

## **The complaint**

Mr K complains about the quality of a used car that was supplied to him through a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance (CBL).

## **What happened**

On 10 October 2020 Mr K acquired a used car through a conditional sale agreement with CBL. The car was registered in January 2014, which means it was six years and ten months old and had travelled around 111,129 miles at the time of supply. This mileage was recorded on an MOT report which was carried out the day prior to supply. The purchase price of the car was £16,995. Mr K says he part exchanged two vehicles to the value of £6,200 which meant that the total amount financed on this agreement was £10,795 payable over 60 months.

Mr K explained that soon after acquiring the car he felt the brakes weren't engaging properly as the brake pedal would nearly touch the floor before they'd work.

Mr K said he took the car to a garage, who advised him that the car needed new calipers. Mr K said he contacted the dealer where he acquired the car but was told that they wouldn't look into the issues until he repaid an outstanding debt of around £800. The dealer said Mr K owed that amount in relation to one of the vehicles that he part exchanged with them. This is confirmed in CBL's system notes.

Mr K says he stopped driving the car and contacted CBL to raise a complaint. CBL have confirmed to us that Mr K complained to them on 13 November 2020 about the issues with the car.

CBL arranged for an independent inspection to be carried out on the car to see whether the issues were present at the point of supply, which would also determine whether they'd instruct the dealer to repair any issues. The inspection was carried out on 1 December 2020. The inspection report concluded that the issues with the braking system, along with an oil leak from the engine were present at the point of supply.

On 9 December 2020, following their review of the inspection report, CBL advised that Mr K was entitled to a repair of the car and advised the dealer to carry out the repairs.

On 18 December 2020 CBL's system notes confirm that Mr K told them he was going to have a third-party garage carry out the repairs to the car. CBL's system notes confirm that they explained to Mr K that should he do so the repairs would be considered unauthorised.

On 22 December 2020 CBL advised that they contacted Mr K to let him know that the dealer was willing to do the repairs. However, Mr K said that the repairs had already been carried out by a third-party garage, which I'll refer to as B. CBL requested that Mr K send them a copy of the invoice from B so they could consider making a contribution towards the repairs.

Mr K explained that despite the repairs carried out by B, the braking system failed on two further occasions, which Mr K brought back to B to repair. On the final occasion Mr K said that B told him, in order to have a complete repair of the braking system, he'd need to have a manufacturers dealer carry out a full diagnostic of the system.

CBL refunded Mr K's January 2021's repayment as a gesture of goodwill. They said that the dealer would refund 50% of the initial repairs to the car carried out by B. Mr K explained that to date, he's not received the payment for the repairs.

On 9 February 2021 Mr K brought his complaint to us. In May 2021 Mr K said that while he was driving the braking system had failed completely. Mr K says he was quoted £3,000 from another garage to repair it. Mr K said that he'd lost faith in the car so decided not to pay for the repairs, and instead declare it SORN and leave it on his driveway. Mr K also asked our investigator if in the circumstances he could reject the car given all the issues with the braking system.

One of our investigators looked into Mr K's complaint and felt that it should be upheld. The investigator felt that the car wasn't of satisfactory quality when it was supplied to Mr K. They also recommended that CBL allow a rejection of the car.

CBL disagreed with our investigator's view. They said that Mr K had unauthorised repairs carried out on the car and so hadn't given the dealer an opportunity to repair it. They also said that B's repairs on the car had been ineffective and that they shouldn't be responsible for this.

CBL asked that the complaint be referred to an ombudsman for a final decision.

Following my review of this complaint, I initially considered asking CBL to do something different to put things right. So, I wrote to both parties to share my initial thoughts on what the outcome and redress of this complaint should be. I also invited both parties to provide any further comments prior to my final decision being issued. Whilst Mr K was happy with my initial thoughts, CBL responded with some considerations which I've summarised below:

- Mr K is free to deny the dealer their rights under the CRA to fix the car and choose any repairer he wishes and CBL will be liable for the repair
- The ombudsman service has no jurisdiction over the complaint relating to the latest breakdown in May 2021, as CBL haven't had an opportunity to look into the issues surrounding this

I responded to CBL in relation to their comments, however I've also addressed them in this decision.

