DRN-4520053

The complaint

Miss S complains about the quality of a used car that was supplied through a conditional sale agreement with Close Brothers Limited (CBL). Miss S is also not happy that her car was repossessed, and her credit file was impacted.

What happened

In February 2022, Miss S acquired a used car through a conditional sale agreement with CBL. The car was about 10 years old and had travelled 77,000 miles when it was supplied to Miss S. The cash price of the car was £4,195. Miss S didn't pay a deposit, so the total amount financed on the agreement was £4,195 payable over 36 months.

Miss S complained to CBL about their inaction in relation to her faulty car which she said has led to it being removed and destroyed for having no road tax, insurance, or MOT.

Miss S said she contacted CBL in September 2022 with concerns about her car which had broken down in August 2022. Miss S provided a breakdown report which advised of a suspected head gasket failure and no compression on cylinder 3, it also noted there was no sign the car had being serviced for a long time.

Miss S said she was advised by CBL not to move the car or to have it fixed whilst they were carrying out their investigation into the issues, which resulted in the road tax lapsing as she was unable to have the MOT completed.

Miss S said she's had a fine of £430 for the car, and is still paying for the agreement even though she no longer has possession of it. She said she's had to purchase another car to get to and from work and has a poor credit rating as a result of a default. Miss S says her mental health has been impacted by this situation and she's having to take medication.

Miss S says she thinks CBL should remove the default from her credit file and arrange a repayment plan for her.

In December 2022 CBL issued a final response relating to the quality of the car. In it CBL advised they were unable to investigate as they couldn't get in contact with Miss S, so they weren't able to support with a repair.

In August 2023 CBL issued a further final response relating to Miss S' complaint about the repossession of her car. They didn't uphold it. They said they told Miss S that she'd need to provide evidence of the faults before any works could be carried out, which they didn't receive. CBL said it was Miss S' responsibility to ensure the car remained legal, and that she had the opportunity to have the car inspected at her home or have it registered as off the road.

CBL confirmed they hadn't received any payments from Miss S between December 2022 to the termination of the agreement in March 2023, so were unable to remove any markers from her credit file or any of the remaining balance.

CBL provided a copy of correspondence dated 11 February 2023 and 8 March 2023 where they asked Miss S to provide evidence of the faults with the car, and that the complaint would be closed if the evidence wasn't provided.

Unhappy with their decision, Miss S brought her complaint to our service for investigation. Having reviewed the information on file one of our investigators recommended that the complaint should not be upheld. They explained that CBL acted fairly by issuing a default notice as the terms of the agreement had been breached.

Miss S didn't accept the investigator's view. She said it was CBL that had breached the terms of the agreement by not supplying her with a car that was of satisfactory quality which led to this situation.

The investigator responded with a second view which concluded that CBL should have arranged to have the car inspected as it had failed within six months of supply. However, the investigator still felt CBL acted fairly in terminating the agreement and applying the default. The investigator recommended CBL pay Miss S £150 in compensation.

CBL, accepted the investigator's recommendations, however Miss S didn't. She believed CBL supplied her with a car that wasn't of satisfactory quality, so asked that her complaint be referred to an ombudsman 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.

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In August 2023 CBL issued a further final response relating to Miss S' complaint about the seizure of her car. They didn't uphold it. They said they told Miss S that she'd need to provide evidence of the faults before any works could be carried out, which they didn't receive. CBL said it was Miss S' responsibility to ensure the car remained legal, and that she had the opportunity to have the car inspected at her home or have it registered as off the road.

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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.

Miss S complains about a conditional sale agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Miss S' complaint about CBL. 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.

My starting point is that CBL supplied Miss S with a used vehicle that had travelled 77,000 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage which may impact its overall quality and reliability, so there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle. It was also priced at £4,195, which is a significant mark-down from what it would be as brand new. I think it's reasonable to say the price for used vehicles tends to reflect the age, mileage and condition of a car.

From the information provided I'm persuaded there was a fault with the car's engine. This is apparent from the breakdown report, dated 16 August 2022, provided by Miss S which noted the suspected diagnosis as '*cylinder head gasket blown, no compression on cylinder no 3, no sign of vehicle being serviced for a long time*'. So, although the report advises the diagnosis should be verified by a repairing garage, I'm persuaded on balance from the evidence that the issues were present with those components and so were engine related.

Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

Satisfactory quality

The breakdown report confirmed the date of call out was 16 August 2022, which I think is fair to say is when the car broke down. CBL confirmed the agreement was entered into on 27 February 2022, so this means the engine failed less than six months from when Miss S was supplied the car.

Neither party disputes that no further expert inspections or diagnostics were carried out on the car prior to it being seized. So, despite the advice from the breakdown report, it appears the suspected issues were never verified or confirmed.

In her complaint to CBL, Miss S said the car was not drivable following its breakdown, so it remained at a location until it was seized.

CBL advised in their correspondence that they were unable to investigate the issues with the car, mainly because Miss S hadn't provided any further evidence.

So, all things considered, as Miss S nor CBL have access to the car, I don't think it's possible to diagnose and confirm the issues with the car or determine whether they would have had an inherent issue that was present or developing when the car was supplied to Miss S.

However, the evidence provided points to there being a problem with the car's engine in August 2022 which rendered the car as undrivable, although having said, that the mileage

recorded on the breakdown report was 85,746, which means Miss S had travelled approximately 8,746 miles in under six months.

