

complaint

Mr R complains about a car he got using a conditional sale agreement through Close Brothers Limited. He says he's had various issues with the car and wants to reject it.

background

Mr R acquired a used car in March 2018. The car cost £2,695. Mr R paid a total deposit of £500. The rest of the purchase was funded using a conditional sale agreement with Close Brothers. The car was around nine years three months old when Mr R acquired it and had covered around 115,864 miles.

Shortly after getting the car, Mr R says he began to have problems with it. He says in the next few weeks it broke down three times. He said it had an oil leak which needed repairing and the dealer replaced injectors on two occasions. He says the car had a diesel leak and a clip was missing – which the dealer also repaired. And he says the car overheated and a new header cap was fitted by the dealer.

In May 2018 Mr R contacted Close Brothers and said he wanted to swap the car. It told him to contact the dealer to see if they would exchange it and to come back if there were further issues. Mr R says he contacted the dealer but it said it would charge him for the mileage he'd done if he returned the car.

In July 2018 the car broke down again and required a roadside recovery.

A few days later Mr R complained to Close Brothers. He said he wanted to reject the car as he'd had so many issues. He said the car now had a 'water leak' and was at a third party garage for a repair. He says he didn't return the car to the dealer as he said they were rude and intimidating.

Two days after complaining to Close Brothers the third party garage invoiced Mr R £316.80 for work where it changed the radiator and coolant pipe.

At the end of July Close Brothers issued its final response letter. It said as Mr R had chosen to get the new issue fixed at a third party garage it couldn't investigate if this was a fault that was present or developing at the point of sale. And, it said as the previous repairs were successful, it wouldn't allow Mr R to reject the car and so it wasn't upholding his complaint.

In August 2018 Mr R said the car overheated again. Mr R took the car to another third party garage who did a pressure test, put in a seal and removed the thermostat. They also noted they believed the overheating was due to a failed cylinder head gasket or internal crack. Mr R paid £86 to the garage for the work.

Mr R didn't repair the car further and then traded it in. He says he only got £1000 for the car.

Our service began to look into Mr R's complaint. Our investigator initially upheld the complaint. He said he thought the faults Mr R had with the car meant it wasn't of satisfactory quality when supplied. He recommended that Close Brothers reimburse Mr R for all the costs from the third party garages. And he said Close Brothers should pay him £200 for the distress and inconvenience caused.

Close Brothers disagreed. It said Mr R had removed its opportunity to repair under the Consumer Rights Act 2015 (CRA) by taking the car to a third party garage so felt the complaint shouldn't be upheld. It asked for an ombudsman's decision.

While awaiting a decision, the investigator reviewed the case again. He issued a second view. He said he now thought the case shouldn't be upheld, saying he believed the car was of satisfactory quality when it was supplied. Mr R disagreed with his. He said he felt he'd been unfairly treated by Close Brothers and asked for an ombudsman's decision.

The case was passed to me to decide. While awaiting a decision, I asked Close Brothers to provide us with some more information from the dealer about what happened. Close Brothers sent us a response from the dealer. It said Mr R had approached them about four weeks after getting the car with an issue. It said an injector was replaced under warranty, but it didn't have any paperwork for this. The dealer also said it hadn't seen or heard from Mr R since.

I sent Mr R and Close Brothers a provisional decision on 30 March 2020. This explained I initially didn't think the complaint should be upheld. I've included my findings from this decision below:

This complaint is about the quality of a car supplied under a conditional sale agreement. This is a regulated financial product, so this service has the power to investigate Mr R's complaint against Close Brothers.

When considering what's fair and reasonable, I take into account relevant law and regulations. The CRA is relevant to this complaint. This says the supplier – Close Brothers – had a responsibility to make sure the car was of 'satisfactory quality'. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. I would consider relevant factors in this case to be, amongst others, the car's age, price, description and mileage.

