

The complaint

Mr D complains that a van acquired under a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance ("CBMF") wasn't of satisfactory quality when it was supplied to him.

What happened

The parties are familiar with the background of this complaint so I will only summarise what happened briefly here.

In November 2022, Mr D entered into an agreement to acquire a used van. He paid a deposit, with the balance of the purchase price being provided under a conditional sale agreement with CBMF. The van was seven years old and had covered approximately 93,000 miles when Mr D acquired it. The agreement was for 60 months, with monthly repayments of £254.80. The cash price of the van was £10,712.80.

In November 2024, Mr D took the van for its scheduled MOT. It failed, and the testing garage explained to Mr D that part of the diesel particulate filter (DPF) was missing. This caused the van to fail the emissions test – and the missing part of the DPF meant that the van was illegal and wasn't roadworthy.

Mr D complained to CBMF. He said the van had been unroadworthy since he had been supplied with it, so was therefore of unsatisfactory quality. He wanted to reject it at this point. CBMF explained that Mr D needed to be able to show the faults had been present when he had been supplied with it and provided some information of independent assessors he could contact.

Mr D arranged for an independent inspection to take place. The report suggested it would be difficult to determine when any tampering with the DPF had taken place, as the van had now covered over 100,000 miles. Upon further questioning the independent technician did confirm that it was felt, on the balance of probabilities, that the tampering had taken place prior to Mr D being supplied with the van. However, CBMF declined his claim. They said the evidence was inconclusive, and therefore they didn't accept the van had been unsatisfactory from the point of supply.

Mr D brought his complaint to our service. Our investigator upheld it. She said that she was persuaded, on the balance of probabilities, that the tampering with the DPF had taken place prior to Mr D acquiring the van, based on the evidence and comments from the independent technician alongside everything that had been provided by Mr D and CBMF. She said that CBMF should arrange for repairs to the van. She also said CBMF should refund all the payments made by Mr D from November 2024, as the van had been off the road since then. Finally, she said CBMF should pay Mr D £300 to reflect the distress he'd been caused by being supplied with a van that wasn't of satisfactory quality.

Mr D accepted but CBMF didn't. They continued to say the evidence was inconclusive and therefore they weren't responsible as Mr D hadn't proven the faults were present when he had been supplied with the van.

As CBMF didn't agree, the complaint has been passed to me 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.

Both parties have provided a lot of information here. I'd like to reassure them that I've read and considered everything that's been sent, although I haven't commented on it all within this decision. I will be focussing on what I consider to be the key points of this complaint.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

When the evidence is incomplete, inconclusive, or 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.

As the conditional sale agreement entered by Mr D is a regulated consumer credit agreement, this service is able to consider complaints relating to it. CBMF are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr D entered. Because CBMF supplied the van under a conditional sale agreement, there's an implied term that it is of satisfactory quality at the point of supply. Vans are of satisfactory quality if they are of a standard a reasonable person would find acceptable, taking into account factors such as – amongst other things – the age and mileage of the van and the price paid.

The CRA also says that 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 and safety can be aspects of the quality of the goods.

Satisfactory quality also covers durability. For vans, this means to components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mr D's case, the van was seven years old and had covered approximately 93,000 miles when he acquired it. So, I'd have different expectations of it compared to a brand-new van. Having said that, the van's condition should have met the standard a reasonable person would consider satisfactory, given its age, mileage, and price.

Our investigator has explained that she thinks the van wasn't of satisfactory quality when it was supplied to Mr D. I agree in this case. There is no doubt that the van is missing a crucial element of the DPF – both parties are in agreement about that. And I'm more persuaded than not, from what I've seen, that the element of the DPF was missing when Mr D was supplied with the van, therefore making it of unsatisfactory quality. I'll explain why.

The CRA explains that where goods are found not to have conformed to the contract within the first six months, it is presumed the goods did not conform to the contract at the point of supply. Unless the supplier, CBMF in this case, can prove otherwise. However, Mr D brought the problems with the missing elements of the DPF to CBMF's attention in November 2024, two years after he'd been supplied with it. As this was outside of six months since he'd been supplied with the van, it was for Mr D to show any faults had been present at the point of supply.

