

complaint

Miss S complains about end of contract charges when she voluntarily terminated her agreement with Close Brothers Limited.

background

In March 2017 Miss S was supplied with a car and entered into a conditional sale agreement with Close Brothers. The term of the agreement was 4 years but Miss S decided to end it early.

Following termination the car was inspected and damage was found. Close Brothers asked Miss S to pay charges.

Miss S accepted that some damage to the side of the car had been caused whilst the car was in her possession and she'd arranged for repairs to be carried out. But she was unhappy about being charged for damage to the alloys and for a missing parcel shelf. She said the shelf hadn't been present when she was supplied with the car and the other damage was pre-existing.

Our investigator upheld the complaint. The investigator looked at the damage and said there was no evidence about the condition of the car when it was supplied, including the presence of the parcel shelf. The investigator noted that the car was over 10 years old at the point of supply and said because of the age of the car the standards of acceptable wear and tear were lower than the BVLRA guidelines. The investigator said Miss S had arranged for repairs to be carried out on the front door but this hadn't been taken into consideration on the invoice. The investigator concluded that there wasn't enough evidence to show that Miss S was responsible for the damage found at inspection and recommended that Close Brothers removed all of the charges.

Close Brothers didn't agree. It said that BVLRA standards were applicable and that the inspector had taken account of the age of the car. It said the damage to the car would have affected the sale price (and therefore the amount it recovered towards the remaining balance). It said that Miss S had acknowledged that she had caused some damage herself and therefore it didn't feel it was fair to waive the charges.

my findings

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

Miss S was supplied with a car that was over 10 years old in 2017, so it's reasonable to assume that it wouldn't have been in pristine condition. She says there was damage present at the point of supply and that the parcel shelf was missing. She acknowledged that she caused some damage to the car whilst it was in her possession but says she arranged for that damage to be repaired.

I've looked at the inspection report including the photos. I've also taken account of the BVLRA guidelines. In doing so, I've considered the impact in terms of any loss Close Brothers would suffer as a result of the damage. I've taken the approach that any damage should be assessed for fair wear and tear and then in terms of any loss in value and not just in isolation.

When considering fair wear and tear the BVLRA guidelines are recognised as the industry standard. These guidelines set out what is acceptable and unacceptable in terms of wear and tear. But in the case of a second hand car, it's reasonable to expect a greater degree of wear and tear than you'd expect to find in a car which was new at the point of supply. The older the car, the more wear and tear I'd expect to see. So I don't think it's fair to apply the guidelines alone to determine whether the wear and tear is acceptable. In this case, the car was over 10 years old at the point of supply and I think the inspection should have taken account of that. Miss S says the car had significant wear and tear (including damage) when it was supplied to her and I think it's more likely than not that this was the case.

With this in mind, I've looked at the items of damage. The scuffs to the wheels are to be expected on a car of this age. I've seen evidence that Miss S had repairs carried out to fix the damage she caused whilst she was in possession of the car. This relates to inspection item 8 (offside door). In relation to the parcel shelf, the supplying dealer hasn't been able to provide evidence that this was present at the point of supply.

The damage for which Miss S has been charged may well exceed fair wear and tear under the guidelines. But I'm not satisfied that Miss S was responsible for that damage.

Close Brothers hasn't provided a CAP valuation or provided details of what the car was sold for at auction. Nor has it said whether any repairs were carried out before the car was sold. Because there's no evidence that Close Brothers has suffered a loss, either by paying for repairs or recovering less than they might expect to at auction, I don't think it's fair to ask Miss S to pay any charges.

For the reasons I've given I uphold the complaint. Close Brothers Limited should remove the charges.

My final decision

My final decision is that Close Brothers Limited should remove the charges.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 16 August 2019.

Emma Davy
ombudsman