

The complaint

Mr B complains about the quality of a used car that was supplied through a Conditional Sale Agreement with Close Brothers Limited (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 registered in May 2016, which means it was nearly six years old and had travelled 14,316 miles when it was supplied to Mr B. The cash price of the car was £35,200, Mr B made an advanced payment of £3,520 so the total amount financed on this agreement was £31,680 payable over 60 monthly payments of £713.74

Within two weeks of having the car Mr B complained to CBL about some issues he was having with it. In February 2022 Mr B said he had the car inspected by a local garage which he said had advised him of the following issues:

- *Spacers on the wheels*
- *Catalytic converters removed*
- *Engine re-tuned*
- *Rear differential seal leaking and damaged*
- *Exhaust hanger broken*
- *After market air filters were fitted*

In addition to the above Mr B reported a restraint system warning light and a loose front trim.

CBL, advised Mr B could return the car as he'd reported the issues within 14 days, however Mr B said the dealer didn't accept his rejection and disputed that there was anything wrong with the car.

CBL arranged for an independent inspection of the car which was carried out on 4 April 2022. The inspection report concluded that the damage to the body and differential were likely to have been caused by the current owner due to grounding. The report also advised the modifications were likely to be part of the manufacturing process for that model of vehicle and considered the car to be fit for purpose. However, the report advised they didn't have sight of the catalytic converters as they were hidden behind covers.

Mr B said following the independent inspection, he received the car back on 20 April 2022 and arranged for a further diagnostic of the car from a franchised dealer which was carried out the following day. The diagnostic report noted that the catalytic converters were missing, and that the engine had been re-tuned. The mileage noted on the diagnostic was 15,478.

On 29 April 2022 CBL issued their final response to Mr B's complaint, which they didn't uphold. CBL referred to the independent inspection report which said the issues were caused due to grounding during the current ownership, and from in-service wear and tear.

Unhappy with their decision, Mr B brought his complaint to our service for investigation. Mr B says he wants to reject the car to put things right.

Having considered all the information, our investigator recommended that Mr B's complaint should be upheld, and concluded that a missing catalytic converter meant the car wasn't of satisfactory quality when it was supplied. Our investigator recommended that CBL allow Mr B to reject the car, but to deduct reasonable costs for damage consistent with the 'grounding'. Our investigator also recommended that CBL pay Mr B £150 in compensation for the inconvenience caused.

Mr B told our investigator in August 2022 (over the phone) that he removed the air fins himself as they were loose. However, he said that he accepted the view.

CBL responded to say that they had confirmation from the dealer that Mr B's model of car wouldn't have regular catalytic converters. They also provided testimony that confirmed the catalytic converters were viewed during an MOT test which was carried out on the day it was supplied.

Mr B provided a further testimony from a local garage, that upon inspection on 21 February 2022, noted passenger restraint issues and the catalytic converters had been removed. Having reconsidered the further information provided, our investigator's outcome remained unchanged. Unhappy with our investigator's view CBL asked that the complaint be referred to an ombudsman for a final decision.

What I've provisionally 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.

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.

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.

CBL supplied Mr B with a used car that had travelled 14,316 miles. With this in mind, 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 with lower mileage; and that there may be signs of wear and tear due to its usage. Having said that, the car was priced at £35,200 which isn't insignificant. It also wasn't a particularly old vehicle. So, I think it is fair to say that a reasonable person would expect it could be used free from any major issues for a reasonable period of time.

From the information provided it's clear to me that there was a fault with the car. This is apparent from the diagnostic from the franchised dealer and from a local garage which both conclude that the catalytic converters had been removed. In relation to catalytic converters on vehicles, guidance provided by Government says: 'removing a catalytic converter...will almost certainly result in a vehicle's emissions exceeding type approval limits and make the vehicle illegal to drive on the road'

I acknowledge the car passed a recent MOT which would have included an emissions check, however, based on the emissions standards, I'm persuaded that a removed catalytic converter is not consistent with this, and so makes the car not fit for purpose and under the CRA, not of satisfactory quality. With this in mind, I've considered whether the car was of satisfactory quality when it was supplied to Mr B.

Catalytic converters

CBL said that the catalytic converters were present at the point of supply. CBL provided a statement from the MOT engineer, which confirmed the car had passed its emissions tests on 10 February 2022. The engineer also confirmed the catalytic converters were present during the MOT test, and on a second inspection carried out on 25 February 2022.

The independent inspection report completed on 4 April 2022 said the catalytic converters were hidden behind a cover, so it couldn't be viewed. A statement provided from a local garage advised that following an inspection of the car on 21 February 2022 they found the catalytic converters had been removed, as did a diagnostic from the franchised dealer dated 21 April 2022.

Catalytic converters are integral for a car to reach its emissions standard, and not doing so amounts to an offence.

I'm presented with expert reports which contradict each other, so I've taken into account what I think was most likely to have been the case based on the evidence I've seen.

Two separate experts have said the catalytic converters had been removed, the franchised dealer and the statement from a local garage, and one professional independent inspection report said it couldn't be seen. I've seen no evidence to suggest Mr B removed the component himself. So, from the evidence provided I'm persuaded that the catalytic converters weren't present when the car was supplied to Mr B.

I acknowledge that we have conflicting evidence from the MOT engineer, however I recognise this is one expert advising of the contrary. And although I'm unable to explain the contradiction, the evidence against the component being present at the point of supply, I find to be more compelling and persuasive. And so, under the CRA, I'm satisfied the car was not of satisfactory quality when it was supplied to Mr B.