So, I need to decide if the car Close Brothers supplied to Mr R was of satisfactory quality or not. I need to consider that in this case the car was over nine years old. It had covered a mileage of over 115,000. And, it cost £2,695. This represents a very significant difference in cost to what the car would've been when new. I think a reasonable person would've expected the car to be in a condition reflective of its age, mileage and price. I also think a reasonable person wouldn't necessarily expect parts of the car to be in good condition, or to be as durable as on a newer car with a lower mileage.

There is some conflicting information in this case. Mr R says the car was returned to the dealer several times for repair. The dealer says it only saw Mr R once, when it replaced an injector. And, there's limited evidence available as neither Mr R nor Close Brothers have been able to provide any paperwork from the time about the repairs at the dealer.

I've thought carefully about what I think most likely happened with the repairs from the dealer. But, whether Mr R's or the dealer's version of events is correct, I don't think this would change my opinion about the case. I'll explain why.

If I assume Mr R's version of events is correct, I may reach the conclusion that the car wasn't of satisfactory quality at the point of supply. I say this as Mr R says the issues with the car happened quite quickly, which indicates there may have been an issue with the car present or developing at the point of sale. Mr R hasn't mentioned having to pay for the

repairs carried out by the dealer, nor provided anything to show this was the case. So, it appears all the issues looked at by the dealer were repaired under warranty free of charge.

Under the CRA, Mr R has a right for the car to be repaired if it wasn't of satisfactory quality – which is what happened in this case. So, if Mr R's version of events is true, and if I reached the conclusion the car wasn't of satisfactory quality, Close Brothers wouldn't have to take any further action here.

If the dealer's version of events is true and Mr R only needed to return the car once for an injector to be replaced, I would be less inclined to reach the conclusion that the car wasn't of satisfactory quality. I say this an injector is part of the car that would suffer from wear and tear. Thinking about the age and mileage of car I would consider it quite likely that this was the case in this instance – rather than a fault. But, either way, the dealer confirmed this was repaired under warranty.

So, in both Mr R's and the dealer's version of events, Mr R has had his rights under the CRA met for the earlier repairs.

Mr R has provided a copy of a breakdown report from mid-July 2018. This shows the car was overheating with a loss of coolant. At this point, the car had covered 119,118 miles. So, Mr R had driven the car roughly 3,250 miles since he got it. I've thought about the fact that the car needed to have its radiator and a coolant pipe replaced. And, I've considered that a few weeks later the car overheated and it appears the third party garage, as a well as Mr R, believed it needed a new head gasket.

Thinking about this, I don't think Mr R could've driven the car for around four months and over 3,000 miles if the radiator, coolant pipe and head gasket needed replacing at the point of supply. I think these issues are due to wear and tear - taking into account that at the point these particular issues started the car had covered nearly 120,000 miles. It follows that I don't think these issues meant the car wasn't of satisfactory quality at the point of supply. This is also backed up by Close Brother's contact notes. When Mr R called to complain about the 'water leak' the notes say:

"the customer stated that wasn't there when he purchased the vehicle"

I have considered whether the earlier issues reported by Mr R were linked to the later ones. But, I haven't seen enough evidence to suggest it's most likely this was the case.

In summary, I think it's possible that the earlier issues reported by Mr R meant the car wasn't of satisfactory quality when it supplied. But, these were repaired free of charge so I'm satisfied, if Mr R's version of events is accurate, that Close Brothers has met it's obligations and doesn't need to take any further action. I'm also satisfied that it's most likely the later issues Mr R had with the car, starting in July 2018, were due to wear and tear rather than an issue present or developing at the point of supply. So, I don't think Close Brothers need to take further action here either.

I gave both parties one month to come back with any further comments or evidence for me to consider before I made my final decision.

Mr R responded and said he wasn't happy with the outcome. He said the dealer had lied as he reiterated that the car had been back on multiple occasions. But, he said he accepted the decision as he had no more evidence.

Close Brothers said it accepted my decision.

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 thought about what Mr R said in response to my provisional decision. But, as I explained above whether his, or the dealer's, version of events is correct it doesn't change the conclusion I would reach.

Having thought about all the information on this case again, I still think this complaint should not be upheld for the reasons I explained in my provisional decision and set out above.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 August 2020.

John Bower
ombudsman