DRN-3726469

The complaint

Ms S is unhappy with a hire purchase agreement with Close Brothers Limited trading as Close Brothers Motor Finance ('CB').

She says she was told a small final payment would be due at the end of the agreement, but then found out a larger balloon payment was to be paid if she wanted to keep the car.

When Ms S handed her car back, she was unhappy with charges for excess mileage and damages.

What happened

Ms S has been represented on this complaint. But to keep things simple, I'll only refer to Ms S in my decision.

In July 2017 Ms S took a hire purchase agreement with CB to acquire a used car. The agreement was taken over 49 months, with monthly repayments of £222.72.

Ms S says she spoke to CB in around April 2021. She says she was told the final payment due around September 2021 would be slightly higher than the normal monthly repayment. But, she says she was later told a balloon payment was due on the agreement of over £4,000.

Ms S decided to hand the car back rather than pay the balloon payment. When the car was collected at the end of May 2021, Ms S says she was unable to go out to the car to look at it due to a health issue. But she says the person who collected the car told her what good condition it was in and that there was no damage. She says she was asked to provide a signature to show the car had been picked up.

CB then told Ms S she owed £1,981.60 for going over her agreed mileage allowance, and £573.60 for damage to the car. This consisted of:

- *Rear door dent* £67.50
- *Damage to alloy wheel* £40.95
- *Damage to alloy wheel* £40.95
- *Scratch to front bumper* £97.30
- *Scratch to rear bumper* £97.30
- *Chips on near side front door* £114.80
- *Chips on off side front door* £114.80

Ms S was unhappy with this and complained to CB. It issued its final response to the complaint in June 2021. It said, in summary, that its agents should've told Ms S about the balloon payment on the phone, but didn't. It apologised for this, but explained the balloon payment had been set out on the agreement so had been charged correctly.

Ms S remained unhappy and referred the complaint to our service. CB then acknowledged Ms S had complained about the excess mileage and damage charges, but it thought these

were fairly applied.

Our investigator issued an opinion. This explained, in summary, that she thought the excess mileage charges and balloon payment had been set out on the agreement Ms S signed. She thought most of the charges for damage had been fairly applied and fell outside of fair wear and tear. But, she said damage to one of the doors wasn't clear, so CB should remove this charge.

Ms S responded and said she was told different amounts on the phone for the balloon payment. She said she hadn't been able to read the agreement when she took it and it had been rushed through. She said the damages weren't noted at the time of collection and she'd been misled into signing something. And she said the damage wasn't present when the car was collected so it must have happened between the collection and the later inspection.

CB also responded and provided a clearer photo of the damage to the door. Our investigator reviewed this. She said this had changed her opinion and she now thought all the damage charges had been fairly applied. And she said what Ms S told her didn't change her mind. Ms S remained unhappy, so the case was passed for an ombudsman's decision.

While awaiting a decision, an agreement was made between CB and Ms S to remove the charges for excess mileage. Ms S still disputes the damage charges – so the case was passed to me to decide.

I sent CB and Ms S a provisional decision on 13 September 2022. My findings from this decision were as follows:

I want to reassure Ms S that I've carefully considered everything she's said in relation to this complaint and all of the points she's raised. Where I haven't specifically commented on something below, this is because I'm focusing on what I consider to be the key points and the crux of her complaint.

Ms S complains about a car supplied under a hire purchase agreement. Entering into consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Ms S's complaint about CB.

Ms S has complained about various points. I'll consider these in turn. As an agreement has been reached between Ms S and CB in relation to the excess mileage charges, I don't need to comment further on this.

Balloon payment

When considering what's fair and reasonable, I take into account relevant regulations, laws and guidance. Section 56 of the Consumer Credit Act 1974 is relevant to this complaint. This explains, under certain circumstances, that a finance provider can be held liable for what is said by a credit broker before a credit agreement is entered into. So, I'm satisfied I can consider what Ms S says she was told about the credit agreement by the dealer here.

Ms S says she was never aware a balloon payment would be due. I need to consider if I think it's likely she was given incorrect information or misled about the finance.

I've considered what the agreement Ms S entered into says. Ms S has acknowledged the balloon payment is on the agreement, but says it was buried in the small print. But I don't agree here. The balloon payment is set out on the front page of the agreement under the schedule of repayments. I can see this explains a payment of £4,323.75 is due 49 months

into the agreement.

I've very carefully thought about what Ms S says here. She says the appointment was rushed and she wasn't able to read the agreement. I appreciate there's a lack of evidence to show what happened when Ms S took the finance here. But, on balance, I haven't seen enough to make me think it's most likely she was given incorrect information or misled.

