

The complaint

Mr B is unhappy that a car supplied to him under a conditional sale agreement with Close Brothers Limited was of an unsatisfactory quality.

What happened

In October 2022, Mr B was supplied with a used car through a conditional sale agreement with Close Brothers. He paid a £1,500 deposit and the agreement was for £5,995 over 48 months, with 47 monthly payments of £171.56 and a final payment of £181.56. At the time of supply, the car was around 9 and a half years old and had done 115,545 miles (according to the MOT record for 6 October 2022).

Mr B says that, during a period of heavy rain in late December 2022 / early January 2023, he noticed water ingress into the car from the roof. This shorted the electrics, resulting in the car not being able to be started. He contacted the supplying dealership about the situation, but they didn't agree to help him. So, Mr B contacted Close Brothers.

In their complaint response letter dated 13 April 2023, Close Brothers said they couldn't investigate Mr B's complaint, as they were unable to contact him about this. Unhappy with this reply, Mr B brought his complaint to the Financial Ombudsman Service for investigation.

Mr B provided photographic and video evidence of the water damage to the car, and that it wouldn't start due to an electrical issue. As the issue with the car had happened within a few months of it being supplied to Mr B, our investigator asked Close Brothers if they would be prepared to arrange for the car to be inspected by an independent engineer. However, Close Brothers didn't respond to this request.

The investigator calculated that the car had travelled around 116,610 miles before it stopped working, and they thought the car wasn't of a satisfactory quality when supplied. Although Mr B had originally asked for the car to be repaired, the investigator thought that a fair solution would be to allow for the car to be rejected, with Mr B being given a refund of the deposit he paid; a refund of all payments he'd made since the car stopped working on 14 January 2023; a reimbursement of the £106 costs he'd incurred in having the car moved; and an additional £200 compensation for the distress and inconvenience he'd suffered.

Close Brothers didn't agree with the investigator's opinion and said the water ingress could've been caused by an open window and not a fault with the car. They offered to have the car independently inspected and said if this determined they were liable then they would agree to unwinding the agreement. This offer was made on 19 December 2023. Mr B agreed to this course of action on 21 December 2023.

Close Brothers arranged for the car to be inspected. The inspector visited Mr B's property (where the car was stored) on 17 January 2024 but was unable to conduct a smoke test to see if the car had any leak. So, no inspection took place. Close Brothers took no further action, despite being given ample opportunity to do so. Given this, the matter was passed to me to make a final decision on 14 May 2024.

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 B was supplied with a car under a conditional sale 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 B to show it was present when the car was supplied.

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

As referred to above, Mr B has provided photographic and video evidence of the issues with the car. These are:

- two photographs dated 14 January 2023, one showing a pool of water in the offside front footwell, and one showing water under the offside front seat;
- a photograph dated 29 January 2023 showing excessive condensation on the inside of the offside front door window;
- a photograph dated 11 March 2023 showing excessive condensation on the inside of the windscreen;
- a video dated 13 March 2023 showing a failed attempt to start the car, with multiple warning lights flickering on and off on the dashboard; and
- two photographs dated 20 May 2023, one showing wet and mouldy offside rear seats, and one showing mouldy carpet in the offside front foot well.

Based on these photographs, I'm satisfied there has been excessive water ingress into the car. I've considered Close Brothers' comments that this may have been caused by an open window. However, based on the pool of water in the footwell and the spread of mould over the back seats, I'm not satisfied that a window left slightly or fully open would allow such wide-ranging water damage. As such, I think it's more likely than not that the damage was

caused by a leak; and a leak in through the roof, as described by Mr B, would explain the spread of damage.

Mr B raised the issues with the car within six months of supply. As I've already said above, the CRA assumes the fault with the car was present when it was supplied, unless Close Brother can show otherwise.

Close Brother have asked for the opportunity to have the car independently inspected, so as to ascertain the cause of the water ingress. While they didn't request this until nine months after being advised of the issues with the car, I'm satisfied it was reasonable for them to be given the opportunity. However, while Close Brothers did arrange for the car to be inspected in January 2024, the inspection couldn't go ahead down to an issue with the inspector not being able to carry out a smoke test. Close Brothers have been given a further four months to rearrange this inspection but have failed to do so.

Given this, as Close Brothers haven't evidenced that the issues with the car weren't present or developing at the point of supply, it's reasonable that I revert to the CRA. As such, I'm concluding the car wasn't of a satisfactory quality when it was supplied, and Close Brothers need to do something to put things right.

Putting things right

[this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract." This is known as the single chance of repair.

However, section 23(2) of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must –
(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given that it's now been more than a year since Close Brothers were advised of the issue with the car, and they haven't taken any steps to either identify the cause of the fault or undertake any repairs, it's arguable they have failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr B should be able to reject the car.

Mr B has a mileage-based insurance on the car, whereby his monthly premiums are based on the mileage travelled. He's supplied evidence from his insurance company that shows that the car hasn't been used since January 2023. However, despite the car being off the road, Mr B hasn't been provided with an alternate car to keep him mobile. As such, he was paying for goods he was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Close Brothers failed to keep Mr B mobile; I'm satisfied they should refund the payments he made from February 2023 onwards.

Mr B has also said that he moved home in late 2023 and incurred £106 of costs in having the car moved to his new address. Again, as the car wasn't drivable as a result of it being of an unsatisfactory quality at the point of supply, I think it's only fair that Close Brothers reimburse this cost.

Finally, it's clear that Mr B has been inconvenienced by what's happened, and this has been exacerbated by the delays in Close Brothers dealing with matters. So, I think they should compensate him for this. The investigator had recommended Close Brothers pay him £200, 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 B;
- remove any adverse entries relating to this agreement from Mr B's credit file;
- refund the deposit Mr B 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 the payments Mr B has made from February 2023 until the agreement is ended;
- upon receipt of proof of payment, reimburse Mr B the £106 car moving costs he incurred;
- apply 8% simple yearly interest on these refunds, calculated from the date Mr B made the payments to the date of the refund[†]; and
- pay Mr B an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Close Brothers to take off tax from this interest, Close Brothers must give Mr B 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 B's complaint about Close Brothers Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 June 2024.

Andrew Burford
Ombudsman