

The complaint

Mr K complains that Close Brothers Limited trading as Close Brothers Motor Finance treated him unfairly, when he tried to return a used car which was financed under a conditional sale agreement with them.

What happened

In January 2022, Mr K got used car from a dealer. To pay for the car, Mr K took out a conditional sale agreement with Close Brothers.

Shortly after getting the car, Mr K contacted the dealer and asked to give the car back. He said the engine management light showed that the car had a fault. The dealer attempted a repair, but Mr K told Close Brothers he still wanted to return it. Mr K also brought a complaint to us because he felt Close Brothers weren't treating him fairly.

Close Brothers arranged for an independent inspection of the car, which confirmed that there was a fault. So, Close Brothers told Mr K he could give the car back and exit the agreement for the finance. They also said they would remove any adverse information from Mr K's credit file and refund the repayments he'd made towards the agreement.

Although Close Brothers collected the car from Mr K in April 2022, they didn't end the conditional sale agreement until two months later. This meant Mr K was asked to make payments, even though he no longer had the car. Close Brothers also kept some of the deposit paid by Mr K, because they said he was responsible for some damage to the car. Mr K didn't accept this and said he didn't cause any damage to the car and that Close Brothers should refund the full deposit amount.

One of our investigators looked into what had happened and found that Close Brothers hadn't treated Mr K fairly. He said Close Brothers hadn't provided persuasive evidence that Mr K was responsible for the damage they had seen. He also said a missed payment was still showing on Mr K's credit file.

So, the investigator concluded that Close Brothers should refund the full deposit amount and pay Mr K £250 for the distress and inconvenience caused. The investigator also said Close Brothers should add interest to the part of the deposit they had held back and said they should remove all the adverse information from Mr K's credit file.

Mr K accepted the investigator's findings, but Close Brothers didn't. They said it was reasonable to ask Mr K to pay for the damage to the car they had seen. Close Brothers also provided several quotes to repair the damage, to support the costs they said were involved. The investigator didn't change his conclusions, so Mr K's case has now been passed to me to make a final 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.

This case is about a conditional sale agreement in Mr K's name taken out with Close Brothers, which is a regulated financial product. As such, we are able to consider complaints about it.

The part of Mr K's complaint about the quality of the car has already been dealt with by Close Brothers. And Mr K has accepted the settlement to that part of his complaint. I say this because Close Brothers have agreed that the car had a fault and have taken it back from Mr K. Close Brothers have also refunded the repayments Mr K had made.

Therefore, I think the remaining complaint points for me to consider are about the part of the deposit Close Brothers retained for the damages they had seen, and the distress and inconvenience Mr K says he was caused.

Mr K also says adverse information is still showing on his credit file. So, I've thought about that in my review.

Close Brothers' assessment of the damage to car

Mr K paid a deposit of £10,000 to the dealer, when the conditional sale agreement was taken out in January 2022. Close Brothers refunded £1,000 of the deposit to Mr K in July 2022 and around a month later, they refunded a further £5,430. This means that Close Brothers retained £3,570 of the deposit, to pay for the damage they say Mr K caused to the car.

To support what they've said about the damage, Close Brothers have provided several pictures from the interior and exterior of the car. The pictures were taken at a site away from Mr K's home address and were sent to us just over three months after the car was collected by an agent of Close Brothers. The pictures show that the agent didn't use measuring tools, to demonstrate the scale of the damage they had seen.

In addition to the pictures, Close Brothers have sent us various quotes for the repair work needed to the car. One of the quotes was obtained by the dealer from a repairer near to their sales office. This quote lists the repairs needed and I can see it is undated and handwritten.

Close Brothers have also provided a second quote obtained by the dealer on 10 June 2022. The quote is a short email and estimates the repair cost to be between £3,500 and £4,000. I can see that the quote lists a general bodywork repair cost, along with repairs to alloy wheels and tyres.

In contrast to the evidence sent to us by Close Brothers, Mr K has provided videos and his own pictures, from the day the car was collected from him. The video shows each side of the car and another shows the car being driven away by the agent. The pictures show the car's general condition, but they don't specially focus on any particular part or panel.

Mr K has also sent us a receipt given to him by the agent, when the car was taken away. The receipt is handwritten and contains very basic details of the car, the agent, the date and the time. The receipt doesn't summarise the condition of the car as the agent had found it.

On the one hand Close Brothers have sent evidence to show some damage to the car and the cost of the repairs. But on the other hand, Mr K says he didn't damage the car and his evidence doesn't show any damage in particular. So, I've thought about the guidance given to businesses providing car finance, when a customer returns a car under the type of agreement Mr K had.

The British Vehicle Rental and Leasing Association ("BVRLA") guidelines from the time when the car was collected are relevant here. Page seven of those guidelines say:

"All readily apparent damage and wear, including that deemed normal wear and tear, will be documented when the vehicle is collected. The driver will be given the opportunity to agree with the condition of the vehicle at the point of collection."

