

## **complaint**

Mr S complains about the quality of a car financed by a conditional sale agreement from Close Brothers Limited. He says the faults with the car mean he should be able to cancel the finance agreement and return it, or, be given a refund of the money he's spent on repairs.

## **background**

I set out the background to this complaint in my provisional decision, a copy of which is attached and forms part of this final decision. I also explained why I proposed to uphold the complaint and the settlement Close Brothers should make to Mr S.

I invited Mr S and Close Brothers to let me have any final comments and evidence before making my final decision. Mr S accepted my provisional decision but Close Brothers did not. In summary, Close Brothers said:

- There was no reason for Mr S to refuse the repairs offered by the trader because they are a registered garage and should have been given a chance to repair the car.
- Mr S didn't provide a range of quotes from different garages before he had the repair work done.
- The trader could have repaired the car at a lower cost.
- They should not have to pay Mr S for any distress and inconvenience as they tried help him.
- The conditional sale agreement cannot be reworked to reflect the £500 price reduction, because a new agreement will give Mr S new rights and terms.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, whilst I realise this isn't the answer Close Brothers were hoping for – I've reached the same overall conclusions as I did in my provisional decision, for the same reasons.

### *the repairs offered by the trader and potential cost saving*

Mr S had concerns about the key part of the engine and wanted a specialist in the car's make, to do the work. I've found that Mr S was told the car had always been serviced by a franchised garage before he got it. Also, I agreed with Mr S that this created a great deal of mistrust between him and the trader. Given these circumstances, I think it was reasonable for Mr S to want the other work identified in the report, to be carried out by a specialist in the car's make. So, I think it was reasonable for Mr S to go ahead with the repairs and the service, using a franchised garage.

I accept that the trader may have been able to arrange for the repairs at a lower cost. But, from looking at the information provided by Close Brothers and Mr S, I'm not persuaded the trader gave Mr S confidence that any repair would have been offered. There was also a significant inconvenience to either Mr S or the trader in getting the car back to the trader's sales garage.

*the absence of a range of quotes*

The receipts Mr S has provided show us that he took the car to be repaired two weeks after he collected it from the dealer. The repair was needed to a key part of the engine, that wasn't connected properly. I'm persuaded that this would have caused Mr S to want to repair the car as soon as he could, to make it safe to drive. I think asking Mr S to get three quotes and then for him to wait for Close Brothers and the trader to decide if they would honour a repair, would have caused delay and cost.

In all the circumstances of Mr S' case, I don't think it would have been fair for him to have to provide three separate quotes for the work.

*the distress and inconvenience payment*

I can see that Close Brothers responded to Mr S when he raised his concerns with them. So, I think they did try and help with the circumstances of his case. But, I think Mr S was caused distress and inconvenience when he discovered a key part of his car's engine was not connected properly and he had to arrange for it to be repaired.

Mr S was without the use of his car whilst the initial repairs and the service by the franchised garage were carried out and I'm persuaded this was inconvenient for him. I also think he was caused distress when he found out about the key part engine and was extremely worried about the safety of a car he'd very recently bought. In all the circumstances, I think Close Brothers should pay Mr S £150 for the distress and inconvenience he experienced.

*the £500 price reduction of the car*

Close Brothers have said that they cannot rework Mr S' conditional sale agreement to reflect a price reduction, because the agreement will have to start again. Close Brothers say they will have to offer Mr S new terms and consumer rights.

I'm still persuaded that the car wasn't as advertised because it wasn't always serviced by a franchised garage and because it had been owned by more than one person. After considering a third party valuation service, I think the true circumstances of the car would have had an impact on its sale price. So, I think Close Brothers need to make a reduction in the purchase price to reflect this.

I have spoken to Close Brothers and asked them for an alternative solution to reworking the conditional sale agreement. Close Brothers didn't offer a solution, so I couldn't consider any alternative they may have wanted to put forward.

