

The complaint

Mr X complains about the quality of a car he has been financing through an agreement with Close Brothers Limited, trading as Close Brothers Motor Finance, who I'll call "Close Brothers".

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

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.

Mr X acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Close Brothers, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

Mr X had a short term right to reject the car if it was of unsatisfactory quality and he reported that in the first 30 days. Close Brothers have now accepted that was the case. They've agreed to allow him to reject the car and will cancel the credit agreement. But the redress they suggested wasn't comprehensive and a mistake was made as they paid Mr X an extra £4,539.57 in error.

There's no longer a dispute that this car was of unsatisfactory quality and that Mr X should have been allowed to reject it in August 2022, a matter of days after he took receipt of it. I won't therefore consider the quality issues in any detail, other than to say I agree Mr X should have been allowed to reject the car and end his agreement in August 2022.

Putting things right

Close Brothers will need to collect the car and end the agreement if they haven't already

done so.

They'll need to refund any deposit Mr X has paid and, as he's been deprived of that money, they will need to add interest to that refund. Mr X has provided a card receipt for £4,000 to demonstrate that was the deposit paid. Close Brothers should return that amount unless they can demonstrate that the deposit of £2,603 listed on the finance agreement was correct.

The relevant legislation says they can retain some of the instalments Mr X has paid in relation to the usage he's had from the car. But I don't think Mr X has had any real use of it. I say that because the car broke down only two days into the agreement, and I think Mr X's use of it beforehand would have been significantly impaired by the issues he had with the Diesel Particulate Filter, the battery, and the relay fault. I therefore think Close Brothers should return all of finance instalments that Mr X paid. They'll need to add interest to that refund as Mr X has been deprived of that money.

Mr X has had to commission a diagnostic on the car's condition in order to support his claim. I think that cost has been incurred as a consequence of the car being of unsatisfactory quality. So, Close Brothers should refund the £49.99 the report cost, and that Mr X has evidenced. Mr X also incurred some insurance and car tax and as those costs were incurred as a consequence of taking receipt of a car that proved to be of unsatisfactory quality, Close Brothers should refund those costs on a pro rata basis.

Mr X has been inconvenienced by these issues. He's had to take the car back to the dealership and to attend to collect the car when it wasn't fixed. He's also had to arrange a diagnostic and he's explained he's needed to use public transport whilst his car has been off the road. Mr X has also explained the difficulties he's experienced taking his children to events, especially over his festive period, and he's explained there were some costs on fuel to get to and from the dealership. Taking all of that into account, I think Close Brothers should pay him £400 compensation in respect of the distress and inconvenience he's experienced. I think that is in line with our published approach on distress and inconvenience payments, and whilst I understand Mr X thinks that isn't enough, I'm not persuaded to increase it.

Our investigator explained in her view of 18 January 2023 that in order to rectify the over payment Close Brothers appear to have made to Mr X, they would need to calculate the redress amount we were asking them to pay and deduct it from the payment they'd already provided to Mr X. If that resulted in an overpayment she suggested Close Brothers should contact Mr X and arrange a suitable way for him to repay that. If it resulted in an underpayment Close Brothers should pay that directly to Mr X. That seems a fair way to resolve the payment error and I'm asking Close Brothers to do that.

My final decision

For the reasons I've given above, I uphold this complaint and tell Close Brothers Limited to calculate the redress amount ordered below and deduct it from the payment they've already provided to Mr X. If that results in an overpayment Close Brothers should contact Mr X and arrange a suitable way for him to repay that. If it results in an underpayment Close Brothers should pay that directly to Mr X. The order is:

- End the agreement with nothing further to pay and collect the car at no cost to Mr X, unless that has already been done.
- Refund Mr X's £4,000 deposit (see comments above) adding 8% simple interest per year from the date of payment to the date of settlement.

- Refund all finance instalments that have been paid and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund the diagnostic cost of £49.99 on provision of proof of payment, and the car insurance and road tax Mr X evidenced to them. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mr X £400.00 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse information they may have reported to Mr X's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr X to accept or reject my decision before 10 June 2023.

Phillip McMahon
Ombudsman