

The complaint

Mr B complains about the quality of a used car that was supplied through a Conditional Sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance (CBL).

What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

In February 2022, Mr B acquired a used car through a conditional sale agreement with CBL. The car was about 16 years old and had travelled 142,000 miles when it was supplied to Mr B. The cash price of the car was £6,499. Mr B paid a deposit of £2,000 which meant the total amount financed on this agreement was £4,499 payable over 48 Months.

Mr B said that in April 2022 his car broke down and was told by the recovering engineer there was no fuel pressure. Mr B said there were a number of problems with the car when he collected it, and so didn't think the dealer carried out the appropriate checks before supplying it to him. Below is a summary of the issues complained of by Mr B:

- *Rear reflector broken*
- *Cosmetic scratches not repaired properly*
- *Vehicle dirty and not valeted*
- *CD player not working*
- *Phone system not working*
- *Satnav not working*
- *Fuel pump pressure issue*
- *Sunroof faulty*

Mr B also provided a receipt for £108, dated 7 April 2022, for replacement track rod ends, which he said he paid for.

Mr B complained to CBL about the issues with his car. He said it's been off the road since April 2022. To settle the complaint, Mr B said he wants to be able to reject the car, get his deposit back along with all payments made towards the car and reimbursements for any arrears. Mr B said he also wanted the difference in any value so he could purchase the same car again.

CBL arranged for an independent inspection of Mr B's car which was carried out in April 2022. The independent inspection report made the following comments:

- *The ignition turned on, but the engine wouldn't start*
- *A diagnostic scan revealed no fault codes*
- *Bonnet wouldn't stay up*
- *The offside rear reflector was broken*
- *Phone connection and CD player didn't work*

- No evidence of any leakage around the sunroof

The report concluded that the car wasn't fit for purpose because it wouldn't start, however, it said further examination was required to identify the cause of the issues and to determine whether the issues were underlying or of a premature nature.

CBL arranged for a further investigation of the car which found that the fuel tank needed to be replaced. However, on 29 June 2022 it was confirmed by the independent inspection engineer that considering the mileage elapsed since the point of sale, and the issue with the fuel pressure, the car was not considered to be durable.

CBL didn't provide Mr B with a final response, so he brought his complaint to our service for investigation. Our investigator recommended that Mr B's complaint should be upheld. However, our investigator recommended a repair as the fairest option. Our investigator also recommended CBL should refund rentals for the period Mr B wasn't able to use the car and pay him £200 in compensation. Mr B accepted the investigator's view but wanted receipts and a further inspection to ensure the car was repaired adequately. Mr B also provided a video of damage caused to his driveway whilst his car was being collected for repair and obtained a quote for £2,800 to repair the damage, which he wanted CBL to pay for. Mr B also asked that the car be returned with a full years MOT, considering the length of time the car had been off the road.

Our investigator amended their view to recommend CBL pay for an MOT and to contribute 20% towards the repair of the driveway or pay the excess if Mr B makes an insurance claim.

CBL responded, to say they repaired the mechanical issues, and would pay for the MOT and compensation as recommended. However, they asked that Mr B collect the car to arrange the MOT. They also agreed to contribute towards the driveway repairs. CBL also advised that Mr B's car doesn't come with a workable phone system and had a CD jammed in it, which suggested it may not have been inherently faulty. CBL asked that the car be collected by Mr B and a third-party garage quote for the remaining issues.

In October 2022 Mr B agreed to collect the car, however, he advised he wasn't happy with the repairs and provided a video of smoke coming from the rear of it. Mr B asked that the car be returned and rejected. On 26 October 2022 Mr B confirmed the car had been collected by the dealer.

In November 2022 our investigator issued a revised view in which he recommended the following:

- cancel the finance agreement with nothing more to pay
- arrange to collect the car at no cost to Mr B
- refund Mr B's deposit of £2,000
- pay a refund of rentals as directed in my findings to cover any loss of use of the car because of the inherent quality issues.
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- pay a further amount of £400 for any distress or inconvenience that's been caused due to the faulty goods.
- contribute 20% towards the cost of the repairs to Mr B's driveway.

CBL arranged a further inspection of the car to determine if a rejection was the fairest approach. The inspection report concluded there were no faults with the car at the point of repair. As such our investigator issued a further view recommending CBL refund rentals from April 2022 to October 2022, pay £300 in compensation, 20% towards the driveway damage and pay for the renewal of the MOT.

Mr B responded to say he still wanted a rejection and asked that the case be referred to an ombudsman for a final decision.

Mr B told our investigator that CBL credited his account with £1,292.56 but gave no explanation or breakdown for the credit.

