

complaint

Ms E complains that Close Brothers Limited (trading as Close Brothers Motor Finance) is responsible for mis-selling a hire purchase (HP) agreement.

background

Ms E's partner wanted a motorcycle. In 2015 a motorcycle dealer supplied one. He arranged HP in the name of Ms E. In 2017 she complained that her partner couldn't insure or use the bike.

The adjudicator recommended that the complaint should be upheld in part. She thought that - acting as agents for Close Brothers - the dealership had made an error. The adjudicator didn't ask that Close Brother should refund any monthly repayments. She recommended that Close Brothers should:

1. accept the return of the bike;
2. unwind the agreement and report the agreement as 'settled' on Ms E's credit file;
3. return Ms E's deposit back to her.

Close Brothers disagrees with the adjudicator's opinion. It says, in summary, that Ms E deceived it for two years.

my findings

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

It's common for HP agreements to provide that the hirer shall not part with possession of the hired vehicle.

It's also common for insurers to decline to issue an insurance policy in the name of anyone other than an owner or hirer of a vehicle.

The dealer arranged the HP agreement on behalf of Close Brothers. So the dealer knew the agreement was in Ms E's name.

From the account statement, I accept that Ms E paid a deposit of £1,500.

Ms E agreed to pay 48 monthly instalments of about £170, followed by a final payment of about £4,500. That's a total of about £12,500.

The agreement included provisions as follows:

- that Ms E shouldn't part with possession of the bike.
- that she should keep the bike in good condition
- that she should keep the bike insured.

that the bike's mileage would be no more than 10,000 miles per year.

From its vehicle registration, I accept that the bike was new.

So I accept Ms E's statement that the dealer dealt with the registration of the bike at the Driver and Vehicle Licensing Agency. I haven't seen the registration document (V5). But from what Close Brothers and Ms E each say, I accept that her partner was the registered keeper.

Therefore the dealer knew that the HP agreement was in Ms E's name but the bike was in her partner's name. Although Close Brothers is unhappy about that, I find it responsible for the dealer's actions.

From the account statement I see that there were some late payments, for example in March 2016 and March 2017.

And Close Brothers' file includes a note that in March 2017 it had done a vehicle registration check and found that the bike was in the name of Ms E's partner.

Ms E hasn't provided any evidence from insurers. But on balance I accept her statement that neither she nor her partner has been able validly to insure – and therefore to use – the bike since March 2017. I find Close Brothers responsible for this – through the actions of the dealer as its agent.

I think Ms E has paid all the instalments due – about £4,000.

I've thought about what's fair to try to put things right.

I bear in mind that, if she'd paid half the total amount payable, Ms E would be entitled to give the bike back and pay no more.

I also bear in mind that Ms E's partner used the bike until March 2017 but not since then.

Overall, I find it fair and reasonable to order Close Brothers to accept the return of the bike in good condition and then to reimburse Ms E for the £1,500 deposit (without interest) and to treat the HP agreement as settled.

my final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I order Close Brothers Limited (trading as Close Brothers Motor Finance) to (in relation to the HP agreement dated September 2015):

1. notify Ms E immediately on her acceptance of this final decision of an address at which she can return the motorcycle to it;
2. provided that she returns it in good condition within 28 days of such notification:
 - 2.1 accept the return of the motorcycle;
 - 2.2 pay Ms E £1,500;

2.3 not ask Ms E to pay any more;

2.4 treat the agreement as settled.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 18 September 2017.

Christopher Gilbert
ombudsman