

## The complaint

Mrs P complains that the car she acquired through Close Brothers Limited (“CBL”) wasn’t of satisfactory quality. She wants to reject the car and cancel the finance agreement.

## What happened

Mrs P entered a conditional sale agreement in January 2021 to acquire a used car. She paid a deposit of £199, and the balance of £2,600 was to be paid through the credit agreement which was set up over a 36-month term. At the time of acquisition, the car had already been driven more than 78,000 miles and was just over 12 years old.

Mrs P says she spent more than £900 on repair costs during 2021, and the car’s turbo failed at the end of the year. She says her local repair centre, who I’ll refer to as “H”, told her the fault with the turbo was likely developing at the point of sale. Mrs P told us:

- she first experienced problems with the turbo within three months of acquiring the car and she asked CBL to pay for it to be repaired;
- H notified her of lengthy gaps in the car’s servicing history, which may have contributed, in part, to the issues with the turbo; it said regular servicing would’ve ensured the turbo was being supplied with the right level of good oil; and it said that further strain on the turbo through continued use of the car caused its ultimate total failure;
- the car has been in for repairs and servicing on at least three occasions, and the latest quote she’s received for repairs is for £1,000; this means the repairs bills for the car will total more than she’s had to pay in monthly repayments to CBL, and is almost equal to the car’s initial sales price;
- in addition to the turbo failure; there’s been issues with the rocker cover and injectors being covered in oil; a worn actuator; fault codes relating to the EGR valve and crankshaft; a corroded rear shock absorber; corroded door sills; and failure of the parking brake;

Mrs P says the car sold to her was not of satisfactory quality and wasn’t fit for purpose at the time of sale. She wants the hire purchase agreement to be terminated and wants a refund of the money she’s spent on repairs. Mrs P says the car is no longer roadworthy, and although she’s had to insure it, it’s been SORN and stored off-road.

CBL rejected this complaint. It says it can’t accept Mrs P’s rejection of the car because any fault with the turbo was not present or developing at the point of supply. It said it had commissioned an independent inspection of the car and the subsequent report confirmed the fault wasn’t present or developing at the point of supply because the vehicle wouldn’t have been able to travel the miles driven by Mrs P.

Our investigator looked at this complaint and said initially that he didn’t think it should be upheld. He acknowledged that there was clearly a fault with the turbo, but he said the independent report was persuasive – the fault with the turbo wasn’t present or developing at the point of supply, and Mrs P had been able to drive the car for nearly 6,000 miles.

Mrs P disagreed and commissioned a further independent inspection. H had previously indicated to her that parts of the exhaust system and *diesel particulate filter* ("DPF") had been tampered with, something Mrs P knew nothing about. So, she asked for the independent inspection to focus on this and the effect this would've had on the car.

This second independent inspection persuaded our investigator to reconsider his findings. He concluded that the report showed that the exhaust system and DPF had indeed been tampered with, and the associated corrosion on the welding confirmed that this had taken place prior to Mrs P's acquisition of the vehicle.

Our investigator upheld Mrs P's complaint because the car was not of satisfactory quality at the point of supply, and he asked CBL to put things right.

This Service has not heard from CBL as to whether it accepts or rejects our investigator's opinion, so the complaint comes to me to decide.

### **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.

Having done so, I agree with our investigator that this complaint should be upheld. I'll explain why.

As the hire purchase agreement entered into by Mrs P is a regulated consumer credit agreement this service is able to consider complaints relating to it. CBL is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. This says under a contract to supply goods, the supplier – CBL in this case – had a responsibility to make sure the goods were of 'satisfactory quality'.

Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods. In this case, I would consider relevant factors to include, amongst others, the car's age, price, description and mileage.

What I need to consider in this case is whether the car supplied to Mrs P was of satisfactory quality or not. There doesn't appear to be any disagreement between parties over whether the car has a fault – everyone accepts the turbo has failed; it's no longer driveable and the car is being stored off-road. The difference in opinion between Mrs P and CBL relates to whether the fault was present or developing at the point of supply, and it's on this question that I must reach a conclusion.

