to reject the car at this point.

I note Close Brothers comments that the initial repairs were carried out by a third party garage. So it can't hold the supplying dealership responsible for this. But the root cause of this issue is that the car wasn't of satisfactory quality at the point of sale. It's also important to note that the repairs were carried out by a manufacturing dealership. And, as I said before, Mr J was only following the supplying dealership's instructions. So I don't think it's fair he loses out as a result.

So taking everything into account, I think the CRA allows Mr J to reject the car now. And I also think that this is the fair and reasonable outcome too."

And I said that I thought Close Brothers should do the following to put things right:

"For the reasons I've set out above, Close Brothers should now allow Mr J to reject the car. I recognise that Mr J has had the car since October 2018. But I'm persuaded that he hasn't used it since November 2018, due to the issues he's had with it. And I understand that he's now acquired a replacement car. So I'm satisfied that he hasn't had use of the car since November 2018 and I think Close Brothers should refund any payments he's made since then.

I also think that this matter has caused Mr J a lot of distress and inconvenience. Firstly, I think it's fair to say that Mr J has suffered some distress for being sold a car which was of unsatisfactory quality, which he paid a not insignificant amount of money for. But also Mr J

has had to pay for another car during this time. And he's shown that this has put him into financial difficulties and that's he's in arrears on his council tax and utility bills. I recognise that this may not only be down to having to pay for two cars, but I think it's likely that this was a contributing factor. Taking all this into consideration, I think Close Brothers should pay Mr J £500 in compensation for the distress and inconvenience this matter has caused him.

So, in summary, I think Close Brothers should do the following to put things right:

1. *Allow Mr J to reject the car and arrange to collect it at no cost to him;*
2. *Cancel the agreement with nothing further to pay – and arrange for any adverse markers to be removed from Mr J's credit file;*
3. *Refund the deposit of £4,000*;*
4. *Refund the monthly payments Mr J has paid since (and including) December 2018 to reflect loss of use*; and*
5. *Pay £500 in compensation for the distress and inconvenience this matter has caused Mr J.*

**It should add 8% simple interest per year on each of these payments from when he paid them until he gets it back. If Close Brothers thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate."*

Close Brothers didn't respond to my provisional decision. Mr J accepted my provisional decision, but he also said that he'd insured this car and his replacement car. And he thought Close Brothers should refund this cost too.

my findings

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

As neither party has given me anything further to think about, I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I've decided to uphold this complaint for the reasons I set out above.

Mr J has said that he thinks Close Brothers should refund the premium he paid for his insurance policy because he hasn't used the car and had to take out finance on another car. But the insurance policy on the replacement car was in his father's name. Mr J says that this was done to keep costs down. But I'm not persuaded that Mr J has had to pay for two insurance premiums. So I don't think I can reasonably require Close Brothers to refund the amount he paid for his insurance policy. So I still think Close Brothers should do the following to put things right:

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2. *Cancel the agreement with nothing further to pay – and arrange for any adverse markers to be removed from Mr J's credit file;*
3. *Refund the deposit of £4,000*;*
4. *Refund the monthly payments Mr J has paid since (and including) December 2018 to reflect loss of use*; and*
5. *Pay £500 in compensation for the distress and inconvenience this matter has caused Mr J.*

*It should add 8% simple interest per year on each of these payments from when he paid them until he gets it back. If Close Brothers thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

my final decision

For the reasons I've set out above, I uphold this complaint and I require Close Brothers Limited to compensate Mr J in line with my instructions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 January 2020.

**Guy Mitchell
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