

The complaint

Miss P is unhappy with the quality of a car she financed with Close Brothers Limited trading as Close Brothers Motor Finance ('CB').

What happened

The parties are familiar with the background details of this complaint so I will just summarise things here. It reflects my informal remit.

At the end of 2021 CB supplied Miss P with a car via a conditional sale agreement. She says she experienced faults with it soon after supply and it was taken to the dealer for repairs. Miss P says that the dealer had it for several months but did not resolve things.

Miss P wanted to reject the car and said it got to a point where it was undrivable. She says that CB sent enforcement officers to her and took the car back because she stopped paying for it – but she thinks she shouldn't have to pay for it due to the issues with its quality. She says the whole situation has caused her significant stress and she would like money back and compensation.

Miss P complained to CB but it didn't uphold the case on the basis that she had not provided sufficient evidence that the car was faulty from the point of sale.

Our investigator upheld the complaint but CB did not reply. So the matter has come to me to make a decision on. I issued a provisional decision which said:

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

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

For completeness I note Miss P has mentioned an issue with discrepancies around the car engine number. However, because I am upholding the complaint (and saying she should have been able to hand back the car) for other reasons I don't consider it necessary to go into this aspect here.

In considering what is fair and reasonable, I need to have regard to 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.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. CB is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account 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 take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA' from now) says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

CB supplied Miss P with a second-hand car that was over ten years old and had done around 68,000 miles at the point of supply. It was priced at £10,000 which while not an insignificant amount of money is less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances a reasonable person would consider that the car had suffered notable wear and tear – and was likely to require more maintenance and potentially costly repairs in the future than you might see on a newer, less road worn model.

While the expectation around the quality of the car would be lower in the circumstances– the car would not be reasonably expected to have significant issues with it at the point of supply including those that make it potentially unsafe, or undrivable.

I can see Miss P has sent CB credible testimony, backed up by messages showing she had issues with the car engine management light almost immediately after taking it from the dealer. Soon after this she goes on to complain about other things including the exhaust and the bumper side panel and bumper not being properly attached to the car and being blown out during driving (with pictures to support this).

So I am persuaded from this strong circumstantial evidence that even though this is an older car, it was supplied to Miss P in a condition the reasonable person would not consider satisfactory. And although Miss P has not supplied an expert report – because of the circumstantial evidence showing how early the significant issues with the car arose – I don't consider the burden should fairly be on her to obtain one here (as CB has indicated in reference to the provisions in the CRA).

Because I consider on balance the car was not of satisfactory quality at the point of supply, Miss P was entitled to a remedy under the CRA. It is arguable that at this early stage Miss P could have exercised her 30 day short term right to reject it. However, it isn't entirely clear if she did at the time.

The short term right to reject notwithstanding Miss P would be entitled to a repair – but the CRA says that has to be done in a reasonable time and without significant inconvenience to her. And here I note that Miss P says that it was only after months of complaining to the dealer that it took the car in to repair in March 2022. And that the car was in for repair for months. So from what she has said from her credible testimony (and CB has not provided persuasive evidence otherwise) it could be argued that despite having a courtesy car for the period the car was in the garage, she should have been allowed to exercise her final right to reject instead of a right to repair.

However, in any event Miss P says the repairs were not done properly, and the car came back in a bad condition with parts badly taped up, significant additional mileage added and a constant smell of burning along with other issues. I accept that some of the issues that Miss P has mentioned would potentially be down to reasonably expected wear and tear in a car of

this age and mileage. However, it is clear there were significant and unacceptable issues at the point of supply – and because I can't be sure those were repaired properly (Miss P has provided credible testimony and CB has not shown otherwise) I consider it fair that Miss P was able to exercise her final right to reject when she raised the matter with CB.

However, CB did not allow her to reject the car – and since then things have moved on. However, I consider it fair that Miss P is put back in a position that reflects the fact she was supplied a car that wasn't of satisfactory quality.

CB should treat the agreement as at an end if it hasn't already, with Miss P not owing anything on it. She should also be refunded her deposit plus interest.

Regarding refunds for months Miss P has paid already. Miss P has confirmed the car was in the garage for 4 months from March 2022 – but she had a courtesy car during that time so I think it fair that she pays for these 4 months of use as she was kept mobile.

I understand Miss P stopped using the car completely in October 2022 due to mounting issues with it and the ongoing concerns since the time it was supplied. But I also note she appears to have stopped paying for the agreement at this point so I don't think there are any monthly rentals to refund from this point for loss of use.

