

The complaint

Mr B complains about the quality of a car he purchased under a conditional sale agreement ("agreement") with Close Brothers Limited ("CBL") and about CBL's offer of compensation in respect of the same.

What happened

In January 2022 Mr B entered into an agreement with CBL for a used car costing £22,995. The car was approximately seven years old and had travelled approximately 57,000 miles. Under the terms of the agreement, everything else being equal, Mr B undertook to pay a deposit of £2,300 followed by 47 monthly payments of £555.83 and 1 monthly payment of £565.83 making a total repayable of £29,989.84 an APR of 13.9%.

Based on records provided by CBL, the following happened:

- In May 2022 Mr B contacted it to complain, amongst other things, that there was a fault with the car's turbo.
- In August 2022 it advised Mr B that in order to be able to consider his complaint further an inspection of the car by a modified vehicle specialist was required.
- In September 2022, following no contact from Mr B, it took the decision to 'close' his complaint.
- In November 2022 Mr B contacted it to say that he "[would] *only accept rejection* [of the car] *or he* [would] *go to court*".
- In February 2023 Mr B contacted it to complain, for a second time, that there was a fault with the car's turbo.

In April 2023 Mr B's car was inspected by a company that I will call "E". E confirmed that the car needed a new turbo at an estimated cost (including labour and new parts) of £4,064.40.

In May 2023 CBL issued Mr B with a final response letter ("FRL"). Under cover of this FRL CBL made Mr B two offers to settle his complaint.

In June 2023 Mr B paid E £5,169 for a repair to the turbo (using new parts) and some other works. This sum of £5,169 can be broken down as follows:

- £4,064.40 (turbo repair as per original estimate)
- £1,104.60 (other works)
- £5,169.00 (total)

Mr B's complaint was considered by one of our investigators who came to the view that, in the main, both of CBL's offers were fair and reasonable.

Mr B didn't agree so his complaint was passed to me for review and decision.

In October 2023 I issued a provisional decision. In summary I said:

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

I'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Secondly, I would add that where the information I've got is incomplete, unclear or contradictory (as some of it is here), I've to base my decision on the balance of probabilities. And although I need to have regard to the law I'm not bound by it, and I can come to a different outcome to what a court might come to.

It's my understanding that Mr B is happy with the repairs undertaken on his car by E. It's also my understanding that CBL doesn't dispute that Mr B purchased a car that was of unsatisfactory quality. So other than confirming that I'm satisfied that Mr B purchased a car that was of unsatisfactory quality, all I'm required to decide in this case is what, if anything, CBL should have to do to fairly and reasonably compensate Mr B for being supplied with a car that was of unsatisfactory quality.

CBL, under cover of its FRL dated May 2023, agreed to accept rejection of the car or to pay for a repair to the car's turbo using second-hand parts (rather than new).

Given that Mr B has had the car repaired and, as I understand it, is happy with that repair I'm not persuaded that rejection of the car now would constitute a fair way to settle matters. But equally, I don't think that directing CBL to refund Mr B the sum of £5,169 he paid E would constitute a fair way to settle matters either.

In my view CBL's offer to repair the car's turbo using second-hand parts rather than new parts was entirely reasonable given that at the time of repair the car was approximately eight and half years old and had travelled approximately 62,000 miles. So what I think CBL should do now, to fairly and reasonably compensate Mr B, is to pay him what it would have cost to repair the turbo using second-hand parts.

I can't say for certain what it would have cost to repair the turbo using second-hand parts, but subject to any further evidence and submissions I might receive from the parties, I'm currently of the view that the best estimate of this cost is £2,408.40 broken down as follows:

- Cost of new parts quoted by E in April 2023 of £2,810.40 x 50% £1,405.20
- Cost of labour quoted by E in April 2023 of £1,254.00 x 80% £1,003.20
- Total £2,408.40

I also think that CBL should pay Mr B interest on this sum of £2,408.40 of 8% simple a year from the date of payment by Mr B of the sum of £5,169 to E (8 June 2023) to the date of settlement.

However, this isn't the end of matters. Between January 2022 and June 2023 there were periods of time Mr B was without the car due, amongst other things, to the fault with the turbo. And in my view Mr B should be compensated, at least in part, for this fact.

Now it's not clear what periods Mr B was without the car or precisely why. But what is clear is that Mr B was able to add approximately 5,000 miles to the car's odometer between January 2022 and June 2023 and that he decided, for reasons not material to this complaint, to not engage (at least in any material way) with CBL between August 2022 and February 2023.