In all the circumstances, I think Close Brothers should simply pay £500 towards Mr S' conditional sale agreement to reduce the current outstanding balance. I don't think it would be fair for Mr S to pay any interest associated with the reduction in price. So, I also think Close Brothers should refund the interest charged under the conditional sale agreement, on the amount of £500, from 11 November 2017 (the start of the agreement) to the date the settlement is made.

### **my final decision**

For these reasons, as well as those set out in more detail in my provisional decision, my final decision is that Close Brothers Limited should:

- reimburse Mr S £1,609 for some of the repairs he paid for himself and pay interest at an annual rate of 8% simple from the date Mr S paid for repairs to the date of settlement;
- Pay Mr S £150 for the distress and inconvenience he's been caused; and
- Pay £500 to Mr S' account for his conditional sale agreement, to reflect a lower purchase price of the car and refund the interest charged under the conditional sale agreement on this amount from the start of the agreement until the date of settlement.

Close Brothers must pay these amounts within 28 days of the date on which we tell them Mr S accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of final decision to the date of payment at 8% a year simple.

If Close Brothers Limited deducts tax from any interest they pay to Mr S as above, they should provide Mr S with a tax deduction certificate, so he can reclaim the tax from the tax authorities if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 November 2019.

Sam Wedderburn  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr S complains about the quality of a car financed by a conditional sale agreement from Close Brothers Limited. He says the faults with the car mean he should be able to cancel the finance agreement and return it, or, be given a refund of the money he's spent on repairs.

### **background**

- In November 2017, Mr S went to collect a car from a used car trader. The trader had previously introduced Mr S to Close Brothers to arrange the finance for the purchase. Mr S signed a conditional sale agreement with Close Brothers and drove the car home.
- The car was advertised as having a 'FLSH' and having had one previous owner. Mr S understood that 'FLSH' meant the car had only ever been serviced by the manufacturer's franchised garages. This is different from 'FSH', which usually means 'full service history' in the used car industry.
- When Mr S arrived home with the car, he realised that it had been owned by more than one person and the trader hadn't had it serviced by a franchised garage. He also noticed that a warning light had appeared. This, it seems, was because a key part of the engine hadn't been connected properly.
- Mr S raised his concerns with the trader and asked them to fix any problems that he'd noticed. He asked the trader to make repairs under the three month warranty he was given. Mr S became frustrated with the trader because he wasn't given assurances the car would be fixed and he didn't like how he was treated while dealing with them.
- Mr S took the car to a franchised garage and paid for a full service. He also arranged for the key part of the engine to be connected. Over the next month, Mr S paid for other repairs to be made to the car. When he was satisfied with the repairs, Mr S asked Close Brothers to refund the costs he'd incurred. He also told them about some other problems he wanted to be put right because he wanted to keep the car.
- Close Brothers declined to pay for the repairs because they didn't have a chance to inspect the car beforehand. Close Brothers organised for an independent inspection in January 2018, to try and find out if the remaining faults were present when Mr S got the car.
- The independent report found several faults and Close Brothers said they would arrange for the trader to fix them. Mr S chose not to take his car to the trader's garage and instead arranged for the other problems to be repaired at garages accredited by the manufacturer.
- Mr S complained to Close Brothers and said he should be compensated for the cost of the repairs. In their final response Close Brothers disagreed and said Mr S should have either given them three quotes for the work needed before taking action or allowed the trader to put them right. Close Brothers also said Mr S was able to reject the car because the way the car was advertised was inaccurate. But, Mr S made it clear to them that he wanted to keep it.
- Because Mr S wasn't satisfied with Close brothers' response, he brought his complaint to us. Our investigator found that Mr S should be allowed to reject the car and get his £500 deposit back. He also said that Mr S should get some of the costs he'd spent on the repairs refunded.
- Both Mr S and Close Brothers disagreed with the investigator. Mr S said he should be refunded for more of the repairs he's arranged for the car. Close Brothers said it is clear Mr S wanted to keep the car and that he'd driven it for around 11,000 miles which may have

affected its condition. Close Brothers also said that Mr S repaired the car without giving the trader a chance to look at it first.