Research suggests the average annual mileage in the UK is around 10,500 miles. Miss S' rate of usage for the time she had the car, persuades me that it was above average.

In consideration that some engine components failed after 85,000 miles and on a car that was over 10 years old, and that Miss S was able to travel a reasonable distance of near to 9,000 miles in just under six months, I'm persuaded it's likely the issues were caused as a result of in-service wear and tear. Dependent on previous usage and care, I don't think it's unreasonable that an engine would require maintenance at that point in a car's life.

So, I'm satisfied from the evidence provided that it's likely the car was of satisfactory quality when it was supplied to Miss S.

Although I've concluded that the car was of satisfactory quality, I acknowledge that this was based on the evidence that was provided and from what was most likely to have been the case. However, as Miss S reported the issues to the dealership within six months of being supplied the car, I think they should have done more. I think it's reasonable to consider an expert inspection of the car should have been arranged for Miss S, so as to identify and confirm what the issues were.

The CRA (goods – guidance for business) says:

'If the goods breach the rights under the Act in the first 6 months there is an assumption that the issue was present at the time of delivery ….. So, if you do not believe that the assumption is correct, you must prove otherwise. After the first 6 months, it is the responsibility of the consumer to show that goods did not meet the requirements of the Consumer Rights Act at the time of delivery'.

So, in consideration of the CRA guidance, I think CBL should have arranged an inspection of the car to determine whether the issues were present at the point of supply.

Having said that, the issues were never proven, and I've already concluded from the evidence provided, that I think it's likely the car was of satisfactory quality when it was supplied to Miss S. However, I do think CBL should have done more at the time, and so I think Miss S should receive some compensation, and I'm in agreement with the investigator that £150 is fair in the circumstances.

Seizure, default and termination

Miss S also complains about the seizure of her car and the default she received on her credit file. She believed CBL's inaction led to the car's seizure and default on her credit file.

The terms of the agreement under the section Default, says:

The following will each be an Event of Default upon which we will be entitled to terminate the agreement after following the statutory requirements:

7.1.1 If you fail to pay any of the repayments specified overleaf within 7 days of their due date in accordance with clauses 2.2 and 2.6 or breach any of clauses 3.2, 3.6, 4 or 5 of this Agreement.'

7.1.9 if you allow any distraint or seizure of the goods or part with possession of the goods

In her complaint letter to CBL, Miss S said, *'I refuse to pay the finance payments on a vehicle that I cannot drive and don't even have in my possession'.* I acknowledge the difficulties of the situation Miss S found herself in with the car, however, the responsibility to maintain the repayments on the agreement hadn't been taken away from her. So I'm satisfied that it wasn't reasonable for Miss S to stop making them without prior arrangement with CBL.

CBL confirmed that the payments towards the agreement ceased from December 2022 to March 2023 when it was terminated, the balance statement provided by CBL also confirms this. So, I'm satisfied that Miss S breached the terms of the agreement by refusing to maintain the repayments.

I'm also satisfied that Miss S breached the terms of the agreement when her car was seized for not having road tax, a valid MOT or insurance. Although I've not seen any direct evidence of this, CBL's system notes have recorded third party correspondence confirming the car's seizure. Both parties are also in agreement that this has taken place, so I've been given no reason to think otherwise.

I acknowledge what Miss S says about waiting for CBL to take action relating to the investigation of the issues with her car, however, I've seen correspondence from CBL which shows they asked her to arrange an inspection of the car. For example, in an email dated 8 February 2023 and in a further email dated 11 February 2023.

I also acknowledge Miss S provided a screen shot of a section of a letter from CBL advising not to have any repairs carried out, however it says not to do so without speaking to them first. So, I think in the circumstances Miss S may have been able to reach an agreement with CBL to repair the car, or as a minimum to have a diagnostic carried out to identify the issues. In addition, I don't think it would have been unreasonable to expect Miss S to have registered her car SORN to ensure its recorded as being off road. Ultimately, I think there were options for Miss S to prevent the seizure of her car, or to have it inspected and repaired and obtain a reimbursement if it was proven that the faults were present or developing when the car was supplied to her.

The Consumer Credit Act 1974 requires businesses to serve notice on a borrower before they can become entitled to take certain actions, including terminating an agreement or recovering possession of any goods. I can see from CBL's system notes that they wrote to Miss S in November 2022 about the arrears on her agreement. And in November 2022 CBL issued Miss S with a default notice, and again on 3 February 2022. Under the CRA a default notice advises that an agreement may be terminated if there's a failure to repay arrears by a certain date. The expiry of the default was 25 February 2023, and I can see from the statement of account that no payment was received by this date.

CBL's system notes confirm on 15 February 2023 and in March 2023 that the car was impounded due to 'evasion of road tax'. CBL notes also confirm the agreement was terminated on 15 March 2023.

So, in consideration of the CCA, the terms of the agreement, the evidence provided and the circumstances of this complaint, I'm satisfied that CBL acted fairly by issuing a default notice and in terminating Miss S' agreement.

My final decision

To settle the complaint Close Brothers Limited have already agreed to pay £150 compensation in recognition of not arranging an inspection of the car. I think this is fair in all the circumstances. So, I'm not going to ask Close Brothers Limited to do anything more.

So, my decision is that Close Brothers Limited should pay £150 to Miss S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 9 February 2024.

Benjamin John
Ombudsman