From what Miss P has said (and noting we have limited information at this stage about the car mileage covered) it appears she was able to make use of the car for the other periods of time. However, Miss P had issues which impaired her use of the car both before and after it was in for repair including burning smells, leaks, warning lights and trim detaching. I think she should get a refund of a portion of the monthly payments she made to the agreement to reflect this (apart from the months of March, April, May and June 2022 when she had the courtesy car). Deciding impaired use is not a science – and I note that some impairment will be down to issues that would usually occur with an older car. However, overall I think a 10% refund of each monthly payment to date (excluding the aforementioned months) is a fair way to reflect the impaired use here.

I also note this matter has caused Miss P significant distress and inconvenience. She has described in detail how this has impacted her mental health and caused difficulties with transporting her family around when she stopped using the car. Miss P indicates that CB were not as helpful as they could have been which contributed to the distress and inconvenience here. I agree that CB could have better supported Miss P – it focused on when Miss P had contacted it rather than the history of the issues she had which were evident from an early stage during her contact with the dealer. I think it should have investigated with the dealer and ultimately accepted the car back instead of asking Miss P to provide more information. And I think it has further aggravated the situation by ending the agreement in the way it has and seeking arrears.

Because of the impact of CB's actions which I am persuaded have caused considerable distress, upset and worry over a period of many months I think it fair to make a compensation award greater than that recommended by our investigator. I have considered our scale of awards for distress and inconvenience on our website in line with the particular circumstances here, and after doing so think an award of £450 to be fair and reasonable.

I understand Miss P fell into arrears on the agreement from November 2022 onwards and a decision was taken to repossess the car and terminate the agreement in January 2023 with a liability transferred to a collection agency. I also understand that now the car has been sold by CB for around £700. However, because the quality issues with the car were the fault of CB, and it failed to rectify these, leaving Miss P with a car she was unable to use as intended I think that it unfair Miss P is penalised for this. In the particular circumstances here

CB should ensure it removes any adverse information from her credit file in respect of the agreement – and ensure that any arrears are written off and recovery action is ceased (this might involve CB having to buy back or settle a debt if it has sold it).

My provisional decision

I uphold this complaint and direct Close Brothers Limited trading as Close Brothers Motor Finance to:

- *End the agreement (if it has not done already) with nothing further to pay;*
- *ensure there are no arrears or collections activity going forward in respect of this agreement and remove adverse information from Miss P's credit file in respect of this agreement as well (this might involve buying back the debt and/or contacting debt collection partners to ensure the actions are carried out properly);*
- *refund Miss P her deposit of £2,000;*
- *reflect impaired use due to any breach of contract in relation to the quality of the car by refunding Miss P 10% of each monthly rental she has paid except for the 4 months of March, April, May and June 2022;*
- *pay yearly simple 8% interest on any refund calculated from date of payment to date of settlement; and*
- *pay Miss P £450 compensation for the distress and inconvenience caused to her.*

CB should provide Miss P with a certificate of tax deduction if it chooses to deduct tax from the interest portion of the award.

I asked the parties for comments.

In summary, Miss P says that:

- CB did not advise her of the short term right to reject when problems first arose;
- She thinks that 10% of her monthly payments is unfair when she was trying to sort the matter out since the start and noting all the distress caused by this including the attempts to repossess the car.

CB did not provide a substantive response to my provisional findings.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

I acknowledge that Miss P says she wasn't made aware that she could have rejected the car at an early stage. This was not ideal – although it isn't clear if CB would have accepted rejection. In any event my decision proposes to put right the situation – and I think it does in a broadly fair way.

I know that Miss P does not think 10% of her monthly payments is fair considering what she has been through. However, she does not dispute that she had use of the car so she does need to pay something to reflect that. And the redress needs to be taken into context with the other redress I am directing here – including a refund of her deposit and a separate payment of £450 for the distress and inconvenience caused.

While I recognise the difficult situation Miss P has been through overall I consider my proposals are a fair way of putting things right. With that said, my role is to resolve things informally, and Miss P does not have to accept my findings – she might wish to go to court as an alternative.

Putting things right

CB should put things right as I have directed below.

My final decision

I uphold this complaint and direct Close Brothers Limited trading as Close Brothers Motor Finance to:

- End the agreement (if it has not done already) with nothing further to pay;
- ensure there are no arrears or collections activity going forward in respect of this agreement and remove adverse information from Miss P's credit file in respect of this agreement as well (this might involve buying back the debt and/or contacting debt collection partners to ensure the actions are carried out properly);
- refund Miss P her deposit of £2,000;
- reflect impaired use due to any breach of contract in relation to the quality of the car by refunding Miss P 10% of each monthly rental she has paid except for the 4 months of March, April, May and June 2022;
- pay yearly simple 8% interest on any refund calculated from date of payment to date of settlement; and
- pay Miss P £450 compensation for the distress and inconvenience caused to her.

CB should provide Miss P with a certificate of tax deduction if it chooses to deduct tax from the interest portion of the award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 23 July 2024.

Mark Lancod
Ombudsman