

The complaint

Mr S has complained that a vehicle supplied to him under a conditional sale agreement with Close Brothers Limited was misrepresented as a four-wheel drive.

Mr S has been represented during the claim and complaint process by Mrs S. For ease of reference, I will refer to any comments made, or any action taken, by either Mr S or Mrs S as “Mr S” throughout the decision.

What happened

In March 2024, Mr S was supplied with a used vehicle through a conditional sale agreement with Close Brothers. The agreement was for £15,000 over 60 months, with 59 monthly payments of £341.88 and a final payment of £351.88. At the time of supply, the vehicle was almost 10 years old, and had done 73,890 miles.

Mr S has said that he asked the supplying dealership for a four-wheel drive vehicle, but the vehicle supplied to him was only two-wheel drive. He complained to Close Brothers, who didn't uphold his complaint. They said that, although Mr S had discussed obtaining a four-wheel drive vehicle with the dealership, he was not advised that the vehicle supplied was four-wheel drive, and there was nothing on the vehicle or paperwork to indicate that it was.

Mr S wasn't happy with this response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that the vehicle supplied to Mr S matched the description on the agreement, and there was nothing on the vehicle or paperwork to indicate the vehicle was four-wheel drive. The investigator also reviewed the correspondence between Mr S and the dealership, and this didn't indicate Mr S was told the vehicle being supplied to him was four-wheel drive. So, the investigator didn't think Close Brothers needed to do anything more.

Mr S didn't agree with the investigator's opinion, and he asked that this matter be passed to an ombudsman to decide.

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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 S was supplied with a vehicle under a

conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Under section 56 of the Consumer Credit Act 1974, we can consider the dealership as acting as an agent of Close Brothers, so Close Brothers have a responsibility for the information Mr S was provided with at the outset. And Mr S believes the vehicle had been misrepresented to him as a four-wheel drive. When considering misrepresentation, I'm looking for two things – there must've been a false statement of fact and that false statement of fact must've induced Mr S, in this instance, to finance this particular vehicle.

I've seen a copy of the messages Mrs S exchanged with the dealership about the vehicle Mr S was looking to obtain. In these, she says *"Tbh we're looking for an automatic 4x4 but he might be interested in the vans so thought it was worth a look before we travel to look at a [specific model of car]."* When he visited the dealership, Mr S was shown a number of different vehicles and rejected them on the basis of cost. Given this, he was shown the vehicle that he eventually financed with Close Brothers.

While it's clear from the message that Mr S wanted a four-wheel drive vehicle, the same message also indicates he might be interested in other vehicles. Given the flexibility in this message, I think it was reasonable for the dealership to show Mr S different vehicles within his price range and *"he might also be interested in the vans"* indicates that Mr S may consider a vehicle that wasn't the automatic four-wheel drive he'd expressed a desire for.

So, I don't think it was unreasonable for the dealership to show Mr S two-wheel drive options, nor do I think it was reasonable for Mr S to assume that all vehicles he was shown would exactly fit his desires – especially when cost is a factor, there may always be the need to compromise, and Mr S hadn't expressly said that he was only interested in four-wheel drive vehicles.

In his complaint to this service, Mr S also admitted that he never reviewed the advert for the vehicle, and he assumed that the previous owners had just removed all the badges and other indicators that would identify the vehicle as a four-wheel drive. What's more, the agreement with Close Brothers clearly states the make and model of the vehicle being financed, but it doesn't state the vehicle is four-wheel drive i.e. it doesn't say it's a '4Motion'.

Mr S has also provided two recordings of calls with the dealership after finding out the vehicle wasn't a four-wheel drive. In one of these calls, where the dealership discussed Mr S selling the vehicle back to them, they say *"even if you went to the finance company and told them we were sold it as a four-wheel drive ..."* I don't consider this to be an admission that the dealership definitely said the vehicle was a four-wheel drive. Instead, it acknowledges that Mr S believed the vehicle had four-wheel drive.

In the second call recording the dealership say that *"someone has given [Mr S] the impression that it's four-wheel drive"* while at the same time saying that, as the UK's largest supplier of this particular make and model of vehicle they've never come across a four-wheel drive version, and only one member of staff was even aware there was a four-wheel drive option.

While I appreciate that Mr S was given the impression the vehicle was four-wheel drive, there is still a difference between this and Mr S being specifically told the vehicle was four-wheel drive. And there's no evidence that Mr S ever specifically asked if the vehicle was four-wheel drive. Instead, Mr S:

- assumed the vehicle was a four-wheel drive because he'd expressed a desire for a four-wheel drive vehicle;

- assumed that the badges and any other indicators that the vehicle was a four-wheel drive had been removed by a previous owner; and
- didn't query why the vehicle wasn't listed as a four-wheel drive on the finance agreement, i.e. why it wasn't listed as a 4Motion.

After reviewing all the evidence, and while I appreciate this will come as a disappointment to Mr S, I'm not satisfied that Mr S was advised the vehicle was a four-wheel drive, and instead all indications – the advert, the badges, and the finance agreement – show that it wasn't. As such, I'm not satisfied there was a false statement of fact. And without this, as I've explained above, there hasn't been a misrepresentation. So, I won't be asking Close Brothers to take any further action.

My final decision

For the reasons explained, I don't uphold Mr S's complaint about Close Brothers Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 May 2025.

Andrew Burford
Ombudsman