

The complaint

Mr T complains about a car supplied to him under a conditional sale agreement with Close Brothers Limited, trading as Close Brothers Motor Finance.

What happened

In May 2020, Mr T took out a conditional sale agreement with Close Brothers for a used car. The car was around five years old and had covered approximately 66,300 miles. The cash price was £21,099. Under the terms of the finance agreement, Mr T was to pay a deposit of £1,500, followed by £415.44 each month for the next five years.

Mr T told us the car's steering failed in December 2020. He took it to a manufacturer's garage, who said a new steering rack was needed because bolts had sheared. The manufacturer covered the cost of that repair.

Mr T said the instrument panel went wrong in November 2021. He said he took the car to a garage, where the battery was replaced. That didn't fix the problem, so in January 2022 the car was transferred to a specialist garage for the fault to be diagnosed.

Mr T said the specialist garage suspected water may have got into the electronic control unit (ECU). He said that unit was replaced in April 2022, but it didn't resolve the problems with the instrument panel. He told us no further repair attempts have been possible due to global problems with the supply of parts for the car.

In May 2022 Mr T complained to Close Brothers that the car wasn't fit for its intended purpose for the duration of the agreement, because there were no replacement parts available to rectify the fault.

Mr T contacted Close Brothers again in June 2022, asking what his options were as he'd been paying for a car he'd been unable to use for nearly eight months. He asked whether they'd collect the car and terminate the agreement at no further cost.

Close Brothers advised Mr T that, once the car was fixed, he'd be able to voluntarily terminate the agreement or sell the car himself and settle the outstanding finance. They also gave him the name of a company that offers to buy cars in any condition.

In July 2022 Close Brothers issued their final response to Mr T, saying they hadn't upheld his complaint about the car because he hadn't provided them with evidence showing the fault was present or developing when it was supplied. Unhappy with this situation, Mr T brought his complaint to us.

Our investigator thought there was enough information to persuade her that the car wasn't of satisfactory quality when it was supplied to Mr T, because she didn't think the ECU casing was sufficiently durable. She said Mr T should be able to reject the car, end the agreement, and get his deposit back.

The investigator thought Mr T should receive a refund of the payments he'd made since 13 November 2021, when he'd stopped using the car. And she thought they should pay Mr T £200 for the distress or inconvenience he'd been caused by being supplied with a car that wasn't of satisfactory quality.

The investigator also thought Close Brothers should reimburse Mr T the £918 he paid to the specialist garage in an attempt to diagnose and fix the problem, and the £150 he paid to have the car recovered home from the garage.

Close Brothers disagreed with the investigator's conclusions. I'll summarise their main points:

- Mr T brought his complaint to Close Brothers approximately two years after he got the car. So, he needs to prove the defects were present or developing when the car was supplied to him – or that it wasn't of satisfactory quality at that time.
- The car had covered approximately 3,500 miles by the time the steering rack was repaired in January 2021 due to a sheared bolt. Many things can cause this to happen, including overstressing the car (such as by towing), debris or torque. No engineering evidence had been provided to show the car wasn't durable.
- Although Mr T had provided correspondence from the specialist garage which talked about the possibility of water ingress into the ECU system, there were no engineering comments or testimony about the root cause of the problem.
- The investigator made assumptions that the ECU cover was heavily corroded and that this was the cause of the fault. The specialist garage made no reference to this. Close Brothers don't believe an unqualified person can make this assessment.
- The images provided of an ECU do not satisfy the burden of proof under the Consumer Rights Act 2015 (CRA). There could be a multitude of reasons for water ingress to the ECU, such as the customer attempting to drive through a body of water.
- The invoice for the ECU swap in April 2022 is approximately two years after the car was sold, with an unknown mileage completed. If the water ingress was present or developing from the time of purchase the fault would've come to light much sooner.

Close Brothers asked for the case to be reviewed by an ombudsman, so the matter was passed to me for a final decision.

After reviewing the evidence, I wrote to both parties setting out my initial thoughts on the case. I asked Close Brothers about the amount Mr T would be liable to pay if he wished to voluntarily terminate the agreement without fixing the car.

Close Brothers responded on 9 June 2023, saying they now recognised that the option of voluntarily terminating the agreement should've been discussed with Mr T in June 2022, when he asked about his options.