Mr D arranged for an independent inspection of the van to take place. This was a visual inspection undertaken by a qualified motor technician. The technician's report was contradictory in places and did confirm that it would be difficult to determine when the tampering of the DPF had taken place. But, having been asked some additional questions by CBMF following receipt of his report, the independent technician further explained that he felt, on the balance of probabilities, that the missing elements of the DPF had been missing when the van was supplied to Mr D.

I'm more persuaded than not by this explanation and evidence from the independent report, when I consider it along with Mr D's testimony and his previous attempts to identify why the van was emitting smoke when being used. He attempted to identify the issues earlier, in February 2024, and the garage could only find a fault with the engine gas regulation (EGR) valve from the diagnostic test. I haven't seen anything to suggest the garage, at that time, had any reason to look at the DPF or take it apart. They only replaced the fault that had been shown during the diagnostic test. So, I'm not persuaded that the DPF was tampered with at this point.

I also don't find it plausible that Mr D would have had the DPF tampered with. He acquired the van as something he needed to rely on, and there isn't anything I've seen that would persuade me he would then remove something from it that would render it illegal and unroadworthy. I think that is too much of a leap to consider in this case. Mr D needed to remain mobile to work – and has had to find employment now that provides him with a vehicle so he can continue to earn and meet his monthly repayments.

I appreciate CBMF have mentioned that the van passed an MOT just as Mr D was being supplied with it and passed another one a year later. They feel any problems with the emissions would have been picked up sooner than they were when the van failed an MOT in November 2024. But the independent technician has explained that the van could have been driven and not failed an MOT with the missing element of the DPF – so I'm not persuaded that the fact the van had passed MOTs previously is in itself sufficient evidence to lead me to conclude the DPF was intact when Mr D was supplied with it.

As mentioned earlier, if the information is inconclusive or contradictory I reach my decision on the balance of probabilities. And, considering everything in this case, I'm more satisfied than not that the DPF had been tampered with prior to Mr D being supplied with the van. As such, it's my decision that the van wasn't of satisfactory quality at the point it was supplied and CBMF now have to do something to put it right.

The CRA allows for one opportunity to repair, and, like our investigator, I think that's the most appropriate remedy at this stage. CBMF should arrange to collect the van from Mr D, arrange and cover the cost to repair (or replace) the DPF and return the van to Mr D once repaired.

Mr D has been without use of the van since November 2024, but has continued to maintain his monthly repayments. CBMF should refund all the payments Mr D has made towards the agreement since November 2024, including 8% simple interest on those refunds from the date they were paid until the date of settlement. If the van is going to take some time to repair, CBMF should also consider this along with Mr D's ongoing monthly repayment requirements.

Mr D has also explained the inconvenience he's been caused by being supplied with a van that wasn't of satisfactory quality. He's had to seek alternative employment to ensure he's been able to keep mobile and can meet his ongoing monthly commitments – all of which have caused him upset. To reflect that, I'm asking CBMF to pay him £300.

My final decision

For the reasons above, I'm upholding this complaint. Close Brothers Limited trading as Close Brothers Motor Finance must:

- collect the van from Mr D at no cost to him.
- arrange and cover the cost of the repairs to the van. This should be completed in a reasonable timescale from the date Mr D accepts this decision.
- refund all the monthly payments made from November 2024 when Mr D has been without use of the van, until the date the repairs are completed.
- pay 8% simple interest on all refunded payments from the date they were paid until the date of settlement.*
- pay Mr D £300 to reflect the distress he's been caused for being supplied with a van that wasn't of satisfactory quality.
- remove any adverse information from Mr D's credit file in relation to this agreement.

*If Close Brothers Limited trading as Close Brothers Motor Finance consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr D how much they've taken off. They should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 July 2025.

Kevin Parmenter
Ombudsman