

The complaint

Mr N complains that a car acquired under a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance (CBMF) wasn't of satisfactory quality when it was supplied to him.

What happened

In August 2022, Mr N acquired a used car from CBMF under a conditional sale agreement. The car was fourteen years old and had covered approximately 98,000 miles when the agreement started. The agreement was for 60 months, and the cash price of the car was £13,050.

A few days after being supplied with the car, Mr N noticed a warning light on the car's dashboard concerning the car's four-wheel drive system. A week or so later the engine management light came on, and a couple of weeks after that the chassis warning light was illuminated, as well as the engine management light. Mr N took the car back to the supplying dealership, who referred him onto his warranty company. They said they were unable to help with the faults.

Mr N took the car to a specialist in this make of car in September 2022 and was advised to drive the car 'hard' to clear any engine faults. Mr N did this, but other faults appeared, and he took the car to another specialist in February 2023. Some diagnostic tests were carried out at this stage, and the specialist confirmed the car needed a complete engine rebuild, with an approximate cost of £10,000.

Mr N complained to CBMF at this point. He said the car they had supplied him with wasn't of satisfactory quality and he wanted CBMF to allow him to reject the car. CBMF arranged for an independent inspection of the car to take place. The car had covered approximately 103,500 miles when the inspection happened – additional mileage of approximately 5,000 since Mr N had been in possession of the car. This inspection concluded that the car was of satisfactory quality when it was supplied, and the fault with the engine was more than likely caused by age-related wear and tear. Because of this, CBMF didn't agree to take the car back from Mr N.

Mr N wasn't happy with this and brought his complaint to our service. Our investigator didn't uphold it. She said she accepted there was a fault with the car, but didn't accept the evidence supplied suggested the fault had been present or was developing when the car was supplied to Mr N. She agreed with the inspection report that the fault had more than likely occurred because of age-related wear and tear.

Mr N didn't agree. He maintained that the car supplied to him by CBMF wasn't of satisfactory quality at the time he acquired it.

As Mr N didn't agree, it's been passed to me to decide.

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 the conditional sale agreement entered by Mr N is a regulated consumer credit agreement this service is able to consider complaints relating to it. CBMF are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr N entered. Because CBMF supplied the car under a conditional sale agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mr N's case, the car was used and had covered approximately 98,000 miles when he acquired it. So, I'd have different expectations of it compared to a brand-new car.

Our investigator has explained that she's satisfied the car was of satisfactory quality when it was supplied to Mr N. I agree in this case. There is no doubt that the car has a serious fault – the inspections carried out confirm that to be the case. But I'm not persuaded, from what I've seen, that I can conclude the car was faulty when it was supplied to Mr N. I'll explain why.

Mr N has provided photos of the car's dashboard warning lights that came on shortly after he acquired the car. And he has mentioned that, at that time he took the car back to the supplying dealer and spoke to his warranty company as well as taking the car to a specialist in this make of car. But the evidence he has provided, including his testimony that the specialist told him to drive the car 'hard' in September 2022 to get rid of the warning lights and any potential faults doesn't, in my opinion, support his case that the car wasn't of satisfactory quality when it was supplied. If, at that stage, it was felt that the car had critical faults or needed an engine rebuild I would have expected the specialist to have told Mr N this. But it seems that Mr N paid for a diagnostic test and was told he could continue to use the car, which he did, covering approximately 5,000 miles in it before being told by another specialist in February 2023 that the engine needed to be rebuilt. From the evidence provided I can't reasonably conclude the engine rebuild was necessary at the point the car was supplied to Mr N. The use he's had of the car for six months doesn't lend itself to this suggestion either.

Mr N brought the problems with the car to CBMF's attention in February 2023, six months after he had been supplied with it. So, I need to consider if CBMF have done what I'd expect them to have done once they were aware there was a problem with the car.

The CRA explains that where goods are found not to have conformed to the contract within the first six months, it is presumed the goods did not conform to the contract at the point of supply. Unless the supplier, CBMF in this case, can prove otherwise. In Mr N's case, it was just on the six-month mark when he first informed CBMF of the faults with the car. CBMF

agreed to arrange an independent inspection of the car to determine when the faults with the car had occurred.

The independent inspection report was conducted in May 2023 and is, in my opinion, the most persuasive piece of evidence in this case. It was a physical inspection of the car by a qualified car technician. The technician concluded that there was no suggestion that the issues present with the car were present or developing when the car was supplied to Mr N. The report explained the faults had developed because of age-related wear and tear. The diagnostic report carried out during the inspection produced the same fault codes as the one Mr N had asked the specialist to carry out in February 2023 – a problem with the camshaft and with the car's control unit. However, these are not the faults Mr N initially saw on his car's dashboard shortly after collecting the car. Mr N hasn't provided any evidence of any previous diagnostic tests or results, but it would appear those faults were cleared at the time and didn't re-occur or contribute to the further failing of the car in February 2023.

The technician felt that Mr N would not have been able to travel the miles he had in the car, if the faults identified during the inspection had been present or developing when the car was supplied. I appreciate Mr N has provided evidence to show the original warning lights he saw shortly after taking delivery of the car, but these faults aren't mentioned in the independent inspection report, or the diagnostic test carried out by the specialist in February 2023 so I can't conclude they contributed to the further failing of the car five months later. From the evidence I've seen, I don't have anything to dissuade me from agreeing with the findings of the inspection report, or that leads me to conclude that CBMF acted unreasonably by following the guidance contained within the report.

Having looked at CBMF's communication with Mr N I do think they could have progressed things sooner regarding the independent inspection and when they were dealing with his complaint. But as I'm persuaded CBMF have acted reasonably by following the recommendations of the report and I'm more persuaded than not that the car was of satisfactory quality when it was supplied to Mr N, I don't think any delays from CBMF have affected Mr N's position. As such, I'm more satisfied than not that CBMF have acted reasonably towards Mr N in this case.

I know this decision will come as a disappointment to Mr N, as he still has the car, and it requires some significant repair work to enable it to be driven. However, I can't hold CBMF responsible for that, for the reasons given. I won't be asking them to do anything more here.

My final decision

For the reasons above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 8 July 2024.

Kevin Parmenter
Ombudsman