Because both Mr S and Close Brothers disagreed with the investigator's findings, the case was passed to me to make final decision.

Things have moved on since Mr S first bought his complaint to our service in that he's organised for further substantial repairs to the car. Mr S says that if he were to hand the car back to Close Brothers now, it would be worth a lot more than when he got it.

### **my provisional findings**

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

In doing so, I'm intending to reach a slightly different outcome to the investigator. I think Close Brothers should pay Mr S more than the investigator recommended and I don't think he should be able to reject the car. I'll explain why.

#### *Close Brothers' responsibilities to Mr S.*

Mr S was given his car under a conditional sale agreement, which is a regulated consumer credit agreement. Our service is able to consider complaints relating to it. Close Brothers is the supplier of the goods under this type of agreement and are responsible for dealing with complaints about their quality.

Part of Mr S' complaint is that some of the things the trader said about the car in the advert wasn't true. The contract Mr S signed, says the trader acted as a credit intermediary for Close Brothers. This means the trader is a credit broker. Under Section 56 of the Consumer Credit Act 1974, a credit broker acts as an agent of a finance provider. So, Close Brothers are responsible for what was said to Mr S about the car before he signed the conditional sale agreement.

The Consumer Rights Act 2015 (CRA) has an implied term which explains goods do not conform to a contract if they aren't as described at the point of supply. In Mr S's case, he says the car turned out not to be as described in the advertisement when he picked it up. So, I have to consider if there has been a breach of the implied term, by looking at the way the trader advertised the car.

#### *how the car was advertised*

Mr S has provided a link to the trader's website which shows the advert used to sell the car. I can see that the car was advertised as having 'only 1 former keeper + FLSH'. Close Brothers have accepted that the car had more than one former keeper and this means the way the car was advertised was incorrect.

I agree with Mr S that FSH is a common acronym for advertising a car as having a full service history. Indeed, many of the other cars advertised on the trader's website are described in this way. There's no other mention of 'FSH' in the advert for Mr S's car, so I don't think the reader would think that there had been a typing error. Given the actual make of the car, I think the advert was misleading and it's reasonable for Mr S to have assumed 'FLSH' meant that the car had always been serviced by a franchised garage of the manufacturer.

However, I have considered if Mr S would have gone ahead with the purchase if he'd have known the truth about the service history and the number of former keepers. Mr S says he felt pressured on the day to buy the car and the atmosphere caused by the trader wasn't friendly.

But, Mr S drove the car over 7,500 miles within the first three months of getting it. And he found out the car had two former keepers soon after he returned home from the trader. He was also prepared to

pay for and arrange repairs to bring the car up to a standard he was happy with. Mr S has made very positive comments about the car within the 'owner's notes' section of the paperwork he sent to us. Also, Mr S says that the car was one of two cars at the trader's garage that matched his exact requirements and it was his intention to buy the best one. So, I think Mr S was always likely to buy a car from the trader.

I agree the car wasn't as advertised and I accept there may have been some expectation from the trader that Mr S would go through with the sale. But, for the reasons I've considered, I think Mr S would have gone ahead with the purchase anyway. So, I don't think the way the trader described the car induced Mr S to enter into the finance agreement and buy the car.

#### *the quality of the car*

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 consideration the description of the goods, the price paid and any other relevant circumstances. In complaints about the quality of a car, circumstances around the age of the car, mileage at the time of the sale and the car's history needs to be taken into account.

In this case, Mr S bought a used car that had covered around 80,000 miles since it was first registered in 2007. So, I think a reasonable person would have different expectations of it compared to a brand new car. But, I think given the purchase price of £13,495 and the advertised condition of the car, it means that a reasonable person wouldn't expect to have any major problems so soon after it was purchased.

Mr S says that the trader agreed to carry out a full service before the sale was completed. There is no written agreement between Mr S and the trader to say a full service would be carried out. But, I can see from the service history records that the car was due another 10,000 mile service at the point sale and it was sold as having a full service history. So, I'm persuaded that it's likely the trader offered to service the car as part of the sale to Mr S.

