DRN-3645933

The complaint

Mr Z and Ms G complain about the quality of a car supplied by Close Brothers Limited ("CBL") trading as Motor Finance.

What happened

In February 2021 Mr Z and Ms G entered into a conditional sale agreement with CBL for a used car. The car was just under nine years old, had travelled approximately 111,000 miles, and had a cash price of £12,990. It came with an additional warranty provided by R, a company that specialises in warranty and breakdown services.

Around two months later the car broke down. Mr Z and Ms G say they'd only travelled around 900 miles in this time. They took the car for an inspection by a manufacturer's garage, who said more diagnostic work would be needed to find the cause of the problem.

Mr Z and Ms G say they contacted the dealer about getting this issue resolved but found them unhelpful. On 17 May 2021 they complained to CBL, saying they wanted to reject the car.

CBL arranged for an independent engineer to inspect the car. The engineer's report said:

> "*clearly further investigation of the condition will need to take place, with regards to a potential timing and fuel low pressure issue. This will require dismantling to take place if further diagnostics do not reveal the condition.*"

Following this inspection, CBL told Mr Z and Ms G the dealer had agreed to carry out a repair. As the car wasn't driveable, arrangements needed to be made to transport it back to the dealer's premises.

Mr Z and Ms G say that, after a lot of confusing messages, R advised them to take the car to a local independent garage. They say they understood this was to get the fault properly diagnosed, so a warranty claim could be submitted.

On 29 July 2021 the car was recovered to an independent garage, E, who attempted to submit a warranty claim to R so the car could be repaired. But the claim was declined because R considered the fault to have been present when the car was supplied.

E sent CBL a report and estimate for repair. The report confirmed:

> "*Timing chain has failed. Valves have impacted on all pistons, cylinder head damage & damage to engine block. Engine is beyond economical repair*."

E told CBL they'd incurred the following costs, which needed to be paid before the car would be released:

- Transportation of the car: £300
- Diagnostic: £375

- Estimate preparation: £150.

E said storage costs would also be incurred on a daily basis until the car was collected.

CBL agreed to cover the cost of the diagnostic. They told Mr Z and Ms G to pay the rest of E's costs by 16 August 2021, so the car could be collected. But Mr Z and Ms G say they couldn't afford to pay this due to their worsening financial situation.

On 25 August 2021 CBL issued their final response to Mr Z and Ms G's complaint. CBL said they hadn't been able to collect the car because E's costs hadn't been paid – and that this meant they couldn't agree to rejection or repair. CBL said they'd credited one monthly instalment for a missed payment in August 2021, and paid Mr Z and Ms G £150 for any distress and inconvenience they'd been caused.

Our investigator looked into what had happened. She thought CBL should have made appropriate arrangements to recover the faulty car instead of leaving it with E, accruing storage charges. So she said CBL should arrange for its recovery.

The investigator said CBL should cancel the agreement and collect the car with nothing further for Mr Z and Ms G to pay - and refund their deposit of £1,299. She also thought CBL should refund the last seven months' repayments Mr Z and Ms G had made, with interest, because they'd had no use of the car during that time. And she said CBL should pay £250 for the distress and inconvenience caused.

CBL agreed Mr Z and Ms G should be able to reject the car. They also agreed to refund the repayments Mr Z and Ms G had made during the time they hadn't been able to use it - and to pay £250 for the distress and inconvenience caused.

But CBL said they'd provided evidence showing they'd instructed Mr Z and Ms G that the car needed to be delivered to the dealer. CBL said that, by authorising the car to be taken elsewhere, Mr Z and Ms G had caused additional charges to be incurred. CBL said they'd recently paid E's charges of £2,400 so the car could be collected. They felt this cost should be deducted from any refunds due to Mr Z and Ms G.

The investigator said Mr Z and Ms G weren't liable to pay E's charges. She said the dispute about who should cover this cost was a matter for CBL to raise with the dealer and R.

CBL said they wouldn't be able to pursue this with the dealer or R. They said they hadn't received any evidence showing R had advised Mr Z and Ms G to have the car delivered elsewhere. And in any event, they felt Mr Z and Ms G would still be liable for the costs incurred because they'd chosen to follow R's advice instead of CBL's. They asked for an ombudsman to review the case.

My provisional decision

I issued a provisional decision, in which I said:

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

Mr Z and Ms G's complaint is about a car supplied under a conditional sale agreement. Entering into consumer credit contracts like this as a lender is a regulated activity. So, I'm satisfied I can look into Mr Z and Ms G's concerns about CBL.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of the goods is satisfactory.