Close Brothers highlighted the difficulty in assessing the cost of repairing the problem with the car's instrument panel without knowing what had caused it. They stressed that it may prove to be uneconomical to diagnose and repair. They said this meant they'd be at risk of suffering large losses if the car didn't sell, or sold at a significant loss.

Close Brothers offered three options:

Option 1:

- The threshold for voluntarily terminating the agreement was £13,213.20 - this being half the total amount payable.

- Mr T had paid a total of £16,455.84. So, he'd paid a surplus of £3,242.64 above the threshold for voluntarily termination.
- The settlement figure was £9,327.58. Close Brothers' internal commercial calculator predicts the vehicle would be likely to fetch around £5,500 at auction. So, they'd face a potential loss of £3,827.58.
- Close Brothers' losses exceed Mr T's current surplus by £584.94. So they offered to allow him to voluntarily terminate the agreement owing this amount.

Option 2:

- Close Brothers offered to send the car for sale at auction.
- Once the car has been sold, they'd deduct Mr T's current surplus from his liability to arrive at the amount he'd need to pay Close Brothers on voluntary termination.

Option 3:

- Vehicle valuation guides say the car's value in 'low' condition would be £690 less than if the car was in average condition. So, Close Brothers offered to allow Mr T to voluntarily terminate the agreement owing this amount.
- They'd retain the surplus he'd paid over the voluntary termination threshold to cover the loss at auction.

Mr T said he couldn't afford to pay around £600 to terminate the agreement. He said he'd only just been managing to keep his head above water, due to having to pay for a replacement vehicle as well as the monthly payments under this agreement. He said he was left with virtually nothing to live on after he'd paid essential household bills and vehicle costs.

My provisional decision

I issued a provisional decision, in which I said:

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

Mr T's complaint is about a car supplied under a conditional sale agreement. Entering into consumer credit contracts like this as a lender is a regulated activity. So, I'm satisfied I can look into this complaint.

Was the car of satisfactory quality when it was supplied to Mr T?

The CRA says that, under a contract to supply goods, there's an implied term that those goods will be of satisfactory quality. It goes on to explain things like fitness for purpose, freedom from minor defects, and durability can be aspects of quality.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. In this case, I note that the car was around five years old and had covered approximately 66,300 miles when it was supplied to Mr T. The cash price was £21,099.

I've seen evidence showing there have been faults with this car, which I've considered.

1. Steering problem – December 2020

I've seen a copy of an invoice from a manufacturer's garage dated 13 January 2021, which records the car's mileage to have been 69,808 at that time. It says: "confirmed

concern of steering failed examined rack and found bolts sheared from electrical motor requires new steering rack”.

I’m pleased to see the steering rack was replaced without charge for Mr T. So, I don’t find it necessary to decide whether this issue meant the car hadn’t been of satisfactory quality when it was supplied to him.

2. Instrument panel problem – November 2021

I’ve reviewed the video clip Mr T provided, showing the problems with the instrument panel. The dashboard display showed multiple warnings before completely shutting down, although the car’s engine carried on running. I consider this to be a significant problem – and I think it was reasonable for Mr T to stop using the car until this was fixed.

Mr T provided evidence showing the car had travelled around 76,532 miles by the time he stopped using it. Based on the evidence I’ve seen, I’m satisfied that he’d had just over 17 months’ and 10,000 miles’ use of the car before this problem came to light.

Mr T has shown us copies of his correspondence with two garages he approached to diagnose and fix the problem. Having reviewed this evidence in detail, I’ve seen references to a number of things that may have caused the instrument panel to malfunction. But I’ve seen nothing confirming what has in fact gone wrong – or what’s most likely to have caused it.

In an email Mr T sent to a garage after the car broke down on 13 November 2021, he said the instrument panel faults appeared after a family member dropped a coin into one of the air vents. I note Mr T also mentioned this to the specialist garage, who said “I’ve checked wiring diagrams nowhere I can see that the 5p could go to via that vent should cause issues.”

Mr T said the specialist garage suspected water damage to the ECU. I’ve seen a copy of their invoice dated 14 April 2022, showing a charge for “ECU swap out”. Mr T provided photos of an ECU, showing signs of possible corrosion. But I don’t consider this to be relevant because he told us that the instrument panel still didn’t work properly after the ECU was replaced.

I’ve seen evidence showing the specialist garage then suggested replacing the clocks. Mr T said he hasn’t been able to get hold of a set due to supply issues caused by the Ukraine war. He says there’s no indication as to how long it will be before the necessary parts will become available.