When Mr S collected the car from the trader, he noticed two warning lights were showing on the dashboard. The warning lights persisted, so within two weeks of getting the car, Mr S approached a franchised garage to investigate. I don't think this was unreasonable given the long distance Mr S lives from the trader and that he'd want to correct a potential safety issue as soon as he could.

Also, I'm persuaded that Mr S didn't find out that the car hadn't always been serviced by a franchised garage until after he'd arranged for one himself. The car was serviced in January 2016 and the garage's stamp looks very similar to that of a franchised garage. At first glance of the service book, I think Mr S was given the impression that the car had always been taken to a franchised garage. So, I think it was reasonable for him to have taken the car to a franchised garage for the 80,000 mile service which should have been done by the trader.

The garage discovered that a key part of the engine wasn't connected properly. So, as part of a general service, the franchised garage fixed the problem. I also agree that Mr S could have expected that the parts of the car's engine to be connected properly. So, I don't think Mr S acted in haste by taking the car to a franchised garage to get it repaired. And because the trader hadn't completed a service, I find it reasonable that he wanted a franchised garage to service the car.

Within a month of collecting the car, Mr S complained to Close Brothers about its general condition and the treatment he says he received from the trader. Mr S also noticed several other concerns, apart from the engine problem. Close Brothers agreed for an inspection of the car to take place in January 2018, to see if the faults were there when Mr S purchased it. The inspection was carried out by a separate company and they concluded that:

- Mr S made his own repairs to the reversing camera;
- the heated seats function didn't work;

- the rear wash wiper valve had failed;
- the nearside door mirror no longer automatically dimmed light because the incorrect glass had been installed; and
- the repairs should be considered the responsibility of the trader.

Close Brothers agreed that some repairs needed to be made. But, I'm not persuaded that all of the issues Mr S has claimed for are faults that were present at the point of supply that mean the car was of unsatisfactory quality. I'll address that in more detail below.

Mr S didn't want to take the car back to the trader and made arrangements to have the various problems fixed more locally to him. Mr S said he had lost trust in the trader to make the repairs because of the problems when he first took the car home, how he was treated by the trader and because he wasn't told about the faults before he bought it.

I don't think it's unreasonable for Mr S to have felt this way. I agree that the car wasn't as advertised and the problems Mr S discovered when he took the car to the franchised garage caused him to be wary of the trader. Also, the trader is based some distance from Mr S's home and he needed the car to get to and from his place of work.

So, I think it was reasonable for Mr S to arrange for some of the repairs highlighted in the report to be done. And because of the service history of the car, I think it was reasonable for him to seek the reassurance he would get from a franchised garage for the repairs.

During Close Brothers' investigation, Mr S sent them a list of the repairs he made before and after the inspection report was done. Some of the repairs Mr S carried out relate to the problems covered in inspection organised by Close Brothers, but not all. I've considered every receipt and invoice Mr S has provided. But I think the repairs listed below were made to put right the problems with car covered in the report and to bring it up to a satisfactory quality, considering its age, mileage, condition and purchase price. In summary, Mr S paid for the following:

Item/Work carried out	Cost	Date
Replacement camera battery	£22	22/11/17
Manufacturer's full service	£599	24/11/17
Diagnostics for heated seats not working	£42	08/12/17
Replacement remote for auxiliary heater	£59	06/01/18
Replacement windscreen	£75	26/01/18
Replacement registration plate light bulb	£2	Unknown
Replacement rear wash wiper valve	£8	21/02/18
Replacement rear wash wiper seal	£1	21/02/18
Repair to DVD player remote	£25	08/03/18
Repair to heating system for the front seats	£946	16/03/18
<b>Total</b>	<b>£1,779</b>	

I've considered the trader's advert for the car and what information Mr S was given before he got it, to decide if he was made aware that some of the features of the car needed to be repaired. I think a reasonable person would expect to be told if key features of a car needed to be repaired before a sale.