To be considered satisfactory, the goods would need to 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 involving a car, it seems likely that the relevant circumstances a court would take into account might include things like its age and mileage at the time of sale, and the car's history.

CBL accept the faults with this car were very likely to have been developing at the time it was supplied to Mr Z and Ms G - and that they should therefore be able to reject the car. So, it doesn't seem in dispute that the car was of unsatisfactory quality at the time it was supplied. But for completeness, I've considered whether this was the case.

The car broke down after around two months and 900 miles. The engine had suffered substantial damage due to failure of the timing chain, which I consider to be a significant fault. Taking into account all the relevant circumstances, I'm satisfied that the fault was present or developing at the time the car was supplied. It follows that I'm satisfied the car wasn't of satisfactory quality when it was supplied.

The main area of dispute in this case relates to the outstanding garage bill that needed to be paid before the car could be collected. I've reviewed how that situation arose.

CBL say they provided clear instructions to Mr Z and Ms G about the collection of the car, but they chose not to follow them. They say they have records of conversations in which Mr Z and Ms G said they didn't want the dealer to carry out repairs. I've given careful thought to these points. But having reviewed all the evidence in detail, I'm not persuaded Mr Z and Ms G have acted unreasonably. I'll explain why.

The case notes say that on 7 July 2021 CBL told Mr Z and Ms G the dealer would repair the car – and that Mr Z and Ms G informed them it wasn't driveable. Over the weeks that followed, I've seen there was lots of communication between the dealer, CBL and Mr Z and Ms G about how and when the car would be collected.

The case notes show Mr Z and Ms G told CBL they wouldn't be able to use their own breakdown cover with R to get the car to the dealer, as they'd already used this service once to recover the car. This information was relayed to the dealer, who sent a recovery truck to collect the car. But the recovery truck was sent to the manufacturer's garage that had inspected the car several weeks earlier – and the car was no longer there.

I've seen no evidence to suggest the car had been moved since the independent engineer inspected it outside Mr Z and Ms G's home on 2 June 2021. So, I'm satisfied that CBL knew the address from which it needed to be picked up.

CBL's notes show they called Mr Z and Ms G on Monday 19 July 2021. Mr Z and Ms G said they'd been told the car would be collected over the weekend, but this hadn't happened. CBL promised the car would be collected that day. The notes go on to record an agreement between CBL and the dealer that the car would be collected by mid-day on 22 July 2021.

On 22 July 2021, CBL's notes record a suggestion from the dealer that the car could be transported more quickly – and repairs started sooner – by instructing R to collect the car. The dealer said Mr Z and Ms G would need to contact R to provide their current address, because the information R held was out of date.

I've listened to the recording of CBL's phone call to Mr Z and Ms G the following day. CBL repeatedly asked Mr Z to contact R to confirm the address for collection. Mr Z expressed reluctance to do this, initially saying "Not my job, that's the dealer's job, I'm not going to do that". Mr Z explained that the dealer and R both had his home address - and that R had previously delivered the car there. He expressed concern about the number of broken promises to collect the car and asked what would happen if they didn't collect this time. But despite his obvious concerns about this, Mr Z clearly agreed to call R, as CBL requested.

Following this, I've seen a copy of an email Mr Z sent CBL on 2 August 2021. He said he'd contacted R, but they'd refused to recover the car free of charge. I've seen that CBL replied on 3 August 2021. Their email said there'd been crossed wires - and that the car could be recovered without charge to Mr Z and Ms G using the dealer's account with R, instead of Mr Z and Ms G's personal account.

The evidence I've seen shows the car had been taken to E on 29 July 2021. Mr Z and Ms G have explained that, after a lot of confusing messages, R had advised them to take the car to a local independent garage. They understood this was to get the fault properly diagnosed so a warranty claim could be submitted. I've seen nothing in the evidence to contradict the account they've given here.

All things considered, I think it's clear that confusion was created about the arrangement for R to collect the car, and I don't think this was the fault of Mr Z and Mrs G. In particular, I think there was likely to have been confusion as to whether the collection was to be requested under Mr Z and Ms G's own breakdown service, under the warranty supplied with the car, or as a separate arrangement at the dealer's request.

I take into account the added complication of R being instructed by the dealer, who explained the arrangement to CBL, who explained it to Mr Z and Ms G, who were then expected to confirm the arrangements with R.

