

The complaint

Mr S complains that a car he bought from Close Brothers Limited under a conditional sale agreement was not of satisfactory quality. He says he should be able to reject it.

What happened

On 22 November 2021 Mr S signed a four-year conditional sale agreement for a used car. The car was some ten years old and had covered around 92,000 miles. Its cash price was £4,294.

Mr S says that the car's oil needed topping up within a few days. He says too that, although it was advertised as having 12 months MOT, it did not. He contacted Close Brothers on 11 December 2021 to say that he had contacted the dealership, which was going to inspect the car within a few days.

On 16 December 2021 Mr S had the rocker cover gasket replaced, in an attempt to cure an oil leak. He paid £192 for the repair. The mechanic noted that there was a possible further leak from the rear crank seal.

A few days later, on 20 December 2021, Mr S arranged for the RAC to inspect the car, as he was still having problems with it. That inspection noted: there was an intermittent misfire; one of the spark plugs was cross-threaded; there was evidence of an oil leak on the gearbox; there was an oil leak from the cam cover gasket; and the cam belt cover was not correctly secured.

Mr S contacted Close Brothers and a further inspection was arranged. An engineer from ACE inspected the car on 19 January 2022. Those inspection findings were largely consistent with the RAC's findings – the engine was misfiring and there were oil leaks from the crankshaft and engine sump. The report concluded however that it was unlikely that these faults were present or developing at delivery; it noted that Mr S had driven around 4,000 miles since he took delivery of the car.

Relying to a large extent on the findings of the ACE report, Close Brothers wrote to Mr S to say that it did not accept responsibility for the car's faults. Mr S referred the matter to this service, where one of our investigators considered the case. She took the view that the faults with the car were matters of wear and tear and that it was likely the car had been of satisfactory quality when it was supplied to Mr S. She did not recommend that Close Brothers take any further action.

Mr S did not accept the investigator's findings and asked that an ombudsman review the case.

I did that and, because I was minded to reach a different conclusion from that reached by the investigator, issued a provisional decision. In that decision, I said:

The conditional sale contract was to be read as including a term that the car be of satisfactory quality. That means the quality a reasonable person would expect in the circumstances. Those circumstances include the car's age, price and mileage.

Mr S's car had a high mileage, was ten years old and was heavily discounted when compared with a newer car of the same make and model. It was, I think, to be expected that it would need more than routine maintenance over the four years of the conditional sale agreement.

There can be no real dispute that the car had faults and that these developed within a very short time. Mr S contacted Close Brothers about the oil level within three weeks of taking delivery, and the first leak was diagnosed just a few days later.

The repair carried out on 16 December was not successful, and the car experienced similar issues a few days later. The RAC report identified a number of issues, including a cross threaded spark plug. That report simply stated what was wrong with the car, but – not surprisingly – did not express any view about whether it was of satisfactory quality or had been at delivery.

The ACE report was however arranged with a view to answering that question. That is, it both reported on the car's condition and expressed a view about its likely quality at the point of delivery. Mr S says that the inspection was quite brief – around ten minutes – and that no road test was carried out. The RAC inspection report indicates that its engineer spent more than 90 minutes checking the car. I note that the ACE report does not reference the RAC's report and, whilst it says there is no evidence of previous unsuccessful repairs, does not refer to the spark plug issue. It makes no reference to the repairs carried out in December 2021.

The ACE engineer concluded that the faults would not have been present at delivery. That conclusion appears to have been based to a large degree on the fact that Mr S had been able to drive the car around 4,000 miles.

Where an item is not of satisfactory quality within six months of delivery, the Consumer Rights Act 2015 places the burden on the supplier to show that it was of satisfactory quality at delivery. I am not bound by the same rules of evidence as a court would be, but I must take relevant law into account. In my view, the ACE report does not satisfactorily explain its conclusion that the faults with the car were not developing or present at the point of sale.

Mr S was told that the car had an MOT certificate, valid for 12 months. In fact, its next inspection was due in February 2022. In making statements about the car, the dealership was, or was to be taken as, acting on behalf of Close Brothers. Mr S arranged an MOT test as soon as he took delivery of the car. The car passed the test, but Mr S should not have had to do that, having been told it was not necessary. I observe however that the test largely concerns issues of safety and roadworthiness, not overall quality. None of the faults that Mr S later identified was a matter of roadworthiness or safety.

The Consumer Rights Act 2015 sets out a number of possible remedies where goods are not of satisfactory quality. They include repair, replacement, a refund, a reduction in price and rejection of the goods. I have considered carefully what is appropriate here. In my view, Mr S should be allowed to reject the car and have refunds of the additional expenses he has incurred. I note however that he has had some use of it, although it appears he has made no payments since January 2022. I do not believe it would be fair to require Close Brothers to refund the monthly payments that Mr S has made.

In conclusion, I do not believe that the car was of satisfactory quality when it was supplied to Mr S. To resolve the complaint, he should be put in broadly the position he would have been if he had not entered into the agreement, to the extent that is possible.

I recommended that Close Brothers end the agreement, reimburse repair and inspection costs, refund the deposit Mr S had paid, and pay Mr S a further £250 in recognition of the inconvenience to which he had been put.

In response to my provisional decision, Mr S said the RAC inspection had been included as part of his membership package. He had paid £54.85 for the MOT test. He said too that he had started court action against the dealership. He had withdrawn those proceedings when it appeared that our consideration of his complaint would resolve matters sooner than he had thought. I note as well that he was able to recover his deposit through his bank.

Close Brothers did not respond to my provisional decision.

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.

As neither party has disputed my provisional findings, I see no reason to change them – other than to remove the requirement that Close Brothers refund the cost of the RAC inspection (since it was included in Mr S's membership package) and the deposit.

My final decision

For these reasons, my final decision is that, to resolve Mr S's complaint in full, Close Brothers Limited should:

- end the conditional sale agreement, with nothing further to pay;
- arrange for the collection of the car at no cost to Mr S;
- refund the cost of the MOT test, £54.85, together with interest at 8% a year simple from 22 November 2021 until the date of the refund;
- refund the cost of repairs, £192, together with interest at 8% a year simple from 16 December 2021 until the date of the refund;
- remove any information registered with credit reference agencies in relation to the agreement; and
- pay Mr S £250 in recognition of the inconvenience to which he has been put.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 June 2022.

Mike Ingram

Ombudsman