Close Brothers will only be liable for problems that are shown to be due to the car not having been of satisfactory quality when it was supplied. I’ve seen no evidence showing the problem with the instrument panel was present or developing at the time the car was supplied – or that it was due to the car not having been reasonably durable.

For these reasons, whilst I have great sympathy for the very difficult situation Mr T now finds himself in, I’m not persuaded that the problem with the instrument panel was due to the car not having been of satisfactory quality when it was supplied. So, I don’t consider him to be entitled to exercise any of the remedies set out in the CRA.

Can the contract be terminated for any other reason?

I've seen evidence showing Mr T asked Close Brothers whether he could return the car and terminate the agreement in June 2022. He's told us they advised him he wouldn't be able to return it to them until it was fixed.

Section 99 of the Consumer Credit Act 1974 says Mr T is entitled to terminate the agreement by giving notice at any time. The following section goes on to explain that Mr T's maximum liability would generally be no more than half the total price. But it says the amount he owes will be increased if he's contravened an obligation to take reasonable care of the goods, to compensate Close Brothers for that.

I think this makes it clear that Mr T had the right to voluntarily terminate the agreement - whether or not he'd complied with his contractual obligations about care of the car. And I don't think it would be fair for him to be locked into an agreement for a car he's been unable to fix, despite his very best efforts.

Close Brothers have suggested three options as to how Mr T's liability could be assessed if he wished to voluntarily terminate the agreement. The second option they've put forward takes away the risk of over or under-estimating the car's value, by waiting to see what it will fetch at auction before telling Mr T what he'll have to pay if he wants to voluntarily terminate the agreement.

I don't think that option would be fair to Mr T. I think he should be told what his liability would be in advance, so he can decide whether he wishes to go ahead with voluntary termination. I don't think he'd be able to decide whether this would be his best course of action without that information.

The other options Close Brothers put forward rely on vehicle valuation tools to assess the car's loss in value. I appreciate that the car could fetch substantially more or less than either of these valuation tools suggest. But I do think that's a risk Close Brothers face with any vehicle that hasn't been returned to them in the condition they'd expect.

Those other suggested options recognise both parties will make losses if Mr T voluntarily terminates the agreement early - and look at how those losses should be shared equally between the parties. Given the unusual circumstances of this case, I do think that's a very fair approach.

In broad terms, Close Brothers offered to allow Mr T to voluntarily terminate the agreement owing around £600. I'm aware that another payment was due to be taken on 1 July 2023. Mr T said he hasn't cancelled his direct debit instruction and is expecting this payment to be taken as normal. So, I'd expect that payment to have reduced the amount Mr T owed Close Brothers by £415.44.

When thinking about how this matter should be resolved, I bear in mind the length of time it's been ongoing. I think it would've been resolved much sooner if Close Brothers had discussed the option of voluntarily terminating the agreement when Mr T contacted them in June 2022. I think he made it very clear that he was struggling to find a way to get the car fixed. Mr T says he carried on trying to find a way to resolve the problem because that's what Close Brothers led him to believe he had to do.

I think that's been very frustrating and stressful for Mr T. He's told us he's continued making the required monthly payments for this car as well as paying for another vehicle for his family to use. He said he's left with no money to spend on family life after he's covered essential household bills. If he'd been able to terminate this agreement sooner, I think he'd have been in a position to refinance any outstanding debt in a way that was more sustainable for him in the longer term.

Thinking about all of this, I think Close Brothers should now allow Mr T to voluntarily terminate the agreement and arrange for the car to be collected from him. This means Close Brothers should now end the agreement with nothing further for Mr T to pay and record the agreement as having been settled.

I invited both parties to send me any further information or comments they'd like me to consider.

Responses to my provisional decision

Close Brothers didn't respond.

Mr T said he was slightly disappointed that my provisional decision didn't help him repair the financial situation he'd been left in. But he said he did accept and agree that this was the best outcome for both parties involved.

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.

As neither party provided any additional information in response to my provisional findings, I see no reason to change my mind.

My final decision

For the reasons set out in my provisional decision, I uphold this complaint and direct Close Brothers Limited to:

- Allow Mr T to voluntarily terminate the agreement with nothing further for him to pay.
- Arrange for the car to be collected.
- Record the agreement as having been settled.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 August 2023.

Corinne Brown
Ombudsman