DRN-5562069

The complaint

Ms S complains about the quality of a car she acquired under a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance (CBL).

When I refer to what Ms S and CBL said or did, it should also be taken to include things said or done on their behalf.

What happened

In May 2024, Ms S entered into a conditional sale agreement with CBL to acquire a used car. The car was first registered in September 2016. At the time of acquisition, the car had travelled approximately 61,720 miles as per the MOT record from around the time of acquisition. The total cash price of the car was approximately £10,725 when Ms S acquired it. The total amount payable under the finance agreement was approximately £12,786. There was an advance payment of about £7,000 and the amount of credit provided by CBL was around £3,725. The agreement consisted of 60 monthly repayments each of around £96.44.

Ms S said the car broke down with an inherent fault within a few months of her acquiring it, and that both the recovery agent and the third-party garage told her the car was full of a leak stop substance that masks problems. She said that the water pump has been replaced, and it has been flushed three times, but the car is still not drivable, as it overheats, and loses water due to a blockage somewhere in the coolant system. Ms S said the car cannot go more than 40 miles an hour or it overheats, so she said it is not safe to drive. Ms S said that she is not the one that put the leak stop substance because she had purchased an extra warranty so there would be no reason for her to try and mask a fault in the car as she could just take it to get it fixed under warranty. Overall, she feels that she has been sold a car that is not suitable for its intended purpose, so she raised a complaint with CBL.

In November 2024 CBL wrote to Ms S and said they considered the issues with the car's coolant, stop/start system juddering on startup, and the loss of power when driving. CBL said the car was seven years old and had travelled 60,000 miles when it was supplied in May 2024 and when they arranged an independent inspection in November 2024 it had travelled 65,510 miles. CBL said the findings of the independent inspection could not confirm the reported faults. The inspection report indicated that the coolant level was just above minimum and there was a substance within the header tank which is coppery in origin, and that it is possible it was a leak stop agent. It also stated that there seemed to be a be a lack of circulation in the system causing pressure to build up, which was probably why the coolant level was dropping, rather than due to an external or internal leak being present. The inspection also indicated that the car would require further investigation under workshop conditions, but the engineer felt that the coolant issue was an in-service issue that has partially been taken care of by the car warranty provider, although, it was an incomplete and unsuccessful repair. The report stated that there is no evidence to suggest the condition would been present at the point of sale. The engineer believed that this would have been brought to the sales agent's attention much sooner. So, the engineer concluded that CBL were not responsible for the faults due to the mileage covered. As such, CBL did not think Ms S should be allowed to reject the car.

Ms S was not happy so, she referred her complaint to the Financial Ombudsman Service (Financial Ombudsman).

Our investigator considered Ms S's complaint and upheld it. The investigator was of the opinion that the car was of unsatisfactory quality when supplied to Ms S.

CBL did not accept the investigator's findings, so 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered good industry practice at the relevant time. Ms S acquired the car under a conditional sale agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. CBL is the supplier of goods under this type of agreement and is responsible for dealing with complaints about their quality.

I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching, what I think is, the right outcome. This reflects the informal nature of the Financial Ombudsman as a free alternative to the courts.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Ms S entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Ms S's case the car was less than eight years old, with a total cash price of approximately £10,725. It had covered around 61,720 miles as per the MOT record from around the time of acquisition. So, the car had travelled a reasonable distance, and it is reasonable to expect there to be some wear to it as a result. I would have different expectations of it compared to a brand-new car. As with any car, there is an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. So, CBL would not be responsible for anything that was due to normal wear and tear whilst in Ms S's possession. But given the age, mileage, and price paid, I think it is fair to say that a reasonable person would not expect anything significant to be wrong shortly after it was acquired.

Ms S thinks that she should be entitled to reject the car.

The CRA sets out that Ms S has a short term right to reject the car within the first 30 days, if the car is of unsatisfactory quality, not fit for purpose, or not as described, and she would need to ask for the rejection within that time. Ms S would not be able to retrospectively exercise her short term right of rejection at a later date.

The CRA does say that Ms S would be entitled to still return the car after the first 30 days, if the car acquired was not of satisfactory quality, not fit for purpose, or not as described, but she would not have the right to reject the car until she has exercised her right to a repair first – this is called her final right to reject. And this would be available to her if that repair had not been successful.

First, I considered if there were faults with the car.