Mr B also told us in February 2023 that he voluntarily terminated his agreement having received a default notice for the abandonment of his car. Mr B said he left his car with the dealership because the MOT had lapsed, and the complaint remained unresolved.

I sent Mr B and CBL my provisional decision on 30 March 2023. I explained why I thought the complaint should be upheld. The key parts of my provisional findings are copied below:

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

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The agreement in this case is a regulated conditional sale agreement. As such, this service is able to consider complaints relating to it. CBL is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory, fit for purpose and as described". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

Here, the car was acquired used, with a cash price of around £6,499 and with 142,000 miles. So, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand new car, and that it's likely to have some signs of wear and tear and require care or maintenance sooner than if it was less road worn.

From the information provided I'm persuaded that there was a fault with the car. This is apparent from the first independent inspection report which concluded that the car was not fit for purpose because it wouldn't start. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

Satisfactory quality

Mr B acquired the car in February 2022, and within two months the car had broken down. The independent inspection report that was completed on 20 April 2022 confirmed some of the issues that was raised by Mr B, however, most notably that the engine wouldn't start. The mileage recorded on the inspection report was 143,556, which meant within the two months since being supplied the car Mr B had travelled about 1,500 miles.

The report advised it wasn't able to determine the root cause of the non-starting issue to say whether the problem was underlying or developing. However, all things considered I'm not persuaded the car was suitably durable, considering there appears to have been significant engine failure within two months since the car was supplied to Mr B. And In the absence of misuse of the car (or some other factor like accident damage) I think a reasonable person would consider this to be unacceptable. So, in the circumstances I'm persuaded the car wasn't of satisfactory quality when it was supplied to Mr B.

Under the CRA if goods are not of satisfactory quality they do not conform to the contract. Section 19 of the CRA sets out certain remedies available to the consumer for goods that do not conform. One of those remedies is the right to a repair.

In an email dated 22 July 2022 the repairing garage confirmed the starting issue had been repaired and that the car was ready for collection. However, when Mr B collected the car in October 2022, he reported smoke coming from the exhaust and provided a video as evidence.

Although a second independent inspection report, carried out in December 2022 determined that there were no faults with the car, I think there was some confusion over whether there were further repairs carried out after Mr B returned the car in October 2022 due to the black smoke coming from the exhaust.

Mr B confirmed to our investigator that he collected the car on 24 October 2022, following the initial repairs. He also told us on the same day he noticed the smoke, and so the car was collected again two days later on 26 October 2022.

On 17 November 2022 Mr B told our investigator that the dealer called him to say the car had been fixed and was ready for collection. And an email from the dealer on the same date advised that the car should be collected to avoid storage fees. This suggests to me that further repairs were carried out on the car.

However, on 25 November 2022 CBL emailed our investigator to say the dealer believed there were no issues with the car and so arranged a further independent inspection which took place on 6 December 2022 confirming no faults were found.

In addition, CBL hasn't provided any evidence of the repairs that were carried out, for example in the form of invoices, diagnostics or receipts.

The CRA says that if the consumer requires a repair, the business must do so within a reasonable time, and without significant inconvenience to the consumer. Inconsideration that Mr B acquired the car in February 2022, reported the problems in April 2022 and was still experiencing issues in October 2022 following repairs that were supposed to be carried out

in July 2022, I'm persuaded that the delays were unreasonable in the circumstances. In addition, from the evidence provided, I'm also persuaded that the first repair hadn't successfully fixed the problem.

I also acknowledge that this whole situation has led to Mr B losing confidence in the car and paying to have it voluntarily terminated. Mr B said he was required to pay CBL £696.16 to terminate the agreement. This was following CBL determining that Mr B had abandoned the car and issuing him with a default notice, after he'd refused to collect it from the dealership.

All things considered, in the circumstances of this complaint I'm satisfied that the car wasn't of satisfactory quality when it was supplied to Mr B and that the initial repair attempt failed. I'm also persuaded that the timescales for repair have caused significant inconvenience to Mr B.

Putting things right.

Having considered the car wasn't of satisfactory quality when it was supplied to Mr B, and an initial attempt at repair had failed, CBL will have to put things right.

Mr B said that he's left the car with the dealership, and voluntarily terminated his agreement with CBL. I've seen no confirmation of this from CBL, however I'm persuaded by what Mr B has told us and by the supporting evidence on file.

As I've considered that the dealership has possession of the car, I'll be instructing CBL to put Mr B in the position had the car been rejected. In addition, as the agreement has already ended, I'll be instructing CBL to refund to Mr B any amounts he's paid CBL to have the car voluntarily terminated. Mr B told us this was £696.16.