So taking all of this into account, and subject to any further evidence and submissions I might receive from the parties, I think it's fair and reasonable for CBL to refund to Mr B (together with interest at 8% simple a year) the monthly agreement repayments he made in May, June and July 2022.

CBL offered Mr B £300 for any distress and inconvenience this whole matter had caused him. I've considered this offer and having regards to everything that has been said and submitted, including what Mr B says were other issues he had with the car shortly after taking delivery of it, I think this sum is appropriate.

Finally, and for the sake of completeness, I would add that as Mr B had repairs undertaken on the turbo at his own volition then if these repairs prove to be unsuccessful then this is a matter between Mr B and E. In other words, if the turbo was to require new or further repairs in the future this isn't something that CBL can reasonably be held liable for.

Mr B responded to my provisional decision to say he didn't agree with it. In summary he said £300 was insufficient compensation given the number of months he was without the car, the substantial costs he incurred in train and taxi fares and given the number of attempted repairs undertaken on the car. He also said that the inspection report, produced following an inspection undertaken on the car in May 2022 on CBL's instructions, contains a number of inaccuracies.

CBL responded to my provisional decision to say it agreed with it.

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 pointed out by Mr B the inspection report, produced following an inspection undertaken on the car in May 2022 on CBL's instructions, contains a number of inaccuracies. However, this isn't material to the outcome of this complaint. I say this because:

- I'm satisfied that this report is in respect of an inspection carried out on Mr B's car, not another
- it's my understanding that CBL doesn't dispute that Mr B purchased a car that was of unsatisfactory quality so the report findings (which are inconclusive) are neither 'here nor there'

In response to my provisional decision Mr B said that what I had provisionally awarded him didn't – for various reasons – compensate him adequately, fairly or reasonably. However, I disagree.

I said in my provisional decision that rejection of the car now wouldn't constitute a fair way to settle matters. And I remain of this view given that Mr B has now had the car repaired and repaired to his satisfaction. I also remain of the view that given at the time of repair the car was approximately eight and half years old and had travelled approximately 62,000 miles CBL should only have to pay Mr B what it would have cost to repair the turbo using second-hand parts.

I will now turn to what else I said CBL should have to do to fairly and reasonably compensate Mr B, that was to refund the monthly agreement payments he made in May, June and July 2022 (together with interest) and to pay him £300.

I appreciate Mr B was without the car for a number of weeks or months. And whilst he was without the car he incurred costs in travelling by train and taxi. But I don't think it would be fair or reasonable for me to direct CBL to compensate Mr B for anytime he was without the car between August 2022 and February 2023 because it was his decision to cease engaging with CBL during this period.

I also can't ignore the fact that Mr B had use of the car for approximately the first four months of the agreement with no issues and that he has been able add a significant number of miles to car's odometer, even if it wasn't as much as 5,000 miles.

I would also point out that the purpose of our service directing a business to refund one or more agreement payments is to reflect the fact that for these months the business was responsible for the consumer being without a car and that the consumer would have alternative transport costs. To direct a business to refund these alternative transport costs in addition to monthly agreement payments would result in a consumer benefiting twice.

Given what I say above and in my provisional decision, I can confirm that I remain of the view that in the particular circumstances of this case what CBL should have to do to fairly and reasonably compensate Mr B is to refund him the monthly agreement payments he made in May, June and July 2022 (together with interest) and to pay him £300. And for the avoidance of doubt I would add that in concluding that CBL should have to pay Mr B £300 I've had regards to what Mr B has shared with our service about his past and current health.

My final decision

My final decision is that Close Brothers Limited must:

- Pay Mr B £2,408.40 for repairs undertaken on the car's turbo
- Pay Mr B interest on the above sum at 8% simple a year from the date of payment by Mr B of the sum of £5,169 to E to the date of settlement*
- Refund to Mr B the monthly agreement payments he made in May, June and July 2022.
- Pay Mr B interest on the above sums at 8% simple a year from the date of payment by Mr B to the date of settlement*
- Pay Mr B £300 for the distress and inconvenience this whole matter has caused him

** HMRC requires Close Brothers Limited to take off tax from this interest. If Mr B asks for a certificate showing how much tax has been taken off this should be provided.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 December 2023.

Peter Cook
Ombudsman