

The complaint

Mr B complains that a car he has been financing through an agreement with Close Brothers Limited ("Close Brothers") has not been of satisfactory quality.

What happened

Mr B took receipt of a used car in November 2018. He financed the deal through a conditional sale agreement with Close Brothers. At the point of supply the car was already about 13 and a half years old and had completed about 97,000 miles.

Mr B had some problems with the car. He took it back to the dealership in February 2019 and reported problems with the brakes, hand brake and steering column. He says the dealership only rectified the brakes and at a later stage rectified the hand brake.

Mr B had a third party garage investigate the issues with the car and in late February 2019 they noted that there was movement in the steering rack; the front and rear brake discs were lipped and the subframe was corroded.

Mr B complained to Close Brothers and an independent inspection was organised. The inspector noted the car hadn't been driven for some time and that there was a misfire on the engine. He said the Engine Management; 4x4 and traction control warning lights were illuminated and that a tyre was deflated. He was unable to drive the car but did move the steering from side to side. He thought it "slightly notchy" and noted it was "not smooth". He thought the steering issue may be contributed to by the deflated tyre. He noted that the brakes were corroded and lipped. Overall, however, whilst he understood that the car had problems during the inspection he didn't think it was likely Mr B would have been able to travel the 7,000 miles he had since taking ownership of the car if the faults were present from the beginning. Close Brothers therefore rejected Mr B's complaint and he referred it to this service.

Our investigator thought it was likely there were faults with this car at the point of supply that hadn't been resolved. She thought there had been multiple efforts to try to resolve the faults Mr B had complained about and she was persuaded they were present at the point the car was supplied to him. She thought the independent inspection confirmed these faults were still present and she therefore thought it would be fair to suggest Close Brothers allow Mr B to reject the car; refund Mr B's deposit with interest and pay him £250 compensation for the distress and inconvenience he'd experienced.

Close Brothers didn't agree with the investigator's opinion. They provided some further comments from the independent inspector who said he didn't think any of the faults were likely to have been present at the point of supply. They asked for a final decision by an ombudsman.

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.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr B acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Close Brother, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would likely include things like the age, mileage and price at the time the car was supplied to Mr B. This car was quite an elderly vehicle and had completed quite a high mileage. I think some of the issues that have been complained of could, as the inspector has suggested, be expected on a car of this age and mileage i.e. the sub frame corrosion and engine faults.

But I don't think the car should have been supplied with faults that made driving it difficult, and ultimately impossible, and I am persuaded that's been the case here.

I think there is evidence that the steering rack was faulty from the beginning. I say that because I can see Mr B referred it to the dealership within the first few months of ownership. The relevant legislation allows the business one opportunity to repair a problem that is present at the point of supply. I think Close Brothers had that opportunity when the steering rack was replaced. But I'm persuaded that the repair didn't work. I say that because I've found Mr B's testimony persuasive and also because the independent inspector has suggested the steering isn't smooth and is notchy. I understand the inspector feels the deflated tyre may have "*contributed*" to that but I think it's clear he still believed there was some underlying issue. Given the history I've seen I think there is evidence that the fault was reported and was present from the start and I don't accept the inspector's view that it could not have been present from that point as there's been sufficient evidence to the contrary.

So I think, as the repair to the steering column hasn't been successful, Close Brothers should now allow Mr B to reject the car.

But even if I'm wrong about that I'm also persuaded that there were most probably problems with the brakes that were unacceptable at the point of supply. Mr B has provided evidence from an independent garage who looked at the car about three months after he took ownership of it. The garage confirmed that front and rear brakes were lipped. I've looked at the MOT history for the car and can see that in June 2018; five months and 2,000 miles before Mr B took receipt of the car, there was an advisory to say "*front brake disc worn, pitted or scored*". The advisory said this should be monitored and repaired if necessary. I think a reasonable person would expect a dealership to consider the previous MOT comments prior to any sale and on a performance car of this type I think a reasonable person would have expected them to have attended to any concerns the brakes may be overly worn. I think after an additional 2,000 miles they would have deteriorated and should have been replaced. So I'm persuaded the subsequent repairs to the brakes haven't been successful as I note the independent inspector's comments that the brakes are still "*lipped*". And that's another reason I think it would be fair to allow Mr B to now reject the car.

Putting things right

Close Brothers should allow Mr B to reject the car and collect it at no cost to him.

He's clearly been inconvenienced by this matter as he's had to return the car to the garage on several occasions and has had to progress a complaint when I think it could have been resolved much earlier. In those circumstances Close Brothers should compensate him and I think £250 is about right.

They should also refund Mr B's deposit and, as he's been deprived of that money, they should add interest to the refund.

My final decision

For the reasons I've given above I uphold this complaint and tell Close Brothers Limited to:

- allow Mr B to reject the car and terminate his finance agreement with them;
- collect the car at no cost to Mr B;
- refund any deposit and add 8% simple interest from the date of payment to the date of settlement;
- pay Mr B £250 compensation for the distress and inconvenience he's experienced;
- remove any adverse reports they may have made to Mr B's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 June 2020.

Phillip McMahon
Ombudsman