I've seen a suggestion that a previous collection attempt was unsuccessful due to an incorrect address being given. But I've seen no supporting evidence to show Mr Z and Ms G were in any way responsible for that error.

I find the car to have been available for collection from 2 June 2021 – when the independent engineer inspected it outside Mr Z and Ms G's home - to 29 July 2021. I consider this ample time for it to have been collected and returned to the dealer for full diagnosis of the fault, with a view to either repair or rejection of the car. By this point I note Mr Z and Ms G hadn't been able to use the car for more than three months.

Thinking about all of this, I'm not persuaded that Mr Z and Mrs G acted unreasonably by arranging for the car to go to E.

I've seen the outstanding charges owed to E related to recovery of the car, diagnosis of the fault, preparation of a written report to support the request to reject the car, and storage charges. I'm satisfied these charges wouldn't have been incurred if CBL had been more proactive and arranged for the car to be returned to the dealer, rather than bringing R into things which ultimately led to delay and confusion. A significant amount of the charges related to storage - which could have been avoided if CBL had been more proactive once the car had been taken to E.

Overall, I find these charges flow from confusion and miscommunication following a breach of contract by CBL. I also note CBL's obligation under the CRA to ensure a repair is carried out within a reasonable timeframe and without significant inconvenience to Mr Z and Ms G – and I'm not satisfied that was achieved here.

So, I don't think it fair to hold Mr Z and Ms G responsible for any of the costs incurred.

Putting things right

CBL agree that Mr Z and Ms G should be able to reject the car. This means the agreement will come to an end with no further payments due, and Mr Z and Ms G should receive a refund of the £1,299 deposit they paid.

I've seen evidence showing Mr Z and Ms G told the dealer the car broke down on 18 April 2021 – and I'm satisfied that they haven't been able to use it since then. So, I think they should receive a refund of the repayments they've made under the agreement from this date.

Mr Z and Ms G say they were put in a very difficult financial position due to having to pay travel expenses as well as meeting their regular monthly payments for the car - and they've been recorded as having defaulted on the agreement. I'm satisfied that they were put in this difficult situation because CBL had supplied them with a car that wasn't of satisfactory quality. So, I think it's fair that any adverse information about this agreement should be removed from their credit file.

Mr Z and Ms G have told us that the problems with the car caused them a great deal of stress. They say they've been paying for a car they haven't been able to use, whilst also having to pay for public transport for themselves and their children. I can appreciate that the dispute over whether they should also pay E's outstanding bill of £2,400 would have added to their stress.

Mr Z and Ms G feel CBL's representative was rude and abusive towards them on a number of occasions. I haven't heard any evidence of this, but I haven't had access to recordings of all the phone conversations they've had about this issue. I've seen a copy of an email CBL sent Mr Z following a phone conversation on 4 August 2021, which says: "I apologise if you feel threatened by my tone this wasn't my intention." So, I think it likely that Mr Z was upset by at least one of the conversations he'd had with CBL.

CBL paid £150 to Mr Z and Ms G for any distress and inconvenience they've been caused. I've seen CBL have agreed to increase this to £250. Based on the information I've seen so far, I think this fairly reflects the impact this situation has had on Mr Z and Ms G.

I said I intended to uphold this complaint and direct CBL to:

- End the agreement at no further cost to Mr Z and Ms G. For the avoidance of doubt, this means CBL should not pass on any charges they incurred from E.
- Refund the £1,299 deposit.
- Refund the payments Mr Z and Ms G have made under the agreement from 18 April 2021.
- Interest should be added to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Remove any adverse information about this agreement from Mr Z and Ms G's credit file.
- Pay Mr Z and Ms G a total of £250 for the distress and inconvenience they've been caused, if this hasn't been done already.

Responses to my provisional decision

Mr Z and Ms G said they accept my provisional findings.

CBL said they believe it would be reasonable for them to withhold the storage costs from the refund to Mr Z and Ms G. I'll summarise the points CBL made:

- Although they agree there was confusion about when the car would be collected and possibly who it would be collected by, they feel it was clear from the evidence that the last instruction to the customer was to use the recovery service to have the car transported to the supplying dealer. No instruction was given at any point to have the car taken to a third party garage.
- There's evidence to show the customer was given a specific instruction from the dealer, but a lack of evidence to confirm they were given a contradictory instruction by R. CBL feel the reasonable conclusion would be to give more significance to the point for which there is evidence.
- R was only acting as a collection agent. If the customer was confused about what to do it would be reasonable for them to make an attempt to clarify this.
- As the dealer had an account with R allowing a vehicle to be transported without charge, CBL wouldn't refuse this and elect to incur the cost of making arrangements themselves. Delivery arrangements like this are very common. The only reason for the issue here was that the customer didn't follow the dealer/CBL's instructions.
- It isn't reasonable for CBL to be held responsible for E's costs on the basis that these costs wouldn't have been incurred if CBL had done things differently. They said Mr Z and Ms G had a responsibility to collect the vehicle.

