

## **complaint**

Mr F complains that a car that he acquired under a conditional sale agreement financed by Close Brothers Limited trading as Close Brothers Motor Finance (Close) was of unsatisfactory quality.

Both Mr F and Ms C have made submissions in this case. For simplicity I will refer to all submissions made by Mr F & Ms C as having been made by Mr F.

## **background**

In August 2014, Mr F acquired a used car. Within three weeks, he had trouble starting the car and returned it to the dealer. It carried out some repair work. Mr F was unhappy as, amongst other things, he had wanted to reject the car.

In November 2014, the car could not achieve a speed of more than 25mph. Mr F brought the car back to the dealer who ran diagnostics but no fault could be located, despite the car clearly being in "limp mode". It identified potential issues but advised that the car needed to be taken to a specialist garage for further investigation. I am told the specialist garage found no fault.

Mr F also complained to Close each time he had an issue with the car. He said it continually advised him that he had to exhaust his options with the dealer. Eventually it did liaise with the dealer and arranged for one of their accredited experts to look at the car. He found that although there were problems which meant that the car was of unsatisfactory quality at the point of sale they had been repaired. In relation to the remaining issue of the car falling into 'limp mode', he could not find a fault.

Close did not accept rejection of the car. However, as a goodwill gesture they refunded two of the monthly payments. Mr F had additionally complained that he was not provided with the spare key or service history both of which were promised at the time of sale. Close agreed to pay for a replacement key.

Mr F complained to us. During the lifetime of his complaint with us, there was an issue with the power steering. The car was again taken to a specialist garage and repaired, with the cost being covered by Close. This visit revealed an outstanding recall on the car for an update which could not be carried out without the service history/car pass. Mr F told our adjudicator that he is currently driving the car without issue, but he has no faith in the car. He had not wanted the continual repair work to be undertaken and wanted to reject the car. He also wanted to be reimbursed for various costs, including travel and the time that he and his partner had to take off work to deal with the various issues.

As a result of our involvement, Close agreed to offer additional compensation, a copy of the service history and a replacement key. Mr F did not agree to that and asked for his complaint to be considered by an ombudsman.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Mr F has made detailed submissions and I have addressed here what I think the key issues are, but I have considered all of the points that he has made.

The issue is whether the car was of satisfactory quality at the point of sale. Legislation says that goods should be of satisfactory quality and free from defects. I have to decide if the faults described by Mr F are inherent defects present at the point of sale. When considering whether goods are of a satisfactory quality I take into account all of the circumstances including, for example, the age of the car and the mileage it has covered.

In this case, the car was acquired for a cash price of around £8,000. It was almost five years old and had driven approximately 103,000 miles. There are discrepancies in the paperwork as to the correct mileage but I accept Mr F's figure. I think it is reasonable to expect there to be some mechanical wear and tear on a car of this age and mileage.

The first issue, the car not starting, arose very shortly after he acquired the car. I have seen a report arranged by Close. In respect of this first problem, the report says that it was an issue surrounding the cam belt. The expert says that, in his view, as this occurred so soon after Mr F acquired the car it would have been present at the point of sale and so the car was of unsatisfactory quality in respect of this issue. However, he said that the repair work carried out returned the car to satisfactory quality.

His view is a generous one. The cam belt is a wear and tear part and one that he said falls to be replaced at about 77,000 miles. When acquiring a used car there is a risk that issues of wear and tear may arise even shortly after the car is acquired. I think it would not be unreasonable to assume that the failure of the cam belt could be such a wear and tear issue.

However, as I found the report to be a credible one I give weight to his conclusion. I am *just* satisfied that the issue with the cam belt and its knock on effect on other parts of the engine was a defect present at the point of sale. However, it has been repaired and therefore, in that respect, returned to a satisfactory quality.

In relation to the 'limp mode' fault, I again accept that the issue first arose shortly after Mr F acquired the car. I note that the dealer observed the fault but could not diagnose it. Neither the specialist garage nor the expert could replicate or diagnose the fault. The expert said that as he could find no fault, he could not consider the car to be of unsatisfactory quality in that regard.

Mr F described the fault as an intermittent one and I have to consider whether the fault may have been present but simply not observed when the car was tested. Clearly, something was causing Mr F to complain. Also, the dealer appears to have acknowledged that there was some issue with the car becoming 'limp'. On balance, I do therefore think that there may have been some issue, albeit an intermittent one.

I need to consider whether this intermittent fault was present at the point of sale. I have no evidence to suggest that it was. As neither the specialist garage nor the independent expert could detect a fault, it follows they are unable to provide any insight into the cause, when or indeed how it had arisen. I also note that Mr F told our adjudicator that the car is currently running without issue.

Mr F complained about the independence of the expert, inaccuracies and his own lack of input into the report. I agree that there were inaccuracies (most notably the mileage). However, I have no reason to doubt the credibility of the report particularly given it supported Mr F's case in part. Whilst Mr F was not contacted by the expert he did have a copy of the careful and detailed letter written by Mr F setting out the issues with the car.

I have to be satisfied that the fault was an inherent one and present at the point of sale. As I have already highlighted I think a reasonable person would expect some wear and tear in a car of this age and mileage. In the absence of something more compelling I do not think it would be fair for me to hold Close liable in these circumstances. I therefore do not find that Mr F should be allowed to reject the car.

Close said that the car was not sold with a service history or spare key and provided a copy of the advert placed in support of this. Mr F said that he would never have bought the car without these and that the advert might be for a like car also sold by the dealer at that time. He highlights, amongst other things, the different price and number of keepers. In any event he says that he did not see or rely on the advert.

I have to decide which scenario in the circumstances is more likely. This is car which is around five years old with over 100,000 miles travelled and so I would not necessarily expect the car to have a full service history or indeed a spare key. Nor would I expect an advert to mention a spare key. I would, however, expect it to make reference to a full service history, if it existed. I take on board Mr F's comments about this in fact being an advert relating to a like car, but it comes directly from the advertiser following a request to them for the advert placed for Mr F's car's registration. It is a fine balance, but I think it more likely that the car was sold without them being offered.

Mr F has also complained about the poor service that he has received from the dealership. However, as that is outside of the financial agreement that he has with Close, it is not something that I cannot consider.

I know that Mr F will be frustrated by my decision and that he has not had a happy experience with his car.

The dealership has, as I understand it, covered the initial repairs at no cost to Mr F. As a goodwill gesture, Close refunded two monthly payments to Mr F. They also covered the cost of the repair to the power steering in January 2015. Close have also offered to pay one further monthly payment to fully reflect the period of time Mr F has been without his car, provide a service history, pay for a replacement spare key and £100 for the trouble and upset he has experienced. I simply leave it to Mr F as to whether he wishes to accept this offer.

In the event that Close cannot provide a service history, our adjudicator has spoken to the manufacturer, who has suggested an alternative course to allow the outstanding update on the car to take place.

### **my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F to accept or reject my decision before 27 July 2015.

Siobhan Kelly  
**ombudsman**