

## **The complaint**

Mr C is unhappy that a car supplied to him under a conditional sale agreement with Close Brothers Limited was of an unsatisfactory quality.

## **What happened**

On 17 March 2020, Mr C was supplied with a used car through a conditional sale agreement with Close Brothers. He paid a deposit of £1,100 and the agreement was for £9,899 over 60 months; with monthly repayments of £241.28. At the time the car was just over eight and a half years old and had done 72,000 miles. Mr C had payments difficulties and Close Brothers terminated the agreement and repossessed the car in July 2021.

Mr C says he started having problems shortly after taking possession of the car and he contacted the supplying dealership about this in May 2020. He also raised the issues with Close Brothers on 18 June 2020 and asked to reject the car. Mr C also took the car back to the dealership, because of the ongoing problems, on a number of occasions while it was in his possession.

In August 2020, he had the car inspected by an independent garage, which cost him £36. This inspection found a suspected issue with the dual mass flywheel, a broken exhaust, a leaking shock absorber, and a damaged ball joint.

Mr C complained to Close Brothers, and they arranged for an independent engineer to inspect the car. This inspection took place on 2 October 2020, when the car had done 82,057 miles. The engineer agreed there was a suspected issue with the flywheel, and that one of the shock absorbers had a heavy oil leak. But the engineer also said that the issues were commensurate with wear and tear, given the age and mileage of the car.

Because of this, while Close Brothers accepted there were faults with the car, they didn't think they were present or developing when the car was supplied to Mr C. So, they didn't think they needed to do anything more. Mr C wasn't happy with this response, and he brought his complaint to us for investigation.

Our investigator said Mr C has first reported the issues with the car three months after it was supplied, and when Mr C had only done around 2,000 miles. And when he put this information to the independent engineer, the engineer said the faults would've been in an advanced state of development when the car was supplied to Mr C.

Because of the engineer's comments, the investigator said the car wasn't of a satisfactory quality when it was supplied to Mr C. However, because Close Brothers had already repossessed the car, asking them to repair it was no longer possible.

The investigator thought it was fair that Mr C paid for the use of the car while it was in his possession, and that Mr C should be liable for the payments from April 2020 to June 2021, less the interest on these payments. He said that Close Brothers should reduce the outstanding balance to £1,750.86, to account for this, as well as refunding Mr C the £1,100 deposit he paid, and the £36 he'd paid to have the car inspected, plus statutory interest. He

also said that Close Brothers should pay Mr C an additional £250 for the distress and inconvenience he'd been caused and remove any adverse entries from his credit file relating to this agreement.

Close Brothers agreed with the investigator's conclusions, but not the remedy proposed. They said, when a car was rejected/repossessed, they'd normally charge a customer one monthly payment for every 1,000 miles the car had travelled. Because Mr C had done 12,500 miles in the car at the point of repossession, they would usually hold him liable for 12.5 payments, not the 15 the investigator had recommended. And the interest wouldn't be removed, as this was something the customer would always have had to pay.

I issued a provisional decision on 17 February 2022, where I explained my intention to uphold the complaint. In that decision I said:

*In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr C was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.*

*The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Close Brothers are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale; and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.*

*The CRA also says that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied, unless Close Brothers can show otherwise. But, where a fault is identified after the first six months, it's for Mr C to show that it was present when the car was supplied. So, if I thought the car was faulty when Mr C took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Close Brothers to put this right.*

*It's not disputed that there were faults with the car, or that these faults made the car of an unsatisfactory quality when the car was supplied to Mr C. So, my decision will focus on what is a fair and reasonable remedy in the circumstances.*

*Where a car was not of a satisfactory quality when supplied, the CRA allows for one chance at repair. And if that repair isn't successful, then the car can be rejected.*

*From what I've seen, the supplying dealership carried out some work on the car in early July 2020. Although I've not seen anything to show me exactly what work was done. But the dealership and Close Brothers were aware of issues Mr C was having with car. And on 1 July 2020, Close Brothers had asked Mr C to book the car into dealership.*

*Given this, and because the car has been repossessed so a repair is no longer possible, I think it's fair for me to base my remedy on Mr C having the right to reject the car.*

*If Mr C had rejected the car in mid-2020, I would've expected Close Brothers to refund the deposit he paid. So, I think it's fair that this is refunded to him now.*

*But, because Mr C had use of the car, I wouldn't expect Close Brothers to refund any payments. And, if he'd rejected the car in mid-2020, it's reasonable to presume that he would've needed to get a replacement vehicle. Which would've come with its own costs. I'm aware that Close Brothers say they should be able to charge Mr C a monthly payment for every 1,000 miles he drove the car. But this wasn't a 'pay by the mile' agreement. Mr C was charged a payment for every month he was in possession of the car.*

