

The complaint

Miss F complained that she was unhappy with the quality of a car she acquired on 6 March 2023, using a conditional sale agreement with Close Brothers Limited, trading as Close Brothers Motor Finance ("Close Brothers"). She is also now unhappy about the length of time it has taken for Close Brothers to settle the complaint.

What happened

Miss F acquired a used Land Rover on 6 March 2023, using a conditional sale agreement with Close Brothers. The cost of the car was £20,345, of which Miss F borrowed £19,345 over a term of 60 months, with a monthly repayment of £449.77. The vehicle was just over five years old, and the mileage stated on the finance agreement was 45,969.

Miss F started having problems with the car on the following day. She contacted the dealership, and then - on 13 March 2023 – she complained to Close Brothers. She had returned the car to the dealership on 11 March 2023 and said she wanted to end the contract.

Close Brothers commissioned an independent inspection of the car, and this took place in April 2023. But as the complaint had not been resolved by the end of May, Miss F brought her complaint to this service. She was unhappy that she hadn't been able to get the contract ended within 14 days, and that the complaint hadn't been resolved. She was also unhappy that Close Brothers had reported missed payments on the car to the credit reference agencies, so her credit score had gone down.

Following our involvement, Close Brothers issued its final response letter about Miss F's complaint in July 2023. Close Brothers upheld her complaint, saying it accepted that she could reject the car and end the contract. It also said that it would refund Miss F's deposit of £1,000 and pay £150 in recognition of the distress and inconvenience caused by the delay in dealing with the complaint, and a further £300 in recognition of the effect on Miss F's credit record. It looks as though these payments were made quite quickly after the final response letter was issued.

Miss F had sent in copies of emails from Close Brothers, in which it was stated that the payments she'd made for road tax and insurance - £160 and £80 respectively – would also be refunded, although these amounts were not mentioned in the final response letter. Our investigator looked at this, and thought that the compensation stated in the final response letter wasn't entirely in line with the approach taken by this service. So she concluded that Close Brothers should, in addition to the refund of the deposit and payment of £450 in recognition of the distress and inconvenience caused:

- cancel the finance agreement and remove all adverse information from Miss F's credit file.
- pay 8% interest on the deposit of £1,000 from date of payment to date of settlement.
- honour its offer to refund the payments of £160 and £80 for the tax and insurance respectively.

Our investigator issued her view to that effect on 2 August 2023. Close Brothers didn't respond, and Miss F contacted Close Brothers (and this service) on a number of occasions to see what was happening. Her particular concern was that, although her credit record showed that the agreement had been settled, there were still missed payments recorded, which were affecting a planned property purchase. She had also not received the additional payments set out in our investigator's view.

Miss F was very unhappy about this, and asked that the complaint be referred to an ombudsman for review.

I issued my provisional decision in February 2024, in which I explained that I thought Close Brothers should pay an additional amount of compensation. I've set out the details of this below. Close Brothers responded to say it accepted my provisional decision. Miss F has not provided any new information.

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.

Miss F's complaint about the car was upheld whilst it was being considered by this service, and the car returned, so I'm primarily looking the redress in this decision. I've decided that Close Brothers should increase the compensation due to Miss F. I'll explain why.

I set out my reasoning in my provisional decision as follows:

"Miss F first complained to us about the quality of the car. Because Close Brothers supplied the car under a conditional sale agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I would also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

I would also need to take account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

In this case, Miss F complained about the quality of the car within days of taking delivery, in March 2023, so the short term right to reject was relevant. Close Brothers commissioned an independent inspection of the car, which was carried out in April 2023. Following this, Close Brothers accepted that Miss F was entitled to reject the car, in line with the CRA provisions, and end the contract.

Because Close Brothers has upheld the complaint, I don't need to comment further on the quality of the car – clearly Close Brothers accepted that it wasn't of satisfactory quality at the point of supply.

However, it took 19 weeks for Close Brothers to issue its final response letter to Miss F, and this was some 13 weeks after the independent inspection took place. In that time Miss F's

credit record was affected by the missing payment records, causing her additional distress as a credit application was declined.

I should say here that I accept that, in general, it is not a good idea to stop making payments while a complaint is being considered. But Miss F had returned the car to the dealership on 11 March, and I can see from the records that Close Brothers sent in, that Miss F contacted it on 10 March 2023 – and the call note shows that she was told that it was “within her right for the first 14 days to hand the car back”. This is, of course, not entirely accurate, but I think it would likely have influenced Miss F’s decision to stop the payments on the agreement.

Taking all this into account, I think it was fair at that point for Close Brothers to offer Miss F a total of £450 in recognition of the distress and inconvenience caused, in addition to refunding Miss F’s deposit. I also think the additional requirements set out by our investigator were fair – that is the removal of all adverse information from Miss F’s credit file, the payment of interest on the refunded deposit, and the refund of the payments of £160 and £80 for the tax and insurance respectively. However, I would normally expect to see interest added to all items refunded.

Close Brothers didn’t respond to our investigator’s view, so it seems it accepted her recommendations. But it did not act on them, and Miss F did not receive the extra payments. And although her credit record showed that the agreement had been settled, there were still three missed payments recorded, which was affecting her credit score and, she told us, her ability to go ahead with a planned property purchase. This caused Miss F additional distress.

I can see that Miss F chased the outstanding items with Close Brothers. We had confirmation from Close Brothers on 31 October 2023 that, although it had paid £1,450 to Miss F, it had still not paid the additional amounts. It also said that there had been a delay in removing the required information from her credit file, but this had been followed-up since to ensure completion. Further information from Close Brothers on 27 November 2023 confirmed this delay but said that the records had been updated on 23 November. The additional amounts due to Miss F had still not been paid.

From all this I don’t think Close Brothers has treated Miss F fairly in delaying both the payment of the additional amounts and the updating of Miss F’s credit history. As I noted above, Miss F said this had affected her ability to move forward with a property purchase, which I can understand would be very difficult. And I can see that she’s had to chase Close Brothers to try to bring this to a close. It isn’t clear whether Miss F has now received the other payments Close Brothers promised to make, or whether Miss F has now been able to check that her credit record has been fully updated. So I think Close Brothers should pay Miss F an additional £100 in recognition of the further delays. And as I noted above I think Close Brothers should pay interest on all sums refunded.”

As I noted above, Close Brothers accepted my provisional decision, and Miss F didn’t provide any new information, and therefore I’ve no reason to change my conclusions. So I’ve decided that Close Brothers Limited should pay an additional amount as set out below in settlement of this complaint.

Putting things right

I understand that Close Brothers has paid £1,450 to Miss F in relation to the deposit on the car and in recognition of delays in dealing with the complaint. In addition to the payment of £1,450, Close Brothers should:

- ensure that any adverse information has been removed from Miss F’s credit file in relation to this agreement (if it has not already done so);

- refund the sum of £240 in relation to the tax and insurance paid by Miss F (if it has not already done so);
- pay 8% simple interest per year* on the amounts refunded on the deposit (£1,000) and tax and insurance (£240), calculated from the date Miss F paid those amounts to the date of settlement (if it has not already done so);
- pay Miss F a further £100 in recognition of the additional distress and inconvenience caused by the delay in settling this complaint.

*if Close Brothers considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss F how much it's taken off. It should also give Miss F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I've decided that Close Brothers Limited should pay an additional amount as described above in settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 15 April 2024.

Jan Ferrari
Ombudsman