In this case the trader's advert does not suggest that some aspects of the car need to be repaired, such as the heated seats or the camera used when reversing. I think a reasonable person would expect these features to still be working on this car, given the mileage, service history and its age. So, I think it was reasonable for Mr S to arrange for them to be repaired.

Mr S arranged for the repairs himself, despite Close Brothers asking him to take the car back to the trader for repair. I've concluded that I accept Mr S's reasons for not wanting to take the car back to the trader. Close Brother's also asked Mr S to get repair quotes from three different garages, with the intention of choosing the best one. I've considered Mr S's actions here and I don't think he acted

unreasonably. Close Brothers gave Mr S no assurance that the repairs would be paid for, only that there was a hope that the trader would provide a refund. As Mr S wasn't given assurances, I think it was reasonable for him to go ahead and organise the repairs at a garage local to him. But, I don't think Close Brothers should pay for everything Mr S has provided receipts for.

Within Mr S' own list of receipts and invoices there are items which weren't identified in the inspector's recommendation. I've considered that Mr S drove the car for over 3,500 miles in under two months before he needed to replace the auxiliary heater remote, the rear number plate bulb, the windscreen, the DVD player remote and repair the rear wiper valve and seal. I can also see that there was a general service to the gearbox when he paid for an inspection and of the heated front seats.

Mr S has been very diligent with his record keeping and this has been helpful in deciding his case. So, considering all the information available, I don't think these remaining five items were faulty when he got the car. And because of the age and circumstances of the car, I think a reasonable person could have expected to have organised a service to the gearbox. So, I don't think Close Brothers need to refund Mr S for these repair and gearbox service costs.

After taking into consideration the repairs Mr S has made to the car, I think it's reasonable for the cost of the manufacturer's service, diagnostics and repair to the heated front seats and the camera battery to be refunded to Mr S. This total comes to £1,609 and I think Close Brothers should pay this amount to Mr S along with a simple interest.

#### *the distress and inconvenience caused to Mr S.*

Mr S has told of his wish to keep the car. Given the money he's spent on the car to bring it to a standard he's happy with and the use he's had, I don't think he should be able to reject it now. In the first year of having the car, MOT records show that Mr S drove it over 15,000 miles. Mr S has explained that he needs this type of car given his employment and that he expected to drive it frequently.

I've concluded that Mr S needed to have the car repaired when he got it and that it was reasonable for him to take it for a service at a franchised garage. I'm also persuaded that it would have been alarming for Mr S to discover that some of the parts of the engine were not connected properly. So, I think Mr S experienced distress and inconvenience. In these circumstances, I think it's fair that Close Brothers make a payment to Mr S. So, I think Close Brothers should pay Mr S £150 for the distress and inconvenience he experienced.

#### *the purchase price of the car*

I have also considered my finding that the car wasn't as advertised. I have used a third party valuation service to check the price of Mr S's car, taking into consideration the specification and condition. Having done so, I think the truth that the car had more than one owner and that it didn't have a full service history from a franchised garage affected the value at the point of sale. So, I think Close Brothers should rework Mr S' conditional sale agreement to make a reduction of £500 in the purchase price to reflect the lower value of the car when he got it.

#### **my provisional decision**

For the reasons I've explained, but subject to any further comments or evidence I receive from Mr S or Close Brothers by 20 September 2019, my provisional decision is that Close Brothers Limited should:

- reimburse Mr S £1,609 for some of the repairs he's paid for himself and pay interest at an annual rate of 8% simple from the date Mr S paid for repairs to the date of settlement;
- Pay Mr S £150 for the distress and inconvenience he's been caused; and



- Rework Mr S' conditional sale agreement to reduce the purchase price by £500 to reflect a lower purchase price of the car.

Close Brothers must pay these amounts within 28 days of the date on which we tell it Mr S accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of final decision to the date of payment at 8% a year simple.

If Close Brothers Limited deducts tax from any interest it pays to Mr S as above, it should provide Mr S with a tax deduction certificate, so he can reclaim the tax from the tax authorities if appropriate.

Sam Wedderburn  
**ombudsman**