

The complaint

Miss B complains about a used car she acquired through a conditional sale agreement with Close Brothers Limited. Miss B says that immediately after acquiring the car she reported problems with it to the supplying dealership and sought to reject the car. Miss B says that her request to reject the car was however declined and she was forced to accept repairs.

What happened

On 11 October 2023 I issued a provisional decision setting out the background and my provisional decision on Miss B's complaint. In that provisional decision I set out:

In mid-September 2022 Miss B used a conditional sale agreement with Close Brothers to acquire a used car. Miss B says she immediately noticed issues with the car and took the car back to the dealership where she got it. The main issue related to the car's clutch and Miss B says she sought to reject the car at that time.

The car's clutch was repaired, Miss B says her request to reject the car was declined and she was required to take back the car. Miss B also referred to additional issues with the car, including problems with the fuel consumption and brakes.

Miss B complained to Close Brothers about the faults and that her request to reject the car had been declined. Her complaint was not upheld and as she remained unhappy with this, she referred her complaint to our service for consideration. The complaint was considered by one of our investigators and he set out the reasons why he considered the complaint should be upheld. Amongst other things, he recommended Close Brothers take back the car and end Miss B's agreement.

Miss B accepted the investigator's conclusions, but Close Brothers did not. As the complaint could not be resolved informally it has been referred to me for consideration.

What I've provisionally decided – and why

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

Miss B acquired a used car using a Close Brothers conditional sale agreement. As the supplier of the car Close Brothers is required to ensure the car supplied to Miss B was of satisfactory quality. Satisfactory quality is set out in the Consumer Rights Act 2015 and is broadly defined as what a reasonable person would expect, considering the specific circumstances of each case. In this instance, when considering whether the car Close Brothers supplied to Miss B was of satisfactory quality it is reasonable to consider the age and mileage of the car at the time it was supplied and when any fault occurred.

Firstly, there seems to be little or no dispute that the car was faulty in relation to the clutch. There were other issues reported but I will refer to these later. Miss B complained about the faulty clutch immediately after acquiring the car and considering the very short time between acquiring the car and reporting the fault with the clutch, I am satisfied on balance that the

clutch was defective at the time the car was supplied to Miss B.

I am fully aware that a clutch would be considered a component of the car that would suffer from wear and tear and that it is not uncommon to expect to replace the clutch at some point during the car's lifetime. I also accept that looking at the age and mileage of Miss B's car, it might not be unreasonable to expect the clutch to need replacing around the car's age and mileage.

However, even allowing for the car's age and mileage when supplied to Miss B it would not be reasonable in my view to supply the car to Miss B with a defective clutch. It was reported immediately and if immediately apparent to Miss B I think it would and should also have been immediately apparent to the supplying dealership prior to the sale. The car should not have been supplied in this way and any known issues should have been remedied prior to the sale. Because of this, I am satisfied that it was not of satisfactory quality when supplied to Miss B.

The Consumer Rights Act 2015 sets out a number of remedies when dealing with goods that were not of satisfactory quality. One of those remedies is the 30 day right to reject and this essentially means that where goods are not of satisfactory quality a consumer can seek rejection of the goods within 30 days of acquiring them. There is no requirement in the legislation for a consumer to allow the supplier an attempt to repair the goods during this period, unless the consumer is willing to allow this. This period can in certain circumstances be extended, but I don't consider it necessary to refer to those here.

Miss B says that she did seek to reject the car and did not want the car repaired, but her request was declined and she was effectively forced to take back the car after it was repaired. Having considered what Miss B says about her attempts to reject the car I note she has been consistent throughout her complaint. I also note that in her call with Close Brothers on 12 October 2022 Miss B referred to her request to reject the car, which is again consistent in my view with what Miss B has said about requesting rejection earlier with the dealership. After considering the evidence that has been presented in this case, I consider it more likely than not that Miss B did actually seek to reject the car and that she was likely told this was not possible. And she was then left with no real alternative but to take back the car.

As I have found above the car was not of satisfactory quality and Miss B sought to reject the car within 30 days of acquiring it, which is her right, Miss B should have been allowed to reject the car and end her agreement with Close Brothers. This did not happen and because of this Miss B has been treated unfairly. I note the car's clutch was repaired but that does not in my view mean that Miss B should be forced to keep the car. Miss B's request to reject should have been accepted and it is then up to Close Brothers and the dealership if they wish to repair the car. That in my view is of no concern to Miss B.