CBL should also refund to Mr B, the deposit he paid on the agreement and all monthly repayments he's made on the agreement from April 2022 to cover his loss of use, when the engine issue was confirmed through the first independent inspection report.

Mr B provided a receipt for £108, dated 7 April 2022, for replacement track rods. CBL should refund this to Mr B also.

Mr B provided video evidence of damage to his driveway when the car was being collected for repair. Our investigator recommended that CBL should contribute 20% to the repairs which they agreed to do. However, in the circumstances I think CBL should contribute more. The repair quotation was £2,800. So, if CBL contributed 20% this would leave £2,240 for Mr B to pay. Considering this was not something Mr B had planned to do, I think £2,240 is a significant amount to pay out as a result of what appears to be a mistake by the collecting agent representing the dealership. I recognise however that the quotation is likely to include a full resurface of the driveway, so in the circumstances, I'm persuaded that 50% is a fairer contribution for CBL to make. So, I'll be instructing them to pay this amount to Mr B, in lieu of the repairs being carried out.

Mr B has described the impact this whole situation has had on him, and the inconvenience caused. For example, impacting his work. In the circumstances I think £400 is fair to recognise this. So, I'll be instructing CBL to pay this to Mr B in compensation.

In an email to our investigator dated 20 December 2022, Mr B said he received a payment from CBL for £1,292.56. However, Mr B said he's not received any information about the payment. CBL has neither informed our investigator about any payments they've made to Mr B in relation to this complaint. So, in the circumstances, I've not taken into consideration the payment Mr B says he's already received from CBL. If its confirmed that CBL made this

award in relation to this complaint, CBL should make the necessary deductions from any award I've made in this provisional decision.

I invited both parties to make any further comments.

Mr B responded to say he accepted my provisional decision. However, CBL responded to say that they didn't agree with it. CBL made some further comments which I'll address below.

Now both sides have had an opportunity to comment, I can go ahead with my 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.

CBL made the following points to my provisional decision:

- 1. The smoke shown in the videos are inconsistent and doesn't prove that a fault exists, and the job sheet confirms repairs were carried out on 20 July 2022*

The above is not exhaustive, but a summary of what I considered to be the main points raised in CBL's response to my provisional decision. To be clear, I've considered all the information provided by both parties in relation to this complaint, however to maintain the informal approach of this service I've focussed on what I've considered to be the main issues here.

The job sheet provided by CBL confirms that the fuel pump and intercooler were replaced in July 2022. However, it doesn't persuade me that there weren't further issues with the car when Mr B collected it from the dealer in October 2022. In addition, as explained in my provisional decision, there appears to have been some confusion and contradicting reports about whether further repairs were carried out after Mr B returned the car in October 2022.

I acknowledge a further independent inspection carried out on the car in December 2022 concluded that no faults could be found. I also recognise, as pointed out by CBL, that the smoke reported by Mr B could have occurred as a result of a number of different reasons, including residue in the system. However, I think it would have been reasonable for the inspection report to have explained or commented on the smoke and its potential cause within the 'opinion' or 'conclusion' section, particularly as this was a key part of Mr B's concerns at that point.

I'm also of the opinion that supplying the car to Mr B, following a repair, in that condition (with a significant amount of smoke coming from the exhaust) without explanation, wasn't reasonable as it would suggest an issue was present. And so, it was likely to cause some concern for Mr B.

I still consider my provisional decision to be fair and reasonable in the circumstances. Neither party has added anything which gives me cause to change these. Therefore, for the reasons as set out above and in my provisional decision, I'm satisfied that the car wasn't of satisfactory quality when it was supplied to Mr B. So, my final decision is the same.

I recognise that this decision is likely to be disappointing for CBL, however I can assure them that I've considered all the evidence provided and believe on balance that my provisional findings are fair in the circumstances.

My final decision

Having considered everything above along with what's fair and reasonable, my final decision is that I uphold Mr B's complaint against Close Brothers Limited trading as Close Brothers Motor Finance and instruct them to:

- Refund Mr B 's deposit of £2000
- Refund all monthly repayments made by Mr B from April 2022
- Refund the amount Mr B paid to voluntarily terminate his agreement
- Reimburse £108 for the costs of the repairs to the track rods as described in my provisional decision
- Pay to Mr B £400 in compensation for the distress and inconvenience caused
- Amend Mr B's credit file to ensure there's no adverse information relating to this agreement
- Contribute 50% towards the cost of repair to Mr B's driveway for the damage caused during the collection of the car

Close Brothers Limited trading as Close Brothers Motor Finance should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If Close Brothers Limited trading as Close Brothers Motor Finance considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 May 2023.

Benjamin John
Ombudsman