

complaint

Mr R's complained Close Brothers Limited won't pay him full compensation for a faulty car.

background

Mr R bought a mazda car. The purchase was financed by a conditional sale agreement with Close Brothers Ltd. Within days of purchase, a number of faults appeared with the car.

Close Brothers Ltd agreed the car was not of satisfactory quality when he bought it and that he was entitled to reject it. It took back the car and refunded the money he'd already paid to it. The supplier refunded his deposit.

But Mr R wanted to be reimbursed for consequential losses exceeding £2000. Close Brothers Ltd refused to refund him. It said his losses were for expenses he either didn't need to pay or would've paid for anyway.

Mr R wasn't happy with this response so he brought his claim to this service.

Our adjudicator partially upheld his claim but both Mr R and Close Brothers Ltd are unhappy with the outcome so this case has come to me for a final 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 won't consider what went wrong with the car or why because Close Brothers Ltd took it back and agreed to refund the money, which Mr R had paid. For this reason, I'll only refer to the factual details where I think they're relevant to the issue of compensation.

The purpose of compensation is to put Mr R in the position he would now be in if the original problem that led to his complaint hadn't happened. In this case, restoring him to the position he would've been in if he hadn't bought the mazda.

Close Brothers Ltd has partially done this by ending the agreement and refunding the money he's paid. But it's refused to refund all the losses caused by the problems with the mazda, except for hire car costs for three days. Still in dispute are the costs of services to the car and replacement parts; road tax; AA membership; fuel costs; loss of wages and the cost of a replacement vehicle.

These are the only expenses I will consider.

services and replacement parts

Mr R said he took the mazda for a diagnostic oil change (£94.94), a terraclean (£495) and a gearbox oil change (£112.87). He thought these services would fix the faults with it. Close Brothers Ltd said it wouldn't refund him for these services because he hadn't provided proof of payment.

Our adjudicator sent it invoices for the services. I appreciate these are not receipts but I've seen his credit card statements and they confirm he paid for these services in full, except for the terraclean: according to the statement he paid £150 for this.

I can see he's incurred costs trying to fix the faults with the mazda, when the supplier wouldn't help him, so I think Close Brothers Ltd should refund him what he's paid, which is £357.81.

He also bought a replacement clutch, flywheel and new bolts. He said Close Brothers Ltd gave prior approval to the purchase of the clutch and flywheel. It said it was his decision to buy these parts and he bought the wrong parts.

I'm afraid I can't see any evidence he was told to buy these parts by either Close Brothers Ltd or the garage. So, I'm not asking the business to refund these costs.

road tax and car insurance

Mr R wants to be reimbursed for a proportion of the road tax and insurance for those weeks when he couldn't use the car. Close Brothers said he should've made a SORN – statutory off the road notification and DVLA would've refunded a proportion of his road tax. I think it's easier to say this with the benefit of hindsight. I don't think he could've foreseen he would be without use of the car for several weeks. And there's no evidence it told him how long the car would be in the garage.

But, on his own admission, he needed a car to travel to work. So if he hadn't bought the mazda it's likely he would've had a working car and would've incurred these expenses anyway.

So I won't be asking Close Brothers to refund a proportion of the road tax and insurance.

AA membership

Mr R's car broke down on 22 February. He called the AA and it took the car to the supplier. He paid the AA a total of £115.82. He's asked Close Brothers Ltd to refund this money.

The AA's costs were made up of a surcharge of £49, which he said was for updating the car details, and £66.82 for an upgraded membership renewal.

He said he didn't update his policy when he bought the mazda because he didn't think he was 'going to have the car long enough to justify doing so'. But when the car broke down, he had to add the mazda because it wasn't covered by the policy.

This figure seems too much for merely updating the vehicle details. And, according to his bank statements, he'd made an earlier card payment for the same amount to the AA on 6 February – the day after he bought the mazda. It looks like a membership renewal fee.

On balance, I think he paid the £49 to take his car to the supplier, whose garage was outside the maximum ten-mile tow limit under his standard policy.

Close Brothers Ltd said it was his choice to buy a car from a supplier sixty miles from his town. But, living where he does, he might not have had many choices so I'm not attaching much weight to this argument.

I think it was reasonable for him to return to car to the supplier. He would've needed to take it there eventually. So, I think it's fair Close Brothers Ltd should refund £49 for the tow costs, as they weren't covered by his standard AA policy.

He also paid £66.82 to upgrade his policy to the 'roadside and relay' cover. The start date for the upgraded policy was 21 May 2016, when the car was off the road.

I don't think Close Brothers should refund the upgraded AA membership fee.

fuel costs

Initially, Mr R asked for a refund of his fuel costs for driving to and from the supplier on 6 March. That's a round trip of 120 miles. He's subsequently claimed for an additional journey on 5 May but it's not clear why he made this journey. He's said his total mileage was 320 miles. He's asking for a refund based on a business rate of £0.45 per mile.

I think Close Brothers Ltd should refund his actual fuel costs for taking the car to the supplier on 6 March but there are no receipts for the money he spent on petrol. It has calculated his fuel costs as £12.76, based on the mazda's miles per gallon rate for a 120 miles journey.

So, in the absence of fuel receipts, I think it's fair for it to refund him £12.76.

loss of wages

Mr R said he lost a days' wages when his car broke down in February. He's asked to be reimbursed for his loss of wages.

But he hasn't provided any evidence to support his claim, so I'm afraid it wouldn't be fair to ask Close Brothers Ltd to refund him for loss of wages.

motorcycle

Close Brothers Ltd couldn't provide a courtesy car, when the mazda was off the road, because it didn't have one. Instead, it agreed to reimburse him for any hire car or taxi costs. But this wasn't a workable arrangement for Mr R because he couldn't afford to pay upfront for alternative transport. So, he bought a motorcycle.

He's asked for a refund of the cost of the motorcycle but Close Brothers Ltd has refused.

I don't think it should reimburse him for the cost of the motorcycle. It's refunded him the money he'd already paid for the mazda and restored him to the position he would've been in if he hadn't purchased it.

On his own admission, he needed a car or other vehicle. So it's very likely he would've bought a replacement vehicle. He just bought one earlier than expected. He's now asking Close Brothers Ltd to pay for it. I think that would put him in a better position than he would've been in if he hadn't bought the mazda.

So, for this reason, I won't be asking Close Brothers Ltd to reimburse him for the motorcycle cost.

I'm sorry this decision will be disappointing news for Mr R but I hope I've explained my reasons clearly.

my final decision

My final decision is I'm partially upholding Mr R's complaint.

I'm asking Close Brothers Ltd to refund the following expenses:

Services to the car	£357.81
AA tow costs	£ 49.00
Hire car costs	£188.28
Fuel costs	<u>£ 12.76</u>
Total Award	<u>£607.85</u>

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 March 2017.

Razia Karim
ombudsman