

I issued a provisional decision on this complaint on 20 November 2024, which I've included below.

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

In summary, I felt Mrs M was entitled to her right to rejection under The Consumer Rights Act 2015.

I directed Close Brothers (CB) to:

- end the agreement with nothing further to pay;
- take back the car at no further cost to Mrs M;
- refund Mrs M's deposit of £400;
- refund any monthly payments Mrs M has paid since 19 April 2024;
- upon receipt of evidence of payments, reimburse Mrs M with the car tax and car insurance costs she's incurred since 19 April 2024;
- pay 8% simple yearly interest on all refunds calculated from the 19 April 2024 until the date of settlement;
- remove any adverse information in relation to this agreement from Mrs M's credit file;
- pay Mrs M £300 compensation for the distress and inconvenience caused to her.

Please refer to my provisional decision below which explains, in depth, how I reached my decision. My provisional decision forms the basis of my final decision which both parties agreed to.

In my provisional decision, I also noted that there was damage to the vehicle following an accident in February 2024. I don't think it would be fair for CB to suffer the cost of repairing that damage or any reduction in the car's value due to the damage. So, I mentioned Mrs M may wish to repair this damage or be aware that a deduction for the damage could be deducted from the settlement I proposed.

CB responded to this point and reiterated the importance of this repair to be actioned in a reasonable timeframe. If not completed within a reasonable timeframe, CB state that they reserve the right to collect the asset, have a condition report carried out and make a suitable deduction from the redress I've proposed.

Since speaking to Mrs M, I understand she is in the process of having this repaired and has confirmed the repairs are due to be carried out this weekend. I don't think it'd be right for me to stipulate what a reasonable timeframe is but it seems like Mrs M is trying her best to move matters forward.

I would expect both parties to engage on this matter and for Mrs M to keep CB updated with any progress made. If there are unreasonable delays caused by Mrs M or she since discovers she is unable to repair the damage herself, as my provisional decision sets out, I don't find it unreasonable for CB to collect the vehicle and make a suitable deduction from

the redress I've proposed to reflect the repairs that need to be carried out as a result of the accident.

My decision directs CB to pay 8% simple yearly interest on all refunds calculated from the 19 April 2024 until the date of settlement. I think it'd be fair to say that I don't think CB need to pay interest until the date of settlement if Mrs M causes delays which then leads to a delay in CB collecting the vehicle. I don't envisage Mrs M creating barriers for CB to settle this complaint so I think CB would need to pay 8% interest until the date of settlement, but in an event there are unreasonable delays caused by Mrs M, I think it would be fair for CB to pay 8% interest from the 19 April 2024 until one month after the date of my final decision.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or decision before 16 January 2025.



Sameena Ali
Ombudsman

My provisional decision

I've considered the relevant information about this complaint.

I'm proposing a different outcome to our investigator.

The deadline for both parties to provide any further comments or evidence for me to consider is 4 December 2024. Unless the information changes my mind, my final decision is likely to be along the following lines.

If Close Brothers Limited accepts my provisional decision, it should let me know. If Mrs M also accepts, I may arrange for the complaint to be closed as resolved at this stage without a final decision.

The complaint

Mrs M complains about the way Close Brothers Limited ("CB") dealt with her claim that a car it supplied to her under a conditional sale agreement wasn't of satisfactory quality.

What happened

In November 2023 Mrs M was supplied with a car and entered into a conditional sale agreement with CB. At the point of supply the car was around eight years old and had covered 71,460 miles.

Mrs M says she experienced faults with the car soon after supply and had taken it to the dealer for repairs in December 2023. The car was returned to her, but Mrs M says she still experienced faults with the car and had contacted the dealership again. Mrs M shared a diagnostic report she had shared with the dealership in January 2024 and had been trying to arrange for the car to be inspected but she struggled to arrange for this to happen.

In February 2024, Mrs M raised a complaint with CB. CB then commissioned an expert report in March 2024 which identified faults with the car. As CB hadn't issued its response within eight weeks, Mrs M referred a complaint to our service to investigate. But in May 2024, CB issued their final response letter, and considered a repair to be the best way forward. In summary, Mrs M wants to reject the car.

Our investigator considered the evidence demonstrated that the car wasn't of satisfactory quality when CB supplied it to Mrs M. But he felt the appropriate resolution wasn't rejecting the car, rather, that CB should arrange and cover the cost of the repairs. He also recommended CB pay £300 for any distress or inconvenience that has been caused and recommended CB to remove any adverse information from her credit file in relation to this agreement.

Mrs M didn't accept the investigator's conclusions as she preferred a replacement but has since expressed her wish to reject the car 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. Where the evidence is contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what

I consider is most likely to have happened in light of the available evidence and the wider circumstances.

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 its quality.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. One effect of the CRA is that the conditional sale agreement is to be read as including a term that the car would be of satisfactory quality.

Section 9 of the CRA says that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, other circumstances could be things like the vehicle's history, age and mileage.

The CRA 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.

Mrs M's testimony is plausible and persuasive. Mrs M says the car had been left at the dealership for two weeks and returned. I haven't been able to ascertain exactly when Mrs M contacted the dealership and whether she exercised her right to reject at that time, so I haven't considered whether she had a short-term right to reject. When the car was returned to her, it was still faulty and a diagnostic report was sent to the dealership. CB has shared testimony from the dealership where they state no repairs have been carried out. I don't disagree with this statement as it appears the faults Mrs M says she reported in December were still present at the time of the diagnostic in January. These faults were still present at the point CB instructed an expert to carry out their independent inspection.

