

## The complaint

Mr W is unhappy that a car supplied to him under a hire purchase agreement with Close Brothers Limited, trading as Close Brothers Motor Finance, was of an unsatisfactory quality.

## What happened

In April 2022, Mr W was supplied with a used car through a hire purchase agreement with Close Brothers. He paid a £7,000 deposit and the agreement was for £23,000 over 48 months, with 47 monthly payments of £311.80 and a final payment of £13,645.55. At the time of supply, the car was around three and a half years old and had done around 25,000 miles.

In September 2022, Mr W contacted the supplying dealership because the inside of the car was damp, starting to go mouldy, and there was severe internal condensation. He said the dealership were unwilling to help, so he complained to Close Brothers.

Close Brothers arranged for the car to be inspected by an independent engineer. This took place on 23 September 2022 when the car had done 26,515 miles. The engineer said the carpets in the car were damp to the touch and starting to grow mould, and a smoke test indicated that water was getting into the car. In concluding the report, the engineer said, *“we consider this fault would have been present or in development at the point of finance inception and subsequently is the selling agents responsibility.”*

Following this report, the drainage channels on the car were cleared, the interior of the car was detailed, and the carpet was replaced. The car wasn't returned to Mr W until January 2023 and Close Brothers refunded three payments to Mr W, as well as paying him £150 compensation. In a letter dated 12 January 2023, Close Brothers told Mr W they considered his complaint resolved. However, if he wasn't happy with what they'd done, or the compensation he'd been offered, they advised him that he had the right to bring the matter to the Financial Ombudsman Service within six months of the date of the letter.

Mr W said that there was still a smell in the car, as well as a lot of internal moisture that was causing condensation. In April 2023, Mr W made a further complaint to Close Brothers that the repair had failed. Close Brothers didn't respond to this, and, on 4 June 2023, Mr W brought his complaint to us for investigation. However, for clarity, the issues Mr W raised with us were the failed repair and the ongoing issues with the car. He didn't raise any issues with how his initial complaint had been dealt with, nor did he complain about the compensation he'd received.

As part of our investigation, Close Brothers agreed to have the car inspected for any ongoing issues with water ingress. However, despite saying they would do this, Close Brothers didn't. Our investigator said that, based on Mr W's actions and the evidence she'd seen, she was satisfied the initial attempt to repair the car had failed. So, she thought Mr W should now be allowed to reject the car.

The investigator recommended Close Brothers end the agreement, collect the car, and refund the deposit Mr W paid. She also said that Close Brothers should refund 10% of the

payments Mr W has made from January 2023, when the car was returned to him after the initial repair, and pay him an additional £300 compensation for the distress and inconvenience he'd been caused.

Close Brothers accepted the investigator's recommendation, but Mr W didn't. He said the issues with the car had been ongoing since before January 2023, so he thought it was only fair that compensation should be considered for the whole period from April 2022. He also said that, due to the problems with the car, he chose to rent another car instead, and the refund of the payments already paid by Close Brothers "*fall[s] short of covering the expenses accrued from renting a car.*" Mr W asked for an ombudsman to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Close Brothers are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Close Brothers can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr W to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr W took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Close Brothers to put this right.

In this instance, it's not disputed there was a problem with water ingress into the car nor that this fault was present when the car was supplied to Mr W. And both parties are in agreement that Mr W should be allowed to reject the car. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Close Brothers should do to put things right.

## Putting things right

In considering what Close Brothers should do to put things right, I've also considered that the Financial Ombudsman Service isn't able to consider every complaint that's brought to us. The rules in which we operate are set out by the Financial Conduct Authority and are known as the DISP rules. DISP 2.8.2 says:

*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication;*

*unless:*

*(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 ... was as the result of exceptional circumstances.*

As I've said above, Close Brothers issued a final complaint response letter (relating to Mr W's initial complaint) on 12 January 2023. In this letter they explained the compensation they were offering, and that Mr W could come to us if he wasn't happy with this. It's not disputed that Mr W received this letter, so I'm satisfied he was made reasonably aware of his rights. And, if as he's saying now, he wasn't happy with the compensation offered, he was aware he could bring this matter to us.

While Mr W did contact us within six months of the date of Close Brothers' letter, this was about the failed repair, not that he considered the compensation he'd been offered was inadequate. And the matter of the original compensation wasn't raised with us until after 12 July 2023 i.e., more than six months after the date of Close Brothers' letter.

What's more, as Mr W was able to bring his second complaint to us within the six-month timeframe, it follows there were no exceptional circumstances that meant he wasn't able to contact us within those six months about the compensation he'd received.

Given this, I'm satisfied that anything that happened before 12 January 2023 isn't something I can consider as part of this decision. And my starting point for any further compensation will be when the car was returned to Mr W, with a failed repair, in January 2023.

Mr W has been able to use the car after it was returned to him in January 2023. While he's said that he's only driven the car for around 4,000 miles since supply, I've noted the agreement limits the mileage to a maximum of 6,000 miles a year. As this is a maximum mileage, and not something Mr W was required to do, I don't think that him doing 4,000 miles in the 18-months he had use of the car (and this period accounts for the time the car was in for repair) – about 45% of the maximum allowed mileage in that period – is so low that I can say Mr W didn't have fair availability to use the car. Because of this, I think it's only fair that he pays for this usage.

However, given the issues with the car, I'm also satisfied that Mr W's usage and enjoyment of the car has been impaired, especially during the winter when surface water / rain was more likely to ingress into the car. Because of this, I also think it's fair that Close Brothers refund some of the payments Mr W made. And I think 10% of the payments made since January 2023 fairly reflects the impaired use caused by the car not being of a satisfactory quality.

Mr W has said that he felt he had no choice but to rent a car, given the issues with the car supplied. While it's not disputed that the repair failed, I would expect Mr W to mitigate any costs he incurred as a result. I haven't seen anything to show me that the ongoing water ingress into the car, especially as Mr W has said this mainly affected the boot, resulted in the car being undrivable. And I haven't seen anything to show me that Mr W attempted to get Close Brothers' approval for a rental car before he incurred this expense, or that any rental car approval was given. As such, I don't think it's fair or reasonable to now ask Close Brothers to cover the costs of a rental car.

Notwithstanding all of this, it's clear that Mr W has been inconvenienced by what happened and frustrated by the failed repair and how Close Brothers dealt with this. So, I think Close Brothers should compensate him for this. The investigator had recommended Close Brothers pay him an additional £300, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Close Brothers should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr W;
- remove any adverse entries relating to this agreement from Mr W's credit file;
- refund the deposit Mr W paid (if any part of this deposit is made up of funds paid through a dealer contribution, Close Brothers is entitled to retain that proportion of the deposit);
- refund 10% of all the payments Mr W has paid from January 2023 onwards;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr W made the payments to the date of the refund<sup>†</sup>; and
- pay Mr W an additional £300 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires Close Brothers to take off tax from this interest, Close Brothers must give Mr W a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr W's complaint about Close Brothers Limited, trading as Close Brothers Motor Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 March 2024.

Andrew Burford  
**Ombudsman**