The independent inspection report and the testimony from the MOT engineer are consistent, in that the damage to the car appeared to be recent and was likely to have happened following the MOT on 10 February 2022. However, both also confirm the damage doesn't render the car unfit for purpose.

I'm persuaded by what the inspection report says, that the damage to the body and case differential was likely caused by 'grounding', for example over speedbumps, however I don't think there's enough evidence to say that this was caused by Mr B. In an email to our investigator in November 2022 Mr B also said he refuted that he tampered with or damaged the car in any way. I've also seen no evidence which confirms the condition of the car prior to supply. In addition, since Mr B was supplied the car, he drove it for an additional 1,700 miles. This was confirmed through a recent image of the mileage, provided by Mr B. With that being the case, I don't think it'd be fair to say Mr B caused it through his driving. For example, there's nothing to say it couldn't have been present through in-service wear and tear prior to Mr B using the car.

Putting things right

Mr B told CBL that he wanted to reject the car, and this is confirmed in the final response and on their system notes in February 2022. 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 short term right to reject the goods.

CBL system notes confirm Mr B requested a rejection of the car within 30 days of being supplied the vehicle, so I'm satisfied that this would be a fair outcome for Mr B.

In the circumstances I'll be instructing CBL to collect the car at no extra cost to Mr B, unwind the finance agreement and refund to Mr B his deposit.

However, in the circumstances I also think Mr B should be refunded some of his monthly payments as the car was unusable. In an email to our investigator in January 2023 Mr B confirmed the car was still on his driveway.

Mr B has provided an image confirming the current mileage as 16,029, which is around 1,700 more miles since it was supplied. I acknowledge Mr B believes the dealership have been using the car and has provided a video of the car being driven. However, without definitive evidence I'm unable to hold CBL responsible for any specific amount of miles driven. So, I think it's reasonable in the circumstances to expect Mr B to pay for the usage he's had.

All things considered, I think it's fair to deduct four months usage, as this appears to be the only use Mr B had of the car. For example, the mileage has increased by about 1,700 since supply and 500 miles since the inspection in April 2022, which I think is reasonable to say amounts to about a further month's usage. So, I'll be instructing CBL to refund to Mr B all the monthly repayments made from June 2022.

Mr B has also confirmed his insurance payments on the car. Mr B was paying insurance on a car he couldn't use. And as I'll be instructing CBL to facilitate a rejection of the car, I think CBL should reimburse to Mr B a portion of his insurance premium. Similar to the mileage, I think it's fair to say Mr B had around four months usage of the car and so should pay for the insurance to reflect that period. Mr B provided an insurance schedule which confirmed he paid an annual premium of £2,462. four months is equivalent to 33% of the year so I'll be instructing CBL to reimburse Mr B with 66% of his insurance annual premium, which amounts to £1,624.92.

Mr B has described the inconvenience that's been caused as a result of the situation. I'm in agreement with our investigator that £150 in compensation fairly recognises the distress and inconvenience caused. So, I'll be instructing CBL to pay that amount to Mr B.

I invited both parties to make any further comments.

Mr B contacted our investigator for an update on his case, but didn't provide any additional comments with regard to my provisional decision. CBL responded to say that they disagreed with my provisional decision. CBL provided 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.

Within their response CBL made the following points:

- 1. They disagreed that the evidence for the catalytic converters being removed prior to supply is stronger*
- 2. In relation to the vehicle damage, CBL felt it would be unreasonable to say that the vehicle would have been purchased in that condition without raising it as an issue*

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.

CBL hasn't provided any further evidence to support their view on the catalytic converters. In their email they've said that all their points have already been expressed on the matter. As no further evidence has been received, I see no reason to depart from my initial findings on the catalytic converters. And as such, I'm satisfied from the evidence provided that the catalytic converters were not present when the car was supplied to Mr B.

In relation to the damage, CBL provided images which show some distortion and damage to the paintwork on the passenger side front grill area of the car. Although I acknowledge the damage is noticeable, I'm not persuaded the extent of the distortion would have occurred within the time Mr B acquired the car, and particularly within the first month when he reported the issues. So, I'm satisfied the damage in the images were likely to be present prior to supply.

For the reasons explained in my provisional decision, I'm also of the opinion that the 'grounding' damage was also likely to have been caused prior to supply. I've seen no evidence that shows Mr B caused it himself. I recognise the conclusions on the inspection report suggests it was a recent occurrence, however at the point of the inspection, Mr B had possession of the car for less than two months. I've seen no evidence, for example in the form of images before and after supply to compare, and so I think it's unreasonable to conclude that Mr B had caused it.

Having reviewed the further information, 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 in my provisional decision, I'm satisfied that the car was not of satisfactory quality when it was supplied to Mr B. So, my final decision is the same.

I recognise my decision is likely to be disappointing for CBL, however I'm satisfied that this is the fairest outcome in all the circumstances.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances, I uphold this complaint and instruct Close Brothers Limited to:

- Collect the car at no additional cost to Mr B
- End the conditional sale agreement entered into by Mr B and remove it from his credit file
- Refund to Mr B the deposit he paid
- Refund to Mr B all the monthly repayments he's made towards the agreement from June 2022.
- Reimburse to Mr B 66% of his annual insurance payment as set out in my decision
- Pay Mr B £150 in compensation in recognition of the distress and inconvenience caused

Close Brothers Limited should pay 8% yearly simple interest on all refunds and reimbursements calculated from the date of payment to the date of settlement.

If Close Brothers Limited 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 26 May 2023.

Benjamin John
Ombudsman