

The complaint

Mr S complains that a car acquired with finance from Close Brothers Limited (CB) wasn't of satisfactory quality.

What happened

In May 2021 Mr S was supplied with a car and entered into a conditional sale agreement with CB.

Mr S experienced issues with the car within the first month of getting it. The engine management light illuminated, and the car went into limp mode.

Mr S reported the issues to CB, who arranged an independent inspection. The inspector found fault codes but said he didn't think the faults would have been present at the point of supply.

In June 2021 Mr S arranged for a mobile mechanic to carry out a diagnostic on the car. The mechanic found that the glow plug wiring harness was faulty, as well as other electrical faults.

In July 2021 Mr S arranged for a further diagnostic on the car. This also found an electrical fault in the glow plug cylinder, as well as issues with the camshaft position sensor and the engine control unit. The mechanic advised Mr S not to drive the car.

Mr S complained to CB but it didn't uphold the complaint, so he contacted this service.

Our investigator upheld the complaint. She said she was satisfied that the car had a fault at the point of supply and that the car wasn't of satisfactory quality. She said that because Mr S had reported the issue within the first 30 days, he should be allowed to exercise his short term right to reject the car.

CB didn't agree. It said the inspection report confirmed that the issues were electrical faults and said that these could occur at any time. It said the inspection had found that the faults weren't present at the point of supply and therefore it wasn't responsible. CB said that the mileage covered by the car didn't have the same significance in terms of durability in the case of electrical (as opposed to mechanical) faults.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general conditions as well as other things including fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

At the point of supply the car had covered around 41,300 miles. I'd expect a second hand car such as this to require repairs and maintain more often than, say, a brand new car. So, in order to uphold this complaint I would need to be satisfied that there was something wrong with the car which made it of unsatisfactory quality at the point of supply, as opposed to an issue which was due to general wear and tear.

An engineer's report can help determine whether a car is of satisfactory quality. I've reviewed all of the engineering evidence. The inspection report produced by ACE found fault codes relating to the electrics. It said that these faults wouldn't have been present at the point of supply and that they were wear and tear related. The diagnostic report obtained by Mr S identify electrical fault codes and electrical faults.

Based on what I've seen, I'm satisfied that there was a fault with the car. The fault occurred within the first month of the point of supply. Under the relevant legislation, it's presumed that goods which don't conform to the contract within the first 6 months don't conform to the contract at the point of supply. It's for the business to show otherwise in these circumstances.

CB has said that the independent inspection report is enough to rebut the presumption. I don't agree. Mr S reported a fault within the first 30 days. Whilst I would expect a second hand car to have a degree of wear and tear, it's still the responsibility of the business to supply a car which is of satisfactory quality. I don't think a reasonable person would expect to experience several electrical faults in the first few months. The independent inspection doesn't say why the engineer thought that the faults wouldn't have been present at the point of supply. Given the age and mileage of the car, I think durability is an issue here. CB has said that durability doesn't apply to electrical faults in the same way that it does to mechanical faults, but the number of fault codes affecting Mr S's car as evidenced by the diagnostic reports suggests to me that there were inherent electrical faults present at the point of supply, and not a sudden electrical fault which occurred due to wear and tear. Because of this, I don't think the car was of satisfactory quality when supplied.

Putting things right

To put things right, and because the faults occurred within the first 30 days, I think CB should allow Mr S to reject the car.

Mr S stopped using the car in July 2021 following the second diagnostic report. I think it was reasonable of Mr S to do so, as this was on the advice of a mechanic. I don't think it's fair to expect Mr S to pay for a car he hasn't used, so all payments he's made since this date should be refunded. Prior to July 2021 Mr S was able to use the car, so I won't be asking CB to refund any payments made prior to this.

My final decision

My final decision is that I uphold the complaint. Close Brothers Limited must:

Allow Mr S to reject the car and end the agreement

Refund the deposit and pay 8% simple interest from the date of payment to the date of settlement

Refund the diagnostic fee of £60

Refund all payments made by Mr S since August 2021 and pay 8% simple interest from the date of payment to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 April 2022.

Emma Davy
Ombudsman