### **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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and 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. CBL is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods would need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that CBL supplied Mr K with a used car that had travelled 111,129 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage. Having said that, the car was priced at £16,995 which isn't insignificant. So, I think it is fair to say that a reasonable person would expect it could be used free from any major issues for a reasonable period of time.

It isn't in dispute that there was a fault with the car's braking system. This is apparent from the independent inspection report, which confirmed that the issues were present or developing at the point of supply. The fault with the braking system is also evident from the invoices provided by B, detailing the repairs it carried out.

It seems here that all parties also accept that the fault meant the car wasn't of satisfactory quality when supplied. But, I think it's worth commenting briefly on this myself. The independent report concluded "*we would consider this fault to have been developing at the point of sale*". I'm satisfied an issue with the car's brakes could be a serious safety issue. So, it follows I'm also satisfied the car was not of satisfactory quality when supplied.

So, what I need to consider here is what would be fair and reasonable to put this right. As part of this, I need to consider if Mr K acted fairly and reasonably by getting the car repaired by B. I also need to consider if it was reasonable for Mr K to continue to use B for the later repairs the car required.

CBL doesn't believe the repair's carried about by B were successful which led to the later problems. And, it says there's no evidence the later problems are linked to the original fault. So, I'll consider if this was the case.

CBL have also raised other concerns with the latest issue the car has. It says these should be considered as a separate complaint and so our service does not have the power to investigate it. So, I'll consider if this is the case or not.

*was it reasonable for B to carry out repairs?*

CBL have said they didn't give their approval or consent for Mr K to have the car repaired by B, and as a result were unable to mitigate any costs. In deciding what is fair I have thought about whether Mr K acted reasonably in taking his car to B for the initial and subsequent repairs.

Mr K explained that when he initially reported the issues to the dealer, they refused to look into them due to an ongoing dispute regarding a vehicle that Mr K had part exchanged with them. CBL confirmed this in their system notes. When CBL confirmed that Mr K was entitled to a repair it liaised with the dealer to confirm that they'd be willing to carry out the repairs. When they came back to Mr K he confirmed the works had already been carried out. Mr K says that he was fed up waiting and didn't trust the dealer to do the works.

In the circumstances, I think a reasonable person would have wanted their car repaired as soon as possible; and considering there was an unrelated, ongoing dispute with the dealer which prompted their initial refusal to look into or carryout the repairs, I think it's likely this would have contributed to any lack of trust between Mr K and the dealer.

I've also considered that it took CBL around a month to confirm the dealer would repair the car.

Given the breakdown in the relationship and the possibility for further delays, I think it was reasonable for Mr K to initially use the services of B, a professional garage and servicing centre. I've also no reason to doubt B's ability to correctly diagnose and carry out appropriate repairs.

I've then gone onto consider whether it was reasonable for Mr K to continue to use B for further repairs.

Considering the breakdown of trust between Mr K and the dealer, I don't think it's unreasonable that Mr K had gone back to B on more than one occasion for further repairs. On each occasion different components of the braking system were attended to, so there's no compelling evidence, like a detailed report, to support CBL's view that the repairs carried out by B were ineffective. In addition, CBL had appeared to support the repairs carried out by B when they requested a copy of the invoice, so they could consider an appropriate contribution towards the costs.

CBL have said that by taking the car to B Mr K had effectively taken away their right to repair the car. Under the CRA if goods are not of satisfactory quality they do not conform to the contract. Section 19 of the CRA sets out certain remedies available to the consumer for goods that do not conform. One of those remedies is the consumer's right to repair or replacement. So, in effect the right to a repair is the consumer's entitlement as opposed to CBL in this case.

I think it's worth clarifying that in these particular circumstances, I'm persuaded that Mr K was sufficiently prevented from using the dealer to have his car repaired in the first instance. And further supports Mr K's decision to use B for the repairs to his car. This is not only supported by what Mr K has said but has also been confirmed on CBL's system notes, dated 16 November 2020, where they advised that the dealer is '*not looking to help until the customer pays them.*'

The series of contacts between Mr K and CBL over the course of a month satisfies me that the dealer was reluctant to help Mr K, and would probably only do so through CBL's enforcement. It also persuades me that Mr K was justified in continuing to take his car to B for repairs as at various points it was uncertain if the dealer would help him.

