

The complaint

Mr G is unhappy that a car supplied to him under a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance (Close Brothers) was of an unsatisfactory quality.

What happened

In March 2023 Mr G was supplied with a used car through a conditional sale agreement with Close Brothers. He paid an advance payment of £2,000 and the agreement was for £20,206 over 60 months; with 60 monthly payments of £303.44. At the time of supply, the car was eleven years old, and had done 96,000 miles. He said he was supplied with a six month warranty product as part of the purchase.

Mr G complains that he was supplied with a car that he says was not fit for purpose. He said that in June 2023 he reported an oil leak, a coolant leak and failed parking sensors to the warranty provider. He said that he had the faults confirmed by an independent garage. He said the inspection also confirmed the drive shaft needed to be replaced and there was gearbox and engine oil leaks.

He said that the gearbox overheating warning light came on in July 2023 and he was no longer able to use the car. He told Close Brothers the car had done approximately 104,000 miles at this point.

Close Brothers did not uphold his complaint. They said an independent inspection had found that the faults were not present at the time they had supplied the car to Mr G.

Mr G disputed the reliability of the independent inspection. He said a full inspection wasn't completed as the car wasn't moved or parts removed. Unhappy with this response, Mr G referred his complaint to our service for investigation.

Our investigator said that there were faults with the car, but he agreed with the independent inspection that the faults were likely to be the result of wear and tear. He said this because of the mileage Mr G had done in the time he had the car. He concluded that it wasn't reasonable to expect Close Brothers to allow Mr G to reject the car as he was persuaded it was of satisfactory quality at the time of supply.

Mr G didn't agree with the investigator. He said the investigator had accepted the independent inspection without contacting the garage that had diagnosed the faults. He provided a note that he had just received from that garage. In this note, the director of the garage said that because the diagnostic report indicated the faults were historic, this meant they would have been present at the time of supply. He also said that because Mr G hadn't had the car for a long time, he thought the seals would've been leaking prior to purchase.

Because Mr G didn't agree, this matter has been passed to me 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 G was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr G 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. In this case those relevant circumstances include, but are not limited to, the age and mileage of the car.

So, if I thought the car was faulty when Mr G 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.

Complaint Handling

Before I explain why I've reached my decision, it's important for me to set out what I've been able to consider here, and how. Mr G has complained about how Close Brothers and the supplying dealer handled and responded to his complaint. Complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, the way Close Brothers handled Mr G's complaint hasn't been considered as part of my decision.

The Warranty

Mr G also complained about the warranty he said he purchased at the time of supply. This is not included in the conditional sale agreement so Close Brothers cannot be held responsible for what has or has not been covered. This would need to be raised with the dealer that supplied the warranty, or the warranty provider.

The Faults

In this instance, it's not disputed there were problems with the car. This is evident from the reports provided by the garage Mr G employed to provide a diagnostic report and confirmed by the independent inspection report.

The issue I have to consider is whether or not the faults were present when the car was supplied to Mr G.

When Mr G took possession of the car in March 2023 it was eleven years old and, according to the agreement, had done 96,000 miles. The MOT history showed that the car had done

97,341 miles when it passed the MOT in February 2023. I'd expect to see wear and tear in a car of that age and mileage. And it would be reasonable to expect that some parts would need to be repaired or replaced over time.

By the time of the diagnostic report in July 2023, the mileage was just under 105,000 miles. So it appears that Mr G had travelled around 8,000 miles in the four months he was able to use the car.

In relation to the various faults, the independent inspection states that the mileage done in that time was "*too great to suggest these were present at that point*". The report also confirmed that the condition of the car reflected the wear and tear that had developed since purchase.

I find these observations persuasive. Mr G had significant usage of the car in a relatively short time. There is no evidence of the faults at the time of supply. I've looked at the MOT history and there is no suggestion of any oil leaks when the last MOT was done in the month before it was supplied to Mr G.

I've also considered the comments made by the garage employed by Mr G. It said that the faulty seals would have been present at the time of supply because Mr G hadn't "owned the vehicle for a long time". And on that basis it said the seals were leaking at point of purchase. But that ignored the significant mileage travelled in the short time Mr G had the car.

So I'm more persuaded by the independent inspection report. That report was signed with a statement of truth by a qualified engineer who also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

I'm satisfied that, considering all the relevant circumstances, it's more likely than not that the car Close Brothers supplied to Mr G was of a satisfactory quality when supplied to him.

Because of this, I don't agree that Close Brothers are responsible for the costs of repairing Mr G's car, nor do I think they should take the car back and unwind the finance agreement.

My final decision

For the reasons explained, I don't uphold Mr G's complaint about Close Brothers Limited trading as Close Brothers Motor Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 October 2024.

Gordon Ramsay
Ombudsman