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.

I've given careful thought to the additional points CBL have raised. I'm not persuaded that I should depart from my provisional decision, so I adopt that reasoning here. But I'll expand on some issues for clarity.

First I'll address CBLs' point about who collected and transported the car. CBL say they expect the supplying dealer to arrange the collection - and that they wouldn't make arrangements themselves where the dealer already has a facility in place to do this at no cost. I don't consider the arrangements between CBL and the supplying dealer to be relevant here - I'll explain why.

The car was supplied to Mr Z and Ms G by CBL. So, if it wasn't of satisfactory quality at the time it was supplied, responsibility for providing a remedy rests with CBL. I note that, in the first instance, the proposed remedy was to return the car to the supplying dealer for a repair.

The CRA says a repair must be carried out within a reasonable time and without significant inconvenience to Mr Z and Ms G. So, I'm satisfied that CBL had an obligation to ensure the collection arrangements weren't causing unreasonable delays or inconvenience.

As I explained in my provisional decision, I'm satisfied that the car was available for collection from 2 June 2021 to 29 July 2021. I consider this more than enough time for CBL to have collected and returned it to the dealer for full diagnosis of the fault, with a view to either repair or rejection.

CBL say the only confusion caused related to when, and by whom, the car would be collected. They feel strongly that the evidence shows the last instruction Mr Z and Ms G were given was to use the recovery service to have the car transported to the supplying

dealer. They feel more weight should be given to this evidence, due to the lack of supporting evidence to confirm Mr Z and Ms G's version of events. I'm not persuaded of this – I'll explain my reasoning in more detail.

I've reviewed the evidence of the last instructions CBL gave Mr Z before R collected the car. I've listened again to the recording of their phone conversation on 23 July 2021 about the arrangements. I heard Mr Z say: *"whatever you say I follow that, but I'm 100% sure they let me down, which they done for the last three months".* CBL's representative acknowledged that there'd been issues with collection, but assured Mr Z that R *"can collect it at no cost to yourself and no effect to any future breakdowns."*

CBL's contact notes show they contacted Mr Z again on 2 August 2021 to find out why the car hadn't been delivered to the dealer. The notes show Mr Z told CBL he'd contacted R but they'd told him the dealer would need to arrange the collection.

CBL's notes show they then contacted R, who confirmed they'd quoted Mr Z and Ms G £250 to recover the car to the dealer. So I'm satisfied that Mr Z had contacted R, as instructed, but they hadn't agreed to transport the car to the dealer free of charge, as he'd been promised by CBL. I think this would be confusing, frustrating, and stressful for him.

So I remain satisfied that, when Mr Z and Ms G confirmed the arrangements with R for the car to be collected on 29 July 2021, there was confusion as to whether this was being requested under Mr Z and Ms G's own breakdown service, under the warranty supplied with the car, or as a separate arrangement at the dealer's request. And I remain of the view that Mr Z and Ms G didn't act unreasonably by arranging for the car to go to E.

And as I don't consider Mr Z and Ms G to be responsible for the confusion that resulted in arrangements being made for the car to go to E, I remain of the view that it wouldn't be fair to hold them responsible for any of the costs incurred.

My final decision

For the reasons I've explained, I uphold this complaint and direct Close Brothers Limited to:

- End the agreement at no further cost to Mr Z and Ms G. For the avoidance of doubt, this means CBL should not pass on any charges they incurred from E.
- Refund the £1,299 deposit.
- Refund the payments Mr Z and Ms G have made under the agreement from 18 April 2021.
- Interest should be added to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Remove any adverse information about this agreement from Mr Z and Ms G's credit file.
- Pay Mr Z and Ms G a total of £250 for the distress and inconvenience they've been caused, if this hasn't been done already.

If CBL consider tax should be deducted from the interest element of the award, they should provide Mr Z and Ms G with a tax deduction certificate so they can reclaim the tax, if they're eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z and Ms G to accept or reject my decision before 29 September 2022.

Corinne Brown
Ombudsman