

The complaint

Miss L complains that a van supplied to her under a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance ("Close") was of an unsatisfactory quality.

What happened

Miss L has been assisted in making her complaint by her husband. But in this decision, for ease, I will treat all communication as having been with, and from, Miss L herself.

On 17 August 2022, Miss L was supplied with a used van through a conditional sale agreement with Close. The agreement was over 60 months, with monthly repayments of £434.33. Miss L also paid a deposit of £4,967.80. At the time it was sold, the van was around four years old and had done 39,423 miles.

The van broke down around six days after it had been supplied to Miss L and it was returned to the dealer for repairs. Although those repairs took an extended period of time, Miss L has said that she was provided with a courtesy vehicle at that time. And it seems the van broke down again in January 2023 and was again repaired by the selling dealer.

On 20 February 2023 Miss L took the van to a local car parts store since it was not running well and struggling to start. The store diagnosed problems with the Glo plugs that it then replaced. The report noted that the van was then running. But the report also noted that the coolant tank was evacuated of water and under high pressure, smoking heavily. It said it suspected a head gasket failure. Miss L said the selling dealer would not commit to offering further repairs until it had confirmed whether the problems were covered under the van's warranty. It told Miss L that if the problems weren't covered by the warranty she would need to pay for the work it had done.

Miss L complained to Close about the problems with the van. It asked her for evidence that the latest problem, suspected to be the head gasket, had been present or developing when the van had been supplied. Miss L was unable to provide that evidence so Close told her it would not be upholding her complaint. Unhappy with that response Miss L brought her complaint to us.

Miss L's complaint has been investigated by one of our investigators. She thought that the dealer had acted fairly in completing repairs to Miss L's van in August 2022 and January 2023. But she didn't think there was sufficient evidence to conclude that the problems with the head gasket were present or developing at the time of sale, or that they had been caused by the earlier repairs. So the investigator didn't think the complaint should be upheld.

Miss L didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Miss L and by Close. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Miss L was supplied with a van under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the van should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of finance used to purchase the van, Close is responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history.

The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the van was supplied. But where that fault is identified later it falls on the consumer to demonstrate it was present, or developing, at the time of sale.

Miss L's van suffered two faults, in August 2022 and January 2023, that were within the first six months since its supply. Miss L has told us those faults were repaired by the dealer free of charge, and that she was kept mobile by the provision of a courtesy vehicle. So I think the dealer, and therefore Close, acted appropriately and in line with their responsibilities at those times.

A further fault with the van was highlighted by the car parts store on 20 February 2023. Firstly I think I should note that the language used at that time on the report given to Miss L was that a fault with the head gasket was suspected (my emphasis). I think it would be necessary to have a more conclusive determination of that fault in order for me to make a definitive finding here. I note that Miss L was offered that investigation by the dealer, but I accept she would have needed to pay a significant sum, had the investigation concluded the problems were outside the warranty. I can understand why she might not have wanted to proceed on that basis, but it doesn't help me to decide this complaint in her favour.

The first suggestion that there might be a problem with the head gasket took place more than six months after the van had been supplied. I haven't seen anything that would lead to a conclusion, even on the balance of probability, that this problem was present when the van was supplied. At the time of supply the van was four years old and had travelled almost 40,000 miles. So it wouldn't be surprising if some parts needed replacing sooner than might be the case with a new van. The purchase price that Miss L paid reflected the used nature of the van.

So whilst I accept how disappointing my decision will be for Miss L, I am not persuaded that it would be reasonable to conclude that the suspected problems with the head gasket were present, or developing, at the time of supply. So I cannot conclude those problems would lead me to consider that the van was not of a satisfactory quality when it was supplied.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Close Brothers Limited trading as Close Brothers Motor Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 27 June 2024.

Paul Reilly
Ombudsman