

The complaint

Mr K complains that the vehicle he acquired financed through a conditional sale agreement with Close Brothers Limited, trading as Close Brothers Motor Finance, wasn't of satisfactory quality.

What happened

In May 2022 Mr K acquired a second-hand vehicle financed through a conditional sale agreement with Close Brothers. Mr K part exchanged his old vehicle for £1,000.

Mr K started to experience problems with the vehicle almost immediately. He said several lights weren't working and the boot did not lock as they were seized. He returned the vehicle the day after collection and the lights were replaced. He said at the time of making this complaint the locks still haven't been fixed.

In August 2022 Mr K returned the car to the dealership because there was a leakage from the front of the vehicle and a hissing noise. He said the air filter and O ring were changed. Mr K said he didn't receive any paperwork for these repairs.

In January 2023 Mr K was driving with his son and partner when he said he felt a sudden drop in the car and pulled over at the nearest garage. The garage told him that the vehicle was scrap as there was corrosion and part of the chassis had a hole which meant the frame was then unable to support the weight of the vehicle. He contacted the dealership who advised that this was a manufacturing fault which the manufacturer was liable for. Mr K contacted the manufacturer who advised him that there was a recall on the vehicle model but Mr K's car was one year too old for the recall. The manufacturer advised that whoever had previously owned the car had taken it in for the safety check part one but had never completed part two.

Mr K said he wasn't advised of this when he acquired the vehicle. And brought a complaint to Close Brothers. Close Brothers commissioned an independent inspection.

In its final response letter Close Brothers said it was not able to offer assistance in seeking repairs to the vehicle as the independent engineer's assessment confirmed the faults presented were not from the point of sale. It said as such it couldn't hold the dealer liable for the faults presented. Mr K wasn't satisfied and brought his complaint to this service. He said as the inspector had advised the corrosion would happen over a long period of time he believed this would have been present at the time of the MOT prior to him acquiring the vehicle.

Our investigator concluded that the vehicle wasn't of satisfactory quality at the point of sale and recommended that Mr K should be able to reject the car. Close Brothers didn't agree and asked for a decision from an ombudsman.

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 the conclusions reached by our investigator for the reasons explained below.

The finance agreement in this case is a regulated consumer credit agreement. As such this service can consider complaints relating to it. The relevant law says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”.

Close Brothers, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr K - whether it was of satisfactory quality at that time will depend on several factors, including the age and mileage of the car and the price that was paid for it. The car supplied to Mr K was 13 years old, had been driven for approximately 66,000 miles and had a price of £8,999. As such I would expect the vehicle to have some existing reasonable wear and tear present.

In its response to our investigator's view Close Brothers said in cases of corrosion, age is a more significant factor than mileage covered. It said the investigator noted the manufacturer provided a warranty for this issue which was for 12 years. It said this would mean the manufacturer concluded that if this level of corrosion occurred within that 12-year timeframe, it would likely be a fault resulting from the known corrosion issue. Close Brothers then said it could reasonably be said that the manufacturer concluded that after that time, which would cover the age of Mr K's vehicle, 14 years, it would not be reasonable to say that a known fault was the cause.

It's not disputed that there is a severe problem with the chassis of the vehicle. There is excessive corrosion which will require major repair to make the vehicle roadworthy. An independent inspection was carried out on the vehicle in January 2023 at 74,582 miles. The report said:

- *“... we can confirm that the offside rear chassis rail and mounting bracket for the rear leaf spring has failed due to excessive corrosion.*
- *As this type of failure occurs over a long period of time, we do consider that this issue was developing to a degree since the point of sale, however, we do not feel would have been evident from an MOT point of view and would not have been a point of failure at that time and therefore we do not consider that this issue, taking into consideration the time and mileage covered by the vehicle since the point of sale, would have been evident at that point and do not consider the selling agent is responsible for the costs of repairs.”*

The vehicle passed an MOT test just prior to Mr K acquiring it and there were no advisories related to the corrosion of the chassis reported at that time. Mr K has said that corrosion must have been evident at the time of the MOT although he accepted that the hole would not have been present. He said he was mis-sold a car with a false MOT.

It's not my role to determine whether the MOT was carried out correctly. And the role of an MOT is to ensure the vehicle's roadworthiness using road safety and environmental checks. It can inform a purchase decision but does not determine whether a car is of satisfactory quality for the purposes of a finance agreement.

Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on several factors. Mr K had only had the vehicle for seven months when it failed.

I accept the vehicle wasn't new and that reasonable wear and tear would be present, but I think a reasonable person would have expected it to have lasted longer than it has done. I'm not disputing the validity of the independent report or the technical evidence therein. But I find the conclusions drawn to be unclear. The report says this type of failure occurs over a long period of time but then goes on to say that the issue was developing to a degree *since* the point of sale. And Close Brothers said this in its final response to Mr K.

In its response to our investigator's view Close Brothers said:

"In relation to the issue being present at the point of sale, the professional engineer noted that the issue would have been developing but would not be the dealer's responsibility.

It is of course the case that any corrosion issue of this extent would have not fully developed within the customer's usage, as corrosion takes place over long periods of time. The issue in question here is whether this meant that the vehicle was not of satisfactory quality at sale. The vehicle passed an MOT and was able to cover 8,500 miles since sale, indicating it was fully functional for an extended period of time.

We're not able to confirm the conditions in which the vehicle was used and kept and those factors can also increase the rate of corrosion. Most vehicles of this age may have some level of corrosion and each vehicle would have a point where that passes from a sign of wear and tear, to a mechanical issue in need of rectification. It is clear here that this vehicle passed that point after significant usage by the customer and at an age where problems can be expected to occur."