I also need to consider that if a balloon payment wasn't included on her agreement, the amount would've been spread over the term and so the monthly payments would've been higher. Even if I accepted what Ms S says happened here, I haven't seen enough to persuade me that she would've taken a different agreement, or that she'd have been financially better off if she did.

It isn't in dispute that CB should've told Ms S about the balloon payment when she called. CB has acknowledged this and apologised. I've considered if CB needs to do more here. But, the balloon payment was always due – regardless of what Ms S was told on the phone. Thinking about what's fair and reasonable, I don't think CB needs to do anything further to put this right.

Damages

I've firstly thought about whether Ms S agreed to be held responsible for damage to the car. The terms of the agreement Ms S entered into say:

"You must maintain the Goods in good and reasonable order and condition at your expense. You are responsible for all loss of or damage to, the Goods, except for any due to fair wear and tear"

So, I'm satisfied Ms S agreed to keep the car in good repair and to be held responsible for any damage outside of fair wear and tear.

When considering the damages here, I've referred to the British Vehicle Leasing and Rental Association (BVRLA) guidance on fair wear and tear. I appreciate Ms S's car was used, but it was only just over a year old and had covered around 13,000 miles when she got it. So I'm satisfied in this case this guidance is still relevant.

In relation to damage to the wheels, the BVRLA says:

"Any damage to the wheel spokes, wheel fascia, or hub of the alloy wheel is not acceptable"

Looking at the photos of the wheels from when the car was collected, I can see clear and obvious damage to both alloys on the spokes. I'm satisfied this falls outside of fair wear and tear.

In relation to dents, the BVRLA says:

"Dents of 15mm or less in diameter are acceptable provided there are no more than two per panel and the paint surface is not broken"

Reviewing the photos from when the car was collected, I can see what appears to be two dents to the near side rear door. And I'm satisfied at least one of these is over 15mm. So, I find this falls outside of fair wear and tear.

In relation to scratches, the BVRLA says:

“Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable, provided they can be polished out”

Looking at the photos from when the car was collected, I can see clear and obvious scratches or scrapes to both bumpers that are well over 25mm. I’m satisfied this also falls outside of fair wear and tear.

In relation to chips, the BVRLA says:

“Chips of 3mm or less in diameter are acceptable provided they are not rusted. A maximum of four chips on any panel, six chips per door edge and eight chips on any forward facing panel is permitted”

From the photos when the car was collected, I can see more than six chips on the near side front door. And I can see a collection of more than six chips or scratches to the off side front door. I’m satisfied both of these areas fall outside of fair wear and tear.

I’ve carefully considered what Ms S says here. She says the car was in great condition with no marks when it was collected and the damage must have happened afterwards. But, when considering the damage I’ve only considered the photos from when the car was collected – not the later inspection. So, I’m satisfied the damage happened when Ms S had the car.

I appreciate Ms S says she was told the car wasn’t damaged and that she thought she was only signing for its collection. And I know she wanted her representative there when the car was picked up.

I don’t know why the collection agent would’ve noted and photographed the damage to the car and then told Ms S that there wasn’t any. And I understand Ms S wanted someone there at the time. But, I’m satisfied the car was damaged at the point it was collected. So, whatever happened here, it wouldn’t change my opinion that it’s fair for CB to charge for it.

I gave both parties two weeks to come back with any further comments or evidence. CB didn’t reply. Ms S came back and said she wasn’t happy with the decision and made some further points for me to consider.

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.

Ms S said in response to my provisional decision that the car wasn’t damaged and this was a ‘false claim’ by CB. But, as explained above, I’ve seen photos from the time the car was collected where the damage can be seen. So, I’m still satisfied the damage was present.

Ms S also said she wasn’t told about the balloon payment and it wasn’t in the contract. But the balloon payment was in the contract. So this doesn’t change my opinion.

Finally, Ms S also said if I listened to the phone calls with CB I would hear it refuse to allow her representative to be present when the car was collected. But, even if this was the case, it wouldn’t affect whether the damage was there at the time or not. As I’ve explained, I’m satisfied it was. So, either way, this wouldn’t change my opinion.

I’ve thought about all of the other information about this complaint together with Ms S’s response to my provisional decision.. Having done so, I still think agreeing to remove the excess mileage charges and apologising to Ms S for the incorrect information is enough to

put things right.

My final decision

Close Brothers Limited trading as Close Brothers Motor Finance has apologised to Ms S for the incorrect information it gave her and it has agreed to remove £1,981.60 for the excess mileage.

My final decision is that I'm satisfied that this is fair and reasonable under the circumstances.

So, I instruct Close Brothers Limited trading as Close Brothers Motor Finance to remove £1,981.60 from Ms S's balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 27 October 2022.

John Bower
Ombudsman