

The complaint

Mr R complains about a car he got under a conditional sale credit agreement with Close Brothers Limited trading as Close Brothers Motor Finance. He says that the car is not of satisfactory quality and that he's been unable to use it for some considerable time. Mr R is also unhappy that he didn't get the warranty that was supposed to be supplied with the car.

Background to this decision

I recently issued my provisional decision setting out the events leading up to this complaint and my intended conclusions on how I considered the dispute best resolved. I've reproduced that provisional decision here and it is incorporated as part of my overall findings. I invited both parties to let me have any further comments they wished to make in response, and I will address their responses later in this decision.

“What happened

In June 2022, Mr R entered into a conditional sale agreement for a used car, sourced from a dealer “P”. At the time, the car was approaching 13 years old and, according to the credit agreement, had covered around 125,000 miles. P had attached a cash price of £20,990 to the car. Mr R paid £3,000 deposit, with the balance financed by Close Brothers at monthly payments of £597.17. Mr R says the car should have come with a six-month warranty that P failed to register.

Within a month of taking delivery Mr R reported a problem with the engine coolant level, which P apparently fixed. However, following his further use of the car the coolant level fell again. Subsequent independent investigations carried out at the behest of both Close Brothers and Mr R identified excess pressure in the cooling system and a head gasket failure, with the likely cause of the excess pressure being worn piston rings. The reports were in conflict over whether the issue was likely to have been present at point of supply.

Close Brothers declined to meet Mr R's request that it cover the cost of repair. Its response didn't address the question of whether the car had been sold with a warranty, though this was made more difficult to ascertain as by that point P had ceased trading and entered liquidation. In recognition of delays in its handling of the claim, Close Brothers offered Mr R £75 compensation. Mr R was dissatisfied with this and referred matters to us.

Our investigator wasn't persuaded that there was sufficient evidence to uphold the complaint. He considered the problems with the car were down to ordinary wear and tear such as might be expected on a car of the age and mileage in this case.

Mr R didn't accept the investigator's conclusions and asked that an ombudsman review the case, as the final stage in our process.

What I've provisionally 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.

Because Mr R acquired the car from Close Brothers as a consumer, the arrangements are covered by – among other things – the Consumer Rights Act 2015 (“CRA”). One effect of the CRA is that the sale agreement is to be read as including a term that the car would be of satisfactory quality. Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability.

Mr R's claim is that the car Close Brothers supplied to him failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality.

I'm fully aware the car was far from new and so the standard a reasonable person might expect from it would be lower than for a car that had covered fewer miles. Buying a used car carries some inherent risks, not least of which is that sooner or later items will need repair or replacement. That said, the price attached to the car and the general expectation of freedom from minor defects suggests that one might expect such a car not to breakdown in the way it did only a month after it was supplied.

As I understand it, at that point P undertook some work on the car, replacing the water pump due to a loss of coolant. It's unclear whether P also replaced the coolant system container cap with a pressure release valve at the same time, or whether this was done at an earlier point. I've no evidence to suggest that this was something Mr R himself arranged after he got the car.

However, in my view it's an important aspect that speaks to the state of the car at the point of supply. I say this because after P carried out its work Mr R reported a continuing loss of coolant, and all of the reports subsequently obtained make reference to excess pressure in the cooling system.

That leaves open the possibility that the excess pressure was something manifest prior to Mr R getting the car, and that the root cause of this was never properly identified or fixed. It seems to me rather less likely that the car suffered two separate and unconnected losses of coolant within a short space of time. The head gasket failure may be a bit of a red herring in this case, as while the report points to the cylinder head being insufficiently tight this could be attributable to earlier work or the post-supply work carried out by P.

The initial problem manifested shortly after the car was supplied to Mr R, and that by November 2022 he'd raised his concerns with Close Brothers after the second failure. The failures suggest a lack of satisfactory quality. The CRA says that goods that don't conform to contract at any time within six months of the consumer taking delivery are to be taken as not conforming to it at the point of supply, unless it is established that the goods did conform to contract on that day.

Having considered the evidence on which Close Brothers has based its position, I'm not currently persuaded it's done enough to rebut that presumption. I don't consider the reports Close Brothers obtained contain sufficient depth of investigation to safely conclude that the car was of satisfactory quality when the firm supplied it to Mr R. That isn't a criticism of the reports themselves. It is to do with the way in which Close Brothers appears to have placed more weight on them than it did on other evidence pointing towards a different outcome.

On balance I'm not currently minded to find that Close Brothers has dealt fairly with the situation by declining Mr R's claim for the reasons it has. I can further understand why Mr R has the concerns he does about the car, and why he's been unhappy about having to maintain the payments for it while having to use another vehicle. I intend to conclude that the car was not of satisfactory quality when it was supplied to Mr R.

Noting the remedies available to Mr R under the CRA, I also think Mr R would be entitled to exercise his right to require repair of the car¹ at this point. With this in mind, I don't believe it's necessary for me to make a finding in respect of any warranty that should have been provided with the vehicle, though I reserve the power to do so depending on the responses I might receive."

To settle matters, I proposed that Close Brothers promptly arrange to collect the car, have it repaired and return it to Mr R at no significant cost or inconvenience to him. I further proposed that Close Brothers reimburse some of Mr R's monthly payments to reflect his impaired use of the car, and that it should pay him additional compensation for his time and trouble. I also felt it appropriate that Close Brothers rework Mr R's account so that he wasn't disadvantaged by the dispute.

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

Responses to my provisional decision

Mr R accepted my intended conclusions, though he asked me to note that he has by now arranged for the repair himself, and is seeking reimbursement of that cost.

Close Brothers informed us that it intended to respond and asked for an extension to the time set out in my provisional decision to do so. That time has passed with no further submissions received from Close Brothers, and in the interests of bringing matters to a close I'm now proceeding with my 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.

In my provisional decision I set out my intended findings and the reasons for them. I've received no comment from Close Brothers in respect of my findings, or any evidence that leads me to reach a different conclusion. I therefore adopt those findings in full in this final decision.

I'm conscious Mr R has provided an update to the situation that changes part of the proposed remedy, as the required repairs have been carried out at his own expense. It makes sense to me to amend that aspect within the proposed remedy, so that instead of uplifting the car and arranging for its repair and return, Close Brothers should instead reimburse Mr R's expense. This is of course subject to Mr R providing Close Brothers with evidence of the work carried out and his claimed costs being reasonably incurred in remedying the defects.

¹ See sections 19(3) and 23 of the Consumer Rights Act 2015

My final decision

My final decision is that I uphold this complaint. To settle it, I order Close Brothers Limited trading as Close Brothers Motor Finance to take the following steps:

1. within 14 days of Mr R's acceptance of my final decision, establish with Mr R the costs he has incurred in getting the car repaired and reimburse him such costs as were reasonably incurred;
2. reimburse 60% of the monthly payments Mr R has made under the conditional sale agreement, to reflect the impairment to his use of the car while recognising the inherent purchase element;
3. rework Mr R's account as if any missed payments were suspended during the period of the dispute so that no adverse payment information is shown on his credit file; and
4. pay Mr R £250 (inclusive of its previous offer to pay him £75) in recognition of his distress and inconvenience due to its handling of his claim

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

Niall Taylor
Ombudsman