I can see that a recovery agent in October 2024 indicated Ms S had reported an overheating issue. This was also confirmed, later the same month, by a third-party garage that had completed warranty repairs on the partially seized water pump and a flush of the cooling system. This third-party garage also indicated there were signs of a coolant stop leak type agent in the car system. That same third-party garage also seen the car in December 2024, where they flushed the coolant system again and indicated that further flushes would be needed to clear the coolant system of the stop leak substance.

I have also seen a copy of the independent report completed in November 2024, and I can see the report in their diagnostic test found two codes in the engine management. One current one related to the camshaft timing and a historic one relating to the camshaft position sensor. The report states there was heavy, brown staining in the coolant bottle and brown staining on the bottom of the coolant pressure cap. After a road test, the engineer said there were clear bubbles in the header tank and when they tried to remove the coolant system pressure cap, there was excess pressure in the coolant system reservoir tank, which was trying to push the coolant out. Overall, the report confirmed there was a substance within the header tank which is of coppery origin and, possibly, is a leak stop agent. There was lack of circulation in the system causing pressure to build up, and this was likely the cause for the coolant level drop, rather than an external or internal leak. And the engineer said that further investigation would be required under workshop conditions to check for blockage and to ascertain what has occurred with the coolant level. The inspection also indicated that further investigation would be required into the fault codes retrieved.

Based on all of the above, I think the car was, most likely, faulty. But just because a car was faulty does not automatically mean that it was of unsatisfactory quality when supplied. So, I have considered if the car was of unsatisfactory quality when it was supplied to Ms S.

I know that after the car had travelled about 3,647 miles, it had a partly seized and corroded water pump and a camblet kit replaced by the third- party garage on warranty. And when it had travelled just under 6,903 miles it had a thermostat replaced. But I think the failure of both parts would not be unexpected. I think, most likely, these needed changing due to normal wear and tear process. Taking into consideration that the car's age, mileage, and price paid, I think it is reasonable to expect there to be some wear to it as a result of its use. There is an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. And with second-hand cars – especially in a car of higher age and mileage – it is more likely that parts will need to be replaced sooner or be worn faster than in a brand-new car. So, CBL is not responsible for anything that was due to normal wear and tear. And I think it is fair and reasonable to say that, considering the circumstances of this complaint, the water pump and a camblet kit and the thermostat all fall within this category. But after these parts were replaced, Ms S said that the car was not fixed and continued to overheat.

I can see that the inspection concluded that the leak stop agent seemed to be causing lack of circulation in the system, leading to pressure to build up. It also states that this is probably why the coolant level was dropping resulting in further pressure building up in the system. The engineer felt that, as the car has travelled about 3,647 miles in five months since purchase, the faults noted in the report would not have been present at the point of sale, as these would have been brought to the sales agent's attention much sooner. So, it seems that the report is inferring that, most likely, the leak stop agent was added to the car while it was in Ms S's possession. As CBL is relying on this report, they believe Ms S should not be able to reject the car.

I have taken the report into consideration, but I found it non-conclusive, as it did state that further investigation would be required under workshop conditions to check for blockage and to ascertain what has occurred with the coolant level. And I think that most likely, the leak stop agent was added to the car before it was supplied to Ms S and not while it was in her possession. To arrive at this conclusion, I have considered several aspects. I have considered that Ms S testimony seems to have been consistent and credible. She has said that the car tends to overheat only when it is being driven 40 miles or more per hour and she also said she mostly drives small distances due to her health. She also mentioned that something was starting to occur with the car about a month after supply, as she noticed that it would lose power for a few seconds but then the power would return without any warning light appearing on the dashboard. So, bearing the above in mind, I think it is not unreasonable that it took some time before she raised the issues in October 2024. And that is most likely why Ms S was able to cover around 3,647 miles before she realised the coolant problems with the car. I also do not think it is unreasonable that she had not mentioned earlier the issues that the car was starting to lose power for a few seconds, with the power returning only a few seconds later and doing so with no warning lights appearing on the dashboard.

In addition, Ms S said she is not the one that put the leak stop substance/agent in the car because she had purchased an extra warranty, so there would be no reason for her to mask a fault in the car, as she could just take it to get it fixed under warranty. I find her testimony persuasive and credible. Also, considering she has paid extra for a warranty I think most likely she would have utilised its benefits.

Overall, considering all the points mentioned above, combined with the fact Ms S had the car for only about four months and covered only about 3,647 miles before she took the car to the third-party garage, I think most likely the leak stop substance/agent was added to the car before it was supplied to Ms S.