On page eight, the guidelines continue to say:

"If the BVRLA member intends to apply any charges, for example for excess mileage, damage or missing equipment, the driver must be advised of those charges no later than four weeks after the vehicle was collected or returned."

Having thought carefully about all the evidence, I don't think Close Brothers documented any damage when the car was collected from Mr K. I can see that Close Brothers didn't tell Mr K about the damage until nearly two months after they took the car back from him. So, I don't think Close Brothers have treated Mr K fairly here.

The BVRLA guidelines also place a responsibility on Close Brothers to show where any damage they intend to charge for, exceeds a fair wear and tear standard. I've said that the photographs Close Brothers have sent us don't contain measurements for the various scratches and dents they've summarised.

Without any sort of measurement, I don't think it's clear from the photographs as to the extent of the damage. I also think the lack of a report carried out by the agent who collected the car makes it difficult to correlate the other damage they've told us about.

Mr K's car was around five years old and had covered 76,500 miles when he got it. I can see from the evidence provided by Mr K, that the car had covered 76,920 miles when he returned it. This means Mr K drove the car around 400 miles in the three months he had possession of it. So, I think the damage Close Brothers have identified, could be viewed as proportional with the age of the car and its mileage before Mr K got it in January 2022.

Overall, I don't think Close Brothers have demonstrated that the damage they've summarised was caused while Mr K had the car. And I'm not persuaded that Close Brothers have shown how the extent of the damage goes beyond fair wear and tear.

In all the circumstances, I think it would be unfair for Close Brothers to hold Mr K responsible for the damage they had identified when they took back the car. So, I think Close Brothers should refund the remaining £3,570 of the deposit back to Mr K.

Mr K has been without the use of the remaining £3,570 from the deposit, since Close Brothers withheld that amount on 18 August 2022. So, I also think Close Brothers should add interest at 8% per year simple to the amount, from 18 August 2022 to the date of settlement of this complaint.

Distress and inconvenience

After Close Brothers collected the car from Mr K in April 2022, they continued to contact him for repayments. I can see from the records held by Close Brothers that they wrote to him on 20 May 2022 with a notice of arrears and that they tried to deduct funds from Mr K's account by direct debit. The records also show where Mr K was in frequent contact with Close Brothers throughout this time, to tell them that the agreement should have been ended.

Furthermore, in April 2022, Mr K says he was trying to source another car. I think this was a

reasonable step, given that Close Brothers had taken the car financed under their agreement back. So, I can understand where Mr K says he found this time very worrying and inconvenient. I also acknowledge that Mr K would have experienced distress where Close Brothers held on to the £10,000 deposit he was expecting to be returned, for an unreasonable amount of time.

Having considered everything, I think Close Brothers caused Mr K distress and inconvenience after they had taken the car from him. And I think the level of distress caused to Mr K means Close Brothers should make a payment to him. In all the circumstances, I think a payment of £250 is fair in light of the distress and inconvenience Mr K experienced.

The adverse information on Mr K's credit file

Close Brothers told Mr K that they would remove any adverse information from the details held about the conditional sale agreement, with credit reference agencies. Mr K has recently told us that Close Brothers have recorded a missed payment in 2022. He says this is incorrect, given the conclusions Close Brothers reached about the quality of the car.

I've thought carefully about the steps taken by Close Brothers, when they accepted that Mr K could exit the conditional sale agreement. I've also thought about what happened, when Close Brothers caused a delay in ending the agreement.

Overall, I think Close Brothers offered to refund all of the repayments made by Mr K. So, I think it was reasonable of him to have cancelled the direct debit for the agreement, once the car was returned. In all the circumstances, I agree with Mr K that Close Brothers should remove all adverse information held about the account with credit reference agencies.

Finally, Mr K has told us that he remains as the registered keeper of the car with the Driver and Vehicle Licensing Agency ("DVLA"). I think it's fair and reasonable that Close Brothers works with Mr K and the dealer to make sure the DVLA have correct and up to date records here.

Putting things right

For these reasons Close Brothers Limited trading as Close Brothers Motor Finance should:

1. refund the remainder of the deposit amount of £3,570 to Mr K;
2. add interest at 8% per year simple to the amount refunded in part one of this settlement, from 18 August 2022 to the date of settlement of this complaint;
3. pay £250 to Mr K for the distress and inconvenience caused;
4. remove any adverse information recorded with credit reference agencies, about the conditional sale agreement; and
5. remove Mr K as the keeper of the car.

Close Brothers must pay these amounts within 28 days of the date on which we tell them Mr K accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If Close Brothers deducts tax from any interest they pay to Mr K, they should provide Mr K with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax

authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Close Brothers Limited trading as Close Brothers Motor Finance to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 31 March 2023.

Sam Wedderburn
Ombudsman