

Complaint

Mr G complains that a car he acquired on a conditional sale agreement through Close Brothers Limited wasn't of satisfactory quality.

background

In January 2018, Mr G acquired a used car supplied through a conditional sale agreement with Close Brothers. The car was around 11 years old and had travelled around 81,000 miles. The cash price of the car was £10,995. Mr G part exchanged his old car for £1,100, paid a £500 deposit and the rest was financed by the conditional sale agreement over a term of 48 months.

In early March, the car had a problem with the alternator and had to be recovered to a garage. After the garage assessed the car they determined that it wasn't a repair they could fix, so the car was moved to another garage. This time the repair was completed and Mr G got the car back at the end of March. Most of the cost of the repair was covered by the warranty but there was a short fall of £94.79 that Mr G says he paid.

Mr G says he then had further issues with the car. One day after having had the car back from the garage, he found there was a burning smell and noise coming from the brakes. A mobile mechanic was called and confirmed that the calliper had seized and the brake pads were worn down to the metal. So the brake discs, callipers and pads were replaced by a garage. As the brake disc and calliper repairs were not covered under the warranty, Mr G paid some of the cost. Mr G has also said that the issue with the brakes had been noted on the MOT certificate as an advisory and on the pre-sale checklist.

Mr G says the car then broke down again, on the 7 April. This time the car had a fuel tank issue. Total cost for that repair was £575 which the garage and warranty company agreed to fund.

In total Mr G says he has paid around £530 towards the repairs.

After firstly discussing the issues with the car to the dealer it was purchased from, Mr G raised a complaint with Close Brothers – as he said the damage was there when he bought the car. Mr G also complained that the car should have had a pre-delivery inspection that would have picked these issues up. He went on to say that Close Brothers have sent him to his warranty company each time he contacted them with an issue, but the policy didn't cover all damage- so he's now out of pocket. Overall in the 10 weeks that he owned the car, Mr G says he wasn't able to use it for four of them.

After contacting Close Brothers several times to ask for a settlement figure, Mr G says he lost faith in the safety of the car and decided to part exchange it for a slightly newer car - but through a different dealer. This left him with a shortfall on the finance due to the part exchange value offered. Mr G asked Close Brothers to reimburse him for the lost money.

Close Brothers looked into the complaint but didn't uphold it. It said that there was no evidence that the faults were present at the point of sale. So Mr G brought the complaint to our service.

Our investigator looked into the complaint and thought it should be upheld. He said that, although the car was used and had covered a large mileage, he found it likely the faults were present at the point of sale – particularly given the number of different issues.

Close Brothers responded to the view. It said –

- An amber condition on the pre-sale checklist is not a failure – in relation to the brake pads;
- It had no evidence to show the dealer was liable for the repairs;
- It can't be held liable for delays by a third party garage; and
- It can't be held liable for the time taken to repair every fault a consumer has whilst they own the car.

I issued a provisional decision on 18 February 2020. This is what I said-

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

Close brothers supplied Mr G with the car under the conditional sale agreement it had with him. Under this type of agreement, Close Brothers is the supplier of the goods and is responsible for any complaints about its quality. In deciding what's fair and reasonable I've taken into consideration – amongst other things – the relevant law and in particular the Consumer Rights Act 2015 ("CRA").

The relevant legislation, namely the CRA, implied a term into the contract that the car was of satisfactory quality. What's satisfactory is measured by what a reasonable person would consider satisfactory taking into account any description of the goods, the price and other relevant circumstances – which I think would include things like the age and mileage of the car.

The car was around eleven years old and had done around 81,000 miles. And I think a reasonable person might expect there to be some wear and tear on a car of that age and mileage.

was the car of satisfactory quality?

The first issue Mr G experienced was the failing of the alternator. This was at the beginning of March, around a month after the purchase. I understand Mr G has said that he thinks this fault was present when the car was sold, but I'm not convinced this means the car was of unsatisfactory quality. I'll explain why.

Failure of an alternator is frequently sudden, rather than gradual – so you could have a perfectly functional alternator one day, and a dead one the next. Alternators also have an unpredictable life span, some can last the lifetime of the car, others can fail much earlier through wear and tear. Given that this is a part that can fail through wear and tear and at any point, and given the age and mileage of the car, even if I was satisfied the part was developing a fault at the point of sale, I don't find this wouldn't make the car of unsatisfactory quality when it was acquired.

When Mr G complained about the alternator issue, he was directed to the warranty company. I'm satisfied this was the correct thing to do, as it's likely the garage would have charged him for the full price of the repair had it been carried out by them.

Mr G has said that when he took the car into the first garage, they were unable to fix the problem – due to the complexity of the issue. The car was then moved to another garage who completed the repair. I understand this must have been frustrating for Mr G, but unfortunately, I can only look at the actions of Close Brothers in this complaint and the repair was arranged by the warranty company. I also don't find it unreasonable that Close Brothers referred Mr G to the warranty company.

When the second fault occurred in April 2018, Mr G emailed the dealer and asked to reject the car. At this point the car was in an independent garage and had an issue with the brake pads and callipers. The garage again directed Mr G back to the warranty company. Although Mr G says the wear on the brake pads was highlighted in the MOT check, it was as an advisory rather than a fail. I'm not persuaded that there's enough evidence to show that the brake pads needed to be replaced when the car was supplied to Mr G - and he was aware when he bought the car that they would need replacing in the near future. The brake pads are also a wear and tear item for which given the age and mileage of the car - the user of the car is responsible. And I don't think that it would be fair or reasonable for me to require Close Brothers to pay for the car's brake pads and callipers to be replaced, as this wouldn't have made the car of unsatisfactory quality.

On 7 April 2018 the car suffered a further failure. This was due to broken fuel sender unit in the fuel tank. Although I'm satisfied this part wouldn't come under a wear and tear item, the full cost of the repair was met by the warranty company and the dealership. As this was the first issue with this part, under the CRA rights given to the consumer, the garage would get an opportunity to fix the broken part. As this was done, I'm satisfied Close Brother's don't need to do any more.

should Mr G have been allowed to reject the car?

The CRA gives a consumer a short-term right to reject a car if a fault occurs within 30 days of receiving it and the car's deemed of unsatisfactory quality. I can see Mr G asked to reject the car outside of this timescale. I'm satisfied only the fuel sender fault would be relevant to this term, as it doesn't come under a wear and tear item. As it was outside of the 30 days, the business gets an opportunity to fix the fault, which was done here. So I don't find Mr G would have been eligible to reject the car, when he raised the three faults.

At the end of April Mr G part exchanged the car, as he said he'd lost faith in it. I know this will disappoint Mr G, but this was his choice to do so. And it follows that I don't find Close Brothers responsible for the shortfall that Mr G got in the value of the trade in value. Although Mr G had experience a number of issues, he had bought a car that was 11 years old and had covered quite a high mileage.

Reponses to my provisional decision

Close brothers had nothing to add

Mr G said that he thinks some financial compensation is due to the length of time without a vehicle and the worry and distress of the vehicle breaking down.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint - Including the points raised by Mr G, and I see no reason to depart from my provisional findings.

As I've not found the first two faults to mean the car was of unsatisfactory quality, I don't find any compensation due.

I'm satisfied the third fault was resolved in a reasonable amount of time, I can see the car went in for repair around the 10 April and was traded in by Mr G on 21 April. So I don't find any compensation due here either.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 April 2020.

Tom Wagstaff
ombudsman