*So, I think Close Brothers should be allowed to keep all the payments Mr C made between supply of the car, and when it was repossessed. And, where Mr C didn't make a scheduled payment under the agreement, I also think it's fair that this remains outstanding (as arrears) and Close Brothers are entitled to pursue him for this.*

*However, Mr C was driving a car with a fault. So, I think it's fair that an allowance is made for this impaired usage. Given all of the circumstances, I think that Close Brothers should refund Mr C 10% of the payments he'd made, plus statutory interest, to account for this impaired usage. But, as he remains in arrears, this refund can be offset against the payments Mr C didn't make.*

*Mr C has also incurred costs in relation to the faults on the car. He's already submitted proof of the £36 cost of the inspection he had done in August 2020. And I think it's fair that Close Brothers reimburse him for this. He's also said that he paid to have the car repaired in November 2020. But he hasn't provided any evidence of this. If, as part of his response to my provisional decision, Mr C provides proof of these repair costs, then I'll also be asking Close Brothers to reimburse these costs. However, as this will mean the car wasn't impaired after the repairs, I would also look to cap the 10% impaired usage refund to when the repair took place.*

*Finally, I agree with the investigator that Mr C was inconvenienced by having a faulty car. Especially with the amount of times this went back to the dealership for inspection or repair while he was in possession of it.*

*So, my provisional decision is that Close Brothers should:*

- *remove any adverse information relating to the agreement from Mr C's credit file;*
- *refund the £1,100 deposit Mr C paid;*
- *refund 10% of the payments Mr C paid to account for the impaired usage of the car (if Mr C provides evidence of repair this refund will be capped at the date of repair);*
- *reimburse Mr C for the £36 cost of the inspection on the car in August 2020 (plus the cost of the repairs in November 2020 if proof of these costs is provided as part of Mr C's comments on this provisional decision);*
- *apply 8% simple yearly interest on the above refunds, calculated from the date Mr C made the payments to the date of the refund<sup>†</sup>; and*
- *pay Mr C an additional £250 to reflect the trouble and upset he's been caused.*

*Close Brothers can also offset the refund for the impaired usage only against Mr C's outstanding balance.*

*<sup>†</sup>HM Revenue & Customs requires Close Brothers to take off tax from this interest. Close Brothers must give Mr C a certificate showing how much tax they've taken off if he asks for one.*

## Responses

Mr C agreed with my provisional decision, but he didn't provide any evidence of the repairs to the car in November 2020. Because of this, I won't be asking Close Brothers to reimburse the cost of these repairs as part of my final decision.

Close Brothers also agreed with my provisional decision, but they've asked if my saying they could offset the 10% payment refund against Mr C's arrears means they can reduce the arrears by this amount, and not pay it to Mr C.

Also, despite my saying "*Close Brothers can also offset the refund for the impaired usage only against Mr C's outstanding balance*", Close Brothers have said they'd like to withhold the £850 damages charges from the deposit refund, and they like to use the remaining £250 to reduce the arrears.

## 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.

For clarity, with regards to offsetting, Close Brothers can use the total amount of the payment refund and reduce the total amount outstanding by the value of this refund. But I would point out that the figure Close Brothers have quoted didn't include interest. And my provisional decision was quite clear that statutory interest should be included when calculating the amount of the refund.

While I appreciate that Mr C has an outstanding balance, I don't think it's fair that the deposit is automatically used to reduce this. And this isn't something we would normally recommend. This is because, if Mr C hadn't used this money as a deposit against a car that was of an unsatisfactory quality when supplied, he would've had this money available to use for other purposes. So, I don't think it's fair that Close Brothers keep this.

And, again, the figures Close Brothers quoted didn't take into consideration statutory interest, even though I clearly said it should be included.

However, as Mr C is in arrears, if he agrees to Close Brothers using the deposit refund to offset the arrears, then they're able to do this. And, as he's in arrears, I'd also expect Close Brothers to treat him with consideration and forbearance when agreeing any repayment plan.

So, for these reasons, Close Brother's comments don't change my view.

## Putting things right

So, given the above, Close Brothers should:

- remove any adverse information relating to the agreement from Mr C's credit file;
- refund the £1,100 deposit Mr C paid;
- refund 10% of the payments Mr C paid to account for the impaired usage of the car;
- reimburse Mr C for the £36 cost of the inspection on the car in August 2020;
- apply 8% simple yearly interest on the above refunds, calculated from the date Mr C made the payments to the date of the refund <sup>†</sup>; and
- pay Mr C an additional £250 to reflect the trouble and upset he's been caused.

Close Brothers can offset the refund for the impaired usage (including interest) only against Mr C's outstanding balance.

†HM Revenue & Customs requires Close Brothers to take off tax from this interest. Close Brothers must give Mr C a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained above I uphold Mr C's complaint. Close Brothers Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 April 2022.

Andrew Burford  
**Ombudsman**