

## The complaint

Mr W is unhappy that a car supplied to him under a conditional sale agreement with Close Brothers Limited was of an unsatisfactory quality.

## What happened

In October 2022, Mr W was supplied with a used car through a conditional sale agreement with Close Brothers. The agreement was for £25,737 over five years; with 59 monthly repayments of £398 and final repayment of £408. At the time, the car was around nine years old, and the invoice showed it had done 79,000 miles.

Mr W said the headlights and indicators stopped working within the first few weeks. He said the dealer that supplied the car told him to take it to a manufacturer's main dealer, or a mechanic specialising in that make of car. He said he did that, and was told the headlights were faulty, as were other electrical parts.

He said he'd complained to the dealer and the broker, but he said the dealer refused to pay for any repairs, blaming him for the fault.

He said he had contacted the finance broker and provided them with an independent report in January 2023 showing the faults. They contacted the dealer and Close Brothers on his behalf.

He said that in March 2023 Close Brothers arranged for an independent report and this confirmed the faults. But he said he still had the car, he couldn't drive it, and the garage wouldn't take it back. He said the MOT had expired and he was unable to drive it because it has no lights.

In March 2023 Close Brothers informed the broker that the independent inspection had confirmed the faults with the lights, and that they were present at the point of sale. The broker said the dealer was willing to look at the car before agreeing to pay for repairs. They said the dealer also insisted that Mr W took the car to them for a further inspection.

The independent inspection commissioned by Close Brothers was completed on 8 March 2023. It concluded that "*both headlights do show excessive condensation and will require replacement to remedy the fault*". The report also confirmed that the faults were not caused by Mr W, and would have been present or developing at the time the car was supplied to Mr W.

In their Final Response Letter sent in April 2023, Close Brothers told Mr W they were willing to support him with a repair of the car because the inspection confirmed the faults were present at the point of sale. But they didn't uphold his complaint because Mr W wouldn't return the car to the dealer.

Mr W wasn't happy with Close Brothers' response, and he brought his complaint to this Service.

Our investigator was satisfied the independent inspection showed there were faults with the car. She said that the broker had provided information that the dealer refused to repair the car. So she said that it was fair for Mr W to be able to reject the car.

She also said that Close Brothers should refund 70% of the monthly payments he had made to reflect the impaired usage, reimburse Mr W's additional expenses he'd incurred, and pay £250 or the distress and inconvenience caused.

Close Brothers didn't respond to our investigator's view so the matter has been passed to me make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr W was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of the goods, Close Brothers were responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description and other relevant circumstances. This would include things like the age and mileage at the time of sale, and the vehicle's history.

There is no dispute that the car had faults. The independent inspection arranged by Close Brothers confirmed the presence of faults, and that they were present at the time of sale. So I'm satisfied the car was not of a satisfactory quality.

The issue at dispute here is what Close Brothers should do to put things right. Although they haven't given reasons, it appears to me they are reluctant to allow rejection as they feel they should be allowed an opportunity to repair the car. And they've suggested in their final response letter that Mr W has not allowed them that opportunity.

It appears that the Close Brothers are relying on testimony from the dealer that Mr W has not arranged for a repair. Section 23 of the CRA says:

*(2) if the consumer requires the trader to replace or repair the goods, the trader must*

*(a) do so within a reasonable time and without significant inconvenience to the customer.*

Mr W has been in regular contact with Close Brothers, and with the broker. He's been open with them about the difficulties he had with the dealer. I can see from Close Brother's evidence that the dealer blamed Mr W for the faults with the lights. But Close Brothers are aware that the inspection they arranged has confirmed this was not the case. But despite this reliable confirmation, the dealer has still stated that it won't agree to pay for repairs, and that it would only look at the car if Mr W took it to its premises.

I find that to be unreasonable. And I'm not satisfied that Close Brothers has treated Mr W fairly. The inspection confirms that the car is not road legal – it has no lights or indicators. It's unreasonable to expect Mr W to drive the car.

By the time they issued their final response in April 2023, the car had been undriveable for six months. I can see that Mr W chased all parties on a regular basis during that time. But the dealer, broker, and Close Brothers delayed unnecessarily, even after it was confirmed the car was faulty.

Mr W has continued to pay for a car he was unable to use. And he eventually had to purchase a second car so he could be mobile again. I'm not satisfied Close Brothers have acted within the requirements of section 23(2)(a) of the CRA. They made no offer to help Mr W get the car to a garage for repair, or offer to pay for any repairs at a location close to him. They had many opportunities to do that. So I don't think it's reasonable that Close Brothers should still be given their one chance of repairing the car. And Mr W should now be allowed to reject it.

### **Putting things right**

Close Brothers supplied Mr W with a car that is now undriveable. It's now for Close Brothers to arrange for the collection of the car.

Mr W is disabled and not having the use of the car has been inconvenient and upsetting. In addition, he clearly explained his communication needs to Close Brothers but these were frequently ignored. I sense his frustration. He had to pay for his own diagnostic reports when the faults were disputed, unreasonably. And he also had to pay for a new battery, for which he received no benefit.

I'm satisfied that Mr W has not had much use of the car. There is a dispute about the mileage. But I'm persuaded by his testimony – he has been consistent and honest throughout. I'm satisfied that he had limited use of the car. So I think it's reasonable that he be refunded a significant portion of the repayments to reflect that impaired usage.

As I'm upholding this complaint Close Brothers Motor Finance Limited must:

- end the agreement with nothing further to pay
- collect the car at no cost to Mr W
- refund the customer deposit/part exchange contribution of £1,800 (minus the £100 Mr W didn't pay)
- refund Mr W 70% of the monthly payments he made towards the agreement
- refund the cost of the two diagnostic reports: £72 plus £180
- refund the cost of the replacement battery: £370
- apply 8% simple yearly interest on all refunded amounts, calculated from the date Mr W made the payments to the date of the refund\*
- remove any adverse entries on Mr W's credit file relating to the agreement
- pay Mr W an additional £250 to compensate him for the trouble and inconvenience

caused to him by being supplied with a car that wasn't of a satisfactory quality, and the failure to communicate with him in the manner he repeatedly requested.

\*HM Revenue & Customs requires Close Brothers to take off tax from this interest. Close Brothers must give Mr W a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr W's complaint about Close Brothers Limited and they must follow my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 March 2024.

Gordon Ramsay  
**Ombudsman**