As Miss B's request to reject was not accepted she was effectively left with little alternative but to use the car. She continued to make the monthly repayments to the conditional sale agreement and is unlikely to be in a position to not use the car and make alternative transport arrangements at extra cost to herself, in addition to making the conditional sale agreement repayments of £200.17 per month.

Miss B has referred to additional issues with the car and in particular has been clear that she believes there to have been an issue with the car's fuel economy. She has referred to the car using more fuel than she had expected and believes there is a fault with the car that has resulted in higher fuel consumption. There may be an issue with the fuel consumption in the car but while noting what Miss B has said, there is however no further supporting evidence to demonstrate the car actually has a defect with the fuel system. Even if there was a defect, it would be very difficult to determine what additional fuel was being used and what

additional cost this therefore proved to be for Miss B. Because of this, I don't consider there to be sufficient grounds to require Close Brothers to contribute towards the fuel costs Miss B has referred to.

Miss B has referred to other issues with the car but as I have found Close Brothers should have accepted Miss B's rejection, even if I accepted these issues resulted in the car not being of satisfactory, rather than more general fair wear and tear, it would unlikely result in any additional redress for Miss B. I do not therefore consider it necessary to refer to them further here.

Putting things right

As I have found that Close Brothers should have accepted Miss B's rejection shortly after the car was supplied, I consider it reasonable that Close Brothers now end the agreement and take back the car from Miss B. This should be at a convenient time and without cost to Miss B. Close Brothers should ensure that nothing further is owed on the agreement and that Miss B is paid the £1,500 which I understand was the amount of her part exchanged vehicle. Interest at 8% simple per year should be added to this refunded amount from the date of payment until the date of settlement.

I have considered carefully whether Close Brothers should be required to refund the monthly rentals that Miss B paid each month towards the conditional sale agreement. Miss B has however had use of the car, even though this is not I accept what she had initially intended. Had she not had use of this car she would have incurred additional costs with a replacement vehicle or other transportation costs. On that basis, I do not consider it would be reasonable to require Close Brothers to refund the monthly repayments Miss B made each month. I do however consider Miss B has been put to considerable trouble and upset in being supplied with a car that was not of satisfactory quality and having her rights to reject the car declined. I have noted that Miss B has already had the benefit of one monthly repayment, of £200.17, to address the inconvenience she has been caused. Having considered the circumstances of the case I do not however consider this goes far enough and Close Brothers should make an additional payment of £200.

My provisional decision

My provisional decision is that for the reasons set out above, I uphold Miss B's complaint and direct Close Brothers Limited to settle the complaint in accordance with what I have set out above in the putting things right section of this provisional decision.

I invited the parties to make any further final submissions they wanted me to consider before 25 October 2023, at which time I would reconsider the complaint and issue a final decision.

Miss B responded to the complaint and in summary said that while she agreed with some of the findings, she was not completely happy with the outcome. She explained that this issue had caused her a lot of upset and strain and also referred to the car no longer being drivable. Miss B believes there is an issue with the car's injectors, as only two of the four injectors were replaced when this issue was initially raised. And the remaining two, unreplaced, injectors have now failed. Miss B asks if she is able to get back the 3 months payments made to Close Brothers for the time she has not been able to use the car.

We received no response from Close Brothers.

What I've decided – and why

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 have come to the same overall conclusions, for the same reasons, as set out in my provisional decision above. Miss B has referred to the car having recently stopped working but has not provided any further supporting evidence as to exactly when this was or what cost impact this has had on her. In the absence of any supporting evidence confirming exactly when the car stopped working or that this was related to any earlier problem that was not sufficiently repaired by the supplying dealer, I am unable to instruct Close Brothers to refund any of the monthly repayments for this period. Nor am I able to instruct Close Brothers to refund any additional costs Miss B considers are caused by this.

Putting things right

In order to settle this complaint, I instruct Close Brothers to:

- End Miss B's agreement with nothing further owed;
- Take back the car from Miss B, at a convenient time and without cost to Miss B, noting the car is not currently running;
- Refund the £1,500 representing the value of Miss B's part exchanged vehicle;
- Add interest at 8% simple per year to the refunded amount of £1,500 from the date of payment until the date of settlement; and,
- Pay Miss B £200 for the trouble and upset caused.

If Close Brothers doesn't settle the complaint within 28 days of Miss B accepting this decision, interest at the same rate as set out above should be paid on the £200.

My final decision

My final decision is that I uphold Miss B's complaint against Close Brothers Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 27 November 2023.

Mark Hollands
Ombudsman