I know that CBL have also questioned if other repairs have taken place while the car was in Ms S's possession before October 2024, but there is no evidence to indicate that most likely other repairs have taken place, and like I said I think Ms S would have been utilising her warranty had she discovered issues with the car earlier.

The third-party garage, who already flushed the coolant system on at least two occasions, has indicated that to get the leak stop substance/agent out of the car's system, it will require several flushes. I think a reasonable person would not expect to have such issues with a car so soon after supply based on the age, mileage of the car, and the price paid. So, taking everything into consideration, I do not think the car was of satisfactory quality.

In situations similar to this one, I would have been inclined to recommended that Ms S is able to exercise her right to a repair, but I do not think this would be fair and reasonable, considering the specific circumstances of this case.

I think a more reasonable solution would be for Ms S to be able to exercise her right of rejection under the CRA. When coming to this conclusion, I have considered many things. Among them, I reflected on the fact that a repair would cause further delays, costs, and inconvenience to Ms S. I have considered that to get the leak stop substance/agent out of the system, the car would require several further flushes which would require multiple trips to the garage to complete this work. Once this substance would be eliminated, it is not unreasonable to suspect that further faults may be found with the car. And under the CRA, CBL are responsible for carrying out the repairs within a reasonable time and without significant inconvenience to Ms S. This has not been the case to date, and further repairs and garage trips would likely cause further inconvenience to Ms S. So, bearing in mind the specific circumstances of this complaint I do not think that a repair would be a fair and reasonable outcome. So, I think Ms S should be able to reject the car now.

CBL should end the conditional sale agreement with nothing further to pay and collect the car from wherever it is located at no cost to Ms S. Any adverse information should be removed from Ms S's credit file and the credit agreement should be marked as settled in full on her credit file, or something similar, and should not show as a voluntary termination.

Ms S has been able to use the car, so I think it is reasonable she pays for this use. But the coolant system has not worked properly since 4 October 2024 and as such, the car has not performed as it should have. I have considered the impact this had on Ms S's use of the car, and I think a 10% refund of the payments made from 4 October 2024 to the date of settlement would fairly reflects the impaired use caused by the car not being of satisfactory quality.

Ms S said she also purchased a 12-month warranty. So, I've considered whether it is reasonable for CBL to refund this to Ms S. Ms S opted to pay for the upgraded warranty for the higher level of protection and peace of mind it offered over a 12-month period. And she had use of the warranty and benefited from the cover the warranty provided. So, I do not think it would be fair and reasonable for CBL to refund this cost to her.

The warranty was included in the finance agreement so it would not be fair for CBL to refund the interest associated with the payments that went towards the warranty. But to minimise the complexity of the calculations involved in the proposed redress, I think the simplest and reasonable solution would be for CBL to deduct the warranty cost of £250 from the deposit being refunded to Ms S.

As such, CBL should refund the advance payment of £7,000 minus a deduction of £250 for the warranty.

CBL should also add interest to the refunded amounts from the date of each payment until the date of settlement. Interest should be calculated at 8% simple per year.

I know that Ms S has mentioned that this situation had an impact on her and had caused her a lot of distress and inconvenience while trying to resolve it. Ms S has explained, in great detail, how this has impacted her life because of her health condition. Also, she had to take the car to several garages and spend a significant amount of time trying to resolve this issue. I think Ms S would not have had to do this, had CBL supplied her with a car that was of a satisfactory quality. So, I think CBL should pay her £200 in compensation to reflect the distress and inconvenience caused.

My final decision

For the reasons given above, I direct Close Brothers Limited trading as Close Brothers Motor Finance to:

1. End the conditional sale agreement with nothing further to pay and to collect the car from wherever it is located at no cost to Ms S;
2. Refund 10% of the payments made from 4 October 2024 to the date of settlement;
3. Refund the advance payment of £7,000 minus the £250 cost of the warranty;
4. Add 8% simple interest per year to all refunded amounts, from the date of each payment to the date of settlement;
5. Pay Ms S £200 compensation;
6. Remove any adverse information recorded on Ms S's credit file in relation to this credit agreement. And the credit agreement should be marked as settled in full on her credit file, or something similar, and should not show as voluntary termination.

If Close Brothers Limited trading as Close Brothers Motor Finance considers that tax should be deducted from the interest element of my award, they should provide Ms S with a certificate showing how much they have taken off so she can reclaim that amount, if she is eligible to do so.

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

Mike Kozbial
Ombudsman