I've gone on to consider whether our service has jurisdiction to look into the issues surrounding the breakdown of Mr K's car in May 2021.

CBL have pointed out that they haven't had an opportunity to consider the circumstances of the car breaking down in May 2021. And so, they believe this falls outside of our jurisdiction to investigate this element of the complaint. Mr K has provided an invoice dated 12 June 2021 outlining the work carried out on the car. Our investigator shared the invoice with CBL which confirmed the car had issues with the braking system. The invoice says that the car was recovered with no resistance on the brake pedal. The previous issues noted on the invoices include the master cylinder and calipers, which together with the lack of resistance on the brake pedal, I'm satisfied, are all related to the car's braking system

I'm satisfied the issues that caused Mr K's car to breakdown were a continuation of the earlier problems experienced from the failure of the braking system, which all parties agreed weren't of satisfactory quality at the point of supply. I'm satisfied that this is part of Mr K's original complaint which is within our jurisdiction to consider and an issue that CBL needs to also put right for Mr K.

### **Putting things right**

Given that I've found the car was not of satisfactory quality when it was supplied to Mr K, I think it's fair that CBL put things right for him.

Mr K has asked that he be able to reject the car. Under the CRA Mr K would have the final right to reject, given that a problem still exists with the braking system despite previous attempts to fix it. So, in the circumstances I'll be instructing CBL to cancel the agreement and arrange with Mr K to collect the car from him. CBL will need to refund the deposit paid which is the value of the part exchanged vehicles of £6,200.

Mr K's car broke down and became undriveable at the end of May 2021. This was confirmed by Mr K to our investigator in an email. So, I've considered that Mr K had use of the car for the majority May 2021. In the circumstances I'll be instructing CBL to refund all payments made by Mr K towards the agreement from June 2021 to date. I'll also be instructing CBL to reimburse to Mr K the recovery costs of £120, as per the invoice provided by Mr K, for the breakdown in May 2021.

I acknowledge CBL advised in their system notes from January 2021 that they'd arrange with the dealer to cover 50% of the initial invoice. However, as I've no evidence that this has been repaid to Mr K, I'm satisfied that they should repay the full amount as described below.

CBL must also reimburse to Mr K the cost of the related repairs and checks carried out on the braking system, as per the invoices provided. The total amount paid for repairs to the braking system as per the invoices are as below:

Invoice date	Description	Quantity	Total Price
19-Dec-20	special caliper	3	£722.80
	brake fluid	1	£39.95
24-Dec-20	brake master cylinder	1	£450.00
29-Jan-21	special hose	4	£318.22
	brake fluid	1	£39.95
12-Jun-21	check and bleed brakes	2	£120.00
	<b>Total</b>		<b>£1,690.92</b>

Mr K provided two further invoices relating to a change of tyres and a replacement alternator. I haven't considered that these works are related to the braking system, so I won't be asking CBL to do anything in relation to them.

To recognise the inconvenience that has been caused to Mr K, for example in having to take the car to the garage for repairs, and the worry of driving with a braking system that was faulty, I think some compensation would be reasonable in the circumstances. When I shared my initial thoughts with both parties on this complaint, I recommended around £200 as compensation, however as CBL has already paid Mr K £233.89 in the form of a refund in January 2021, I won't be asking them to pay any further compensation as I think this is fair and reasonable in the circumstances.

### **My final decision**

Having thought about everything above, along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Close Brothers Limited trading as Close Brothers Motor Finance to:

- collect the car at no additional cost to Mr K
- refund to Mr K the deposit of £6,200
- refund to Mr K all monthly payments made by Mr K from June 2021, from when the car became undriveable, to date
- reimburse to Mr K £1,690.92 for the repairs carried out to the braking system as detailed above
- end the agreement and remove it from Mr K's credit file
- pay 8% yearly simple interest on all refunds and reimbursements calculated from the date of payment to the date of settlement

If Close Brothers Limited trading as Close Brothers Motor Finance considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr K how much it's taken off. It should also give Mr K 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 K to accept or reject my decision before 30 April 2022.

### **Ombudsman**