

The complaint

Mr C complains about the quality of a used car that was supplied to him through a conditional sale agreement with Close Brothers Limited (CBL).

What happened

In May 2022, Mr C acquired a used car through a conditional sale agreement from CBL. The car was around 14 years old and had travelled about 121,950 miles when it was supplied to him. The cash price of the car was £8,999. Mr C paid a deposit of £1,000 so the total amount financed on the agreement was £7,999 payable over 48 monthly repayments of £220.90.

Mr C said that within a week of acquiring the car he noticed there was a leak. Mr C said he contacted CBL within 14 days and was told to take the car to a garage. Mr C said he took the car to a third-party garage who produced a diagnostic report of the issues and provided CBL with a copy. However, Mr C said that CBL didn't uphold his complaint and closed the case because they said they didn't receive the information within 30 days.

Mr C said he wants to reject the car and cancel the finance agreement, and added that he only realised whilst speaking to CBL about his complaint, that the car's mileage was recorded incorrectly as 48,000 on the finance agreement.

In September 2022, CBL issued their final response to Mr C's complaint. They advised that the onus was on Mr C to provide evidence of the issues. However, they said as they'd not received any evidence of the faults, and were not able to contact Mr C, they've been unable to investigate the issues and so didn't uphold the complaint.

Unhappy with their decision, Mr C brought his complaint to our service for investigation. Having considered all the information on file our investigator recommended that Mr C's complaint should be upheld. Our investigator recommended that CBL facilitate a rejection of the car with a refund of Mr C's deposit and monthly repayments, and to pay him £100 in compensation.

CBL didn't respond to our investigator's view, so the case has been referred to me for a 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.

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.

Here, the car was acquired used, with a cash price of around £9,000 and had travelled 121,950 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 new or less road-worn car, and that it'd likely require maintenance or servicing sooner than if it was younger and with less mileage.

From the information provided I'm satisfied there was a fault with the car. This is apparent from the diagnostic report provided from the third-party garage, advising of an oil leak and power steering leak and noise. Having considered the car had a fault, I've thought about whether it was of satisfactory quality at the time of supply.

The finance agreement and invoice confirm that Mr C acquired the car on 28 May 2022. The diagnostic report from the third-party garage, dated 9 June 2022, confirms there were significant faults with the car. This was less than two weeks after supply. The mileage on the diagnostic report was recorded as 121,320, which means Mr C was able to travel around 370 miles up to that point.

Having considered the evidence provided, I'm satisfied that the car wasn't of satisfactory quality when it was supplied to Mr C. I don't think it's reasonable to consider that the issues identified were caused as a result of Mr C's usage of the car within the first two weeks.

CBL advised they hadn't seen any evidence of the issues, and weren't able to get into contact with Mr C so didn't uphold the complaint. CBL system notes show that the issues were reported to them in June 2022 and that they sought evidence from Mr C. Mr C provided us with copy correspondence showing that he'd made CBL aware of the problems on 1 June 2022.

I don't doubt that CBL hasn't been able to contact Mr C, and I can see that their system notes show they made some attempts at doing so. However, I don't think the lack of contact negates CBL's responsibility to ensure the car was of satisfactory quality when it was supplied, nor do I think it negates the evidence that Mr C provided from the third party garage, dated around 12 days after the point of supply, that there were significant issues with the car.

I'm satisfied from the evidence provided that the issues were likely to be developing or present when it was supplied to Mr C. Having considered the car wasn't of satisfactory quality when it was supplied to Mr C, I'll be instructing CBL to put things right.

Mr C originally requested a rejection of the car within the first two weeks after the issues were identified. This is also recorded on CBL's system notes. Had things gone as they should have; it's likely Mr C would have been able to hand the car back within the first 30 days. Instead I can see from the account statements that he's continued to make his monthly repayments.

To put things right, I'll be instructing CBL to facilitate a rejection of the car. They'll need to refund Mr C's deposit along with any monthly repayments he's made on the agreement. This is because the issues started within the first two weeks of being supplied the car, and before the monthly repayments commenced at the end of June 2022. CBL should pay Mr C 8% simple interest on all refunds from the date of payment to the date of settlement.

CBL should remove any adverse information from Mr C's credit file in relation to this agreement.

I think it's fair to say Mr C has experienced some distress and inconvenience as a result of the issues. So, I'm in agreement with our investigator that £100 in compensation is fair in 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 cost to Mr C
- end the agreement with nothing further for Mr C to pay
- refund to Mr C his deposit of £1,000
- refund to Mr C all rentals for the period from June 2022 to the date of settlement as described in my decision
- pay £100 in compensation to Mr C for the distress and inconvenience that's been caused as a result of the issues
- remove any adverse information from Mr C's credit file in relation to the agreement.

Close Brothers Limited should pay 8% yearly simple interest on all refunds 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 C how much it's taken off. It should also give Mr C 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 C to accept or reject my decision before 1 October 2023.

Benjamin John
Ombudsman