The inspection report CB instructed to be carried out in March 2024 lists a number of faults with the vehicle ranging from exhaust gas recirculation, glow plug control and fuel system issues. An addendum to this report was sent in April 2024 which stated that they considered the faults with regards to the fault codes would have been present or in development at the point of vehicle sale. I note that the fault codes identified during this visit were present when Mrs M arranged her own diagnostic report in January 2024. I'm satisfied I can rely on this independent inspection report to conclude that the car wasn't of satisfactory quality when supplied.

The CRA sets out a number of possible remedies where goods were found to have been not of satisfactory quality. CB don't disagree that Mrs M is entitled to a remedy here. But it says this should be a repair not a rejection. From the evidence I've seen, Mrs M has requested a replacement. However, I don't think this is a suitable remedy here. I say this as we would expect Mrs M to receive a like for like replacement – the CRA explanatory notes say a replacement would usually need to be identical. I don't think it would be practical to suggest that CB could source a vehicle which would be a suitable like for like replacement considering things like the age and mileage of the car.

I've carefully thought about the remedy CB have proposed. The CRA says that repairs must be carried out within a reasonable time and without significant inconvenience to a consumer, but I'm not persuaded that that has been the case here.

I'm mindful that CB were only alerted to these issues in February 2024 but from the correspondence between CB and the dealership, I'm not persuaded these repairs would have been completed any earlier if Mrs M did raise her concerns with CB directly in December. After all, it's not unusual for a consumer to contact the selling agent first to try and resolve any issues with a car they've supplied. So, a repair could have resolved matters, but in this case, I don't think the repairs have been carried out within a reasonable time and without significant inconvenience to Mrs M. Because of this, I think Mrs M is entitled to her right to rejection.

I can see that CB has tried to assist Mrs M – they paid for its own expert report and attempted to seek resolution through the dealership. However I think it should have supported Mrs M more by taking responsibility for the quality of goods and accepting rejection of the vehicle sooner.

For these reasons, I consider it fair that CB end the agreement, accept the car back with no further liability for Mrs M. It should also refund her deposit and ensure that she doesn't have any adverse information on her credit file as a result of this agreement.

CB accepted that Mrs M was entitled to a rejection on 19 April 2024 and wrote to the dealership explaining this. I think CB did act swiftly in their communications with the dealership. I understand its position since changed following the responses from the dealership but I think CB should've taken responsibility at this point and accepted the rejection of the vehicle in April 2024. If it did, Mrs M would not have been liable for any monthly payments made after this point so I think Mrs M should be reimbursed for any monthly payments made after this point. In circumstances like this, where the consumer has had possession of a vehicle, a deduction for fair use could be made. However I note, Mrs M hasn't used the vehicle since then so I don't think there's any deduction CB need to make as a result of fair usage. There was a period of time when Mrs M was without the car in December, but she was provided with a courtesy car so I don't think CB need to refund any amounts to reflect impaired use.

Mrs M said she was advised not to drive the car following an accident in February 2024. This was at no fault of CB's, and I haven't seen anything suggesting CB advised Mrs M not to drive the vehicle following the accident. After all, Mrs M was driving the vehicle having experienced the known issues from the point of supply till February 2024. Mrs M could have fixed the damage as a result of the accident and continued to drive it but she hadn't. So I don't think it would be fair to ask CB to compensate her for the non-use of the vehicle following the accident until 19 April 2024.

Mrs M has told us that she's had to pay for multiple cars since February 2024 but I don't think it's fair for CB to compensate for this. As I explained, I can't hold CB responsible for Mrs M not using the vehicle from February 2024. And if CB did accept the rejection of the vehicle sooner, Mrs M would have incurred costs for alternative means of transport.

The investigator also awarded Mrs M £300 compensation to reflect the distress and inconvenience caused. Mrs M doesn't agree with the amount of compensation. I've thought about this and I'm minded to agree with the investigator that this is a fair amount of compensation considering the circumstances. I've taken into consideration everything Mrs M has said and the events that have unfolded and along with the redress I've proposed above, I think £300 reflects the distress and inconvenience. Mrs M spent unnecessary time and effort with CB in an attempt to resolve matters. I've already mentioned why I think CB should

have accepted the rejection sooner and if it did, this would have avoided the inconvenience Mrs M has suffered.

My provisional decision

Subject to any further comments or submissions I receive from either party, I'm minded to uphold this complaint and direct CB to:

- end the agreement with nothing further to pay;
- take back the car at no further cost to Mrs M;
- refund Mrs M's deposit of £400;
- refund any monthly payments Mrs M has paid since 19 April 2024;
- upon receipt of evidence of payments, reimburse Mrs M with the car tax and car insurance costs she's incurred since 19 April 2024;
- pay 8% simple yearly interest on all refunds calculated from the 19 April 2024 until the date of settlement;
- remove any adverse information in relation to this agreement from Mrs M's credit file;
- pay Mrs M £300 compensation for the distress and inconvenience caused to her.

If CB considers it must deduct tax from my interest award it should provide Mrs M with a certificate of tax deduction.

Please note, there is damage to the vehicle following an accident in February 2024. Mrs M says that this is minor damage to the bumper of the vehicle. Be that as it may, it wouldn't be fair for CB to suffer the cost of repairing that damage or any reduction in the car's value due to the damage. Mrs M may wish to repair any damage that has been caused because of the accident. But if the car is collected without this repair, Mrs M needs to be aware that she may be invoiced for any repairs that are carried out to fix the damage as a result of the accident. And, I wouldn't find it unreasonable for CB to make a suitable deduction from the redress I've proposed.

For the reasons explained, I intend to uphold Mrs M's complaint about CB. And they are to follow my directions above. I now invite any further submissions from the parties before 4 December 2024, after which time I'll reconsider the complaint and issue my final decision.

Sameena Ali
Ombudsman