Having considered things most carefully, including both independent reports, I, like our investigator, don't think the car supplied to Mrs P was of satisfactory quality at the point of sale. I've summarised the relevant points from both independent reports below:

Report 1 – commissioned by CBL

The inspector confirmed that the car started immediately and without issue. It was driven for around 200m and exhibited a '*lack of performance consistent with a turbocharger fault*'. Taking account of an historic fault code from April 2021, they said in their opinion, the reduced performance was a result of a fault with the turbocharger, which '*would not have been present or developing at finance inception*'. They said the fault developed due to general in-service wear and deterioration.

## Report 2 – commissioned by Mrs P

The inspector confirmed that they had undertaken a general vehicle condition check which showed that the car was in a fair and reasonable general condition. They reported that there was evidence of oil seepage in various areas of the engine compartment and components on the engine and that steam cleaning would be required to determine the exact source of leakage and the appropriate repair action.

The inspector reported that the turbo induction hose had collapsed and was split, and that upon removal, severe damage to the impeller blades caused by long-term in-service wear was evident.

The inspector also noted that the top section of the DPF unit was clearly exposed and showing unquestionably that the unit has been tampered with – the top end plate centre pipe shows a poor previous, non-standard welded pipe section, consistent with the removal of the inner core filter of the DPF for operational purposes.

The inspector did concur with the first independent report and said that the turbocharger wear was the direct result of normal in-service age-related wear and tear. But they noted that the wear may have been accelerated by poor oil quality caused fuel contamination within the oil as a result of an issue with the vehicle's DPF system.

The inspector said that "*there is no doubt that the DPF canister has undergone a reweld, and the level of corrosion in and around the DPF weld leads us to the conclusion that the DPF has been tampered with at some point in the past that precedes the date of sale.*"

*Tampering with the DPF would prevent the vehicle meeting minimum MOT standards and from being fully compliant...therefore, in our considered opinion, this vehicle was not sold in a condition that was fit for regular use on the public highway".*

Taking both these reports into account, I've concluded that the car was not of satisfactory quality when it was first supplied to Mrs P. I say this because the two separate inspections do not contradict one another; in the first report, the inspector was only instructed to examine the turbo, in the second case, the inspector was given a wider brief. The second inspector agrees with the findings in report one, but identifies other issues highlighted by Mrs P to CBL and confirms that these pre-date the supply of the car to Mrs P.

I now need to consider what would be fair and reasonable to put things right. Given that the car has been looked at a number of times and is neither roadworthy nor movable, I don't think any further attempts at repair seem reasonable. So, I think Mrs P should be able to reject the car.

I need to consider that Mrs P has had some use of the car, but that she's not been able to use it since January 2022. I'm also going to take into consideration what she's told us about the worry and anxiety that this fault has caused her since she first acquired the car, and the inconvenience she's been caused; she's had to car-share, borrow her husband's car, and her parents' car. So, I'm going to ask CBL to pay her some compensation in recognition of

this. I'm also going to instruct CBL to reimburse her for some of the consequential costs she's incurred.

Mrs P says she's had to insure the car, even though she's been unable to use it. Whilst I understand the cost and frustration of this, the insurance has provided peace of mind by covering her against losses associated with fire or theft. Accordingly, I don't think CBL needs to reimburse her insurance costs.

### **Putting things right**

I direct Close Brothers Limited to put things right by doing the following:

- End the credit agreement with nothing further to pay.
- Remove any adverse information from Mrs P's credit file in relation to this agreement.
- Collect the car, if it hasn't already been collected, at no cost to Mrs P and at a time and date suitable for her.
- Refund Mrs P her deposit of £199
- Refund all monthly payments made from 6 January 2022 to the date of settlement.
- Pay 8% simple interest from the time these payments were made to the date of settlement.
- Pay Mrs P £195 – this is the cost she paid for the independent report.
- Pay Mrs P £50.38 – this is the cost she paid for the initial diagnostic report.
- Pay Mrs P £150 for the distress and inconvenience caused.

### **My final decision**

My final decision is that I uphold this complaint and require Close Brothers Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 28 February 2023.

Andrew Macnamara  
**Ombudsman**