As I mentioned above the pass or failure of an MOT is not a benchmark for satisfactory quality for the purposes of a financial agreement. Although he had covered around 8,500 miles since he acquired the vehicle I don't agree with Close Brothers that it was '*fully functional for an extended period of time*', as the problem occurred after only seven months. And I don't think a reasonable person would consider seven months to be an extended period of time in the life of a car. If this type of problem occurs over a long period of time I think it likely that it was present at the point of sale and Close Brothers itself has pointed out above.

Mr K asked a separate independent garage to look at his vehicle. Its report said:

- *We were asked to assess this vehicle following issues noticed on the chassis. This vehicle is known unfortunately for this type of corrosion issue and many have been repaired by the manufacturer.*
- *Sadly this year falls outside the current age limit that the manufacturer are reviewing under goodwill. The corrosion is in the same areas near the shock mountings as other similar vehicles and has corroded to the point this has snapped into two pieces. To repair this would need a substantial chassis piece manufactured including the spring mounting point.*
- *Given the age and the mileage of the vehicle this repair would outweigh its current value. As the customer has bought this within the last six months and the corrosion is so excessive we have recommended that they go back to the seller for a resolution."*

As the investigator noted there is a difference in the reported dates of failure, but it wasn't within the first six months.

I've also looked at photos and video of the rust corrosion provided by this garage. Looking at these photos I think a reasonable person would conclude that the corrosion present had been developing for quite a long time.

This particular corrosion issue is known to the manufacturer. It was a design flaw and as mentioned by Close Brothers and the independent garage customers were offered free warranty repair for vehicles up to a certain age and Mr K's vehicle didn't qualify for repair.

When the hole developed on the chassis Mr K contacted the dealership. In his complaint to this service Mr K said

- *“They advised me they had owned the same car and it was a manufacturing fault which the manufacturer are liable for and advised me to contact them.”*

When Mr K spoke to the manufacturer it said the previous owner had taken the car in for the safety check part one but didn't complete part two. Mr K said he wasn't advised of this when he bought the car. He said he went back to the dealership again but was told as he was out of the 30 days warranty the dealership wasn't liable.

I find Mr K's testimony credible. And it does lead me to believe the dealership was aware or ought reasonably to have been aware at the time of the sale that there was an historical corrosion issue, including product recall, with this vehicle. This seems to be the case especially as the dealership mentioned ownership of the same vehicle to Mr K and advised him to contact the manufacturer directly when he raised the matter. I do understand the points Close Brothers makes concerning the 12-year timeframe for the manufacturer's warranty and that older vehicles may have some level of corrosion. And to an extent I agree with this generally. But the corrosion with this model was a known issue with the manufacturer, and was likely known or ought reasonably to have been known by the dealership prior to sale, so it seems reasonable to have expected the dealership to have inspected the car chassis prior to its own purchase or prior to selling the vehicle on.

Mr K has also complained that the lock at the rear of the vehicle was damaged and that he has been chasing the dealer to get it resolved. He said at the time of the complaint that the lock still hadn't been fixed. I can see from contact notes provided by Close Brothers that it was aware of this issue but I can't see that it was resolved.

This is a finely balanced complaint because Mr K had the car for only a short period of time before it failed though he had been able to drive 8,500 miles and the car was 13 years old when supplied. But I consider it to be clear from the evidence that the issue of corrosion of the chassis was more than likely present or developing when the car was supplied to Mr K. I'm not persuaded it started in the time between the vehicle being supplied to Mr K and it failing. And while reasonable wear and tear would be expected on a car of this age this was a known issue in the model and the independent inspection confirmed that the corrosion was in the same area of the car as the known issue. I believe the dealership knew or ought reasonably to have known about it. I think it likely that had it checked with the manufacturer the dealership would have discovered that the previous owner had only had the vehicle partially tested for it. So I'm persuaded that the vehicle supplied to Mr K was not of satisfactory quality at the point of sale and he should be allowed to reject it.

Mr K has told the service that he's discovered other people may be having similar difficulty with the dealership. My role here is to look at the individual circumstances of this complaint so I am unable to comment on others' experiences.

Putting things right

Mr K hasn't been able to use the car since January 2023 so I don't believe he should have to pay for it from that point. Mr K told the service that this situation has caused him stress and worry so it should compensate him with £250.

I'm aware that the car is due an MOT on 9 May 2023 but is currently not in a roadworthy safe condition. I'm instructing Close Brothers to collect the car and I recognise this may not be possible before 9 May. In order to be fair and reasonable to Mr K he will not be liable for any further costs that may arise e.g. from impending MOT, and Close Brothers should refund these to Mr K upon provision of evidence if he has to pay anything in that regard.

Mr K is concerned that he will have the vehicle in his possession without an MOT and this would void insurance whilst it's on his property. It maybe helpful to Mr K to discuss the situation and complaint with his insurance provider and/or to investigate his options regarding registering his vehicle as off the road (SORN).

In order to put things right Close Brothers Limited, trading as Close Brothers Motor Finance should:

1. end the agreement with nothing further to pay
2. collect the car at no further cost to Mr K. If collection is after 9 May Close Brothers should refund any costs incurred by Mr K that may arise e.g. from impending MOT, upon provision of evidence.
3. refund the Mr K's deposit/part exchange contribution of £1,000
4. refund all monthly payments from January 2023 to the date of settlement as the customer reasonably stopped using the car at this point
5. pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
6. pay a further amount of £250 for any distress or inconvenience that's been caused.
7. remove any adverse information from the customer's credit file in relation to the agreement.

My final decision

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

Maxine Sutton

Ombudsman