

Complaint

Mr K is unhappy with a car that Close Brothers Limited (trading as “Close Brothers” Motor Finance) supplied to him through a hire-purchase agreement.

Background

In August 2019, Close Brothers provided Mr K with finance for a used car. The car was just under a year and a half old and the agreement suggests that it had completed 711 miles at the time of the sale.

The cash price of the vehicle was £20,750.00. Mr K paid a deposit of £2,325.40 and applied for finance to cover the remaining £18,424.60 he needed to complete the purchase. Close Brothers accepted Mr K’s application and entered into a 48-month ‘personal contract purchase’ type of hire-purchase agreement with him.

The total amount to be repaid of £24,669.40 (not including Mr K’s deposit) was due to be repaid in 47 monthly instalments of £340.50 followed by an optional final payment of £8,430.50 which Mr K had to pay if he wished to keep the car.

In the autumn of 2023, Mr K sought to sell the car and clear the finance. However, a prospective purchaser queried whether the vehicle he was selling was the same as a similar one in a photograph, which had been severely damaged in an accident, and was subsequently sold by auction in April 2018. The prospective purchaser decided against purchasing the car.

Mr K attempted to contact the salvage yard to find out if the vehicle identification number (“VIN”) for the car in the photographs matched the one for his car. The salvage yard told Mr K that it would not be able to provide any details regarding the car in the photograph as he was not the party it sold the vehicle to. After telling the salvage yard that he inferred that the VIN for his vehicle existed in its records, Mr K complained to Close Brothers saying that the reason for the sale of the car was misrepresented and he was overcharged as he paid market value for a vehicle which had been salvaged after an accident.

Close Brothers issued its final response to Mr K’s complaint on 9 January 2024. In essence, Close Brothers didn’t uphold Mr K’s complaint. It said that this was because it didn’t consider that there was anything wrong with the car that it had supplied to Mr K. Mr K was dissatisfied at this and referred his complaint to our service.

Mr K’s complaint was subsequently reviewed by one of our investigators. He was satisfied that the car Close Brothers supplied to Mr K was of satisfactory quality and he was not persuaded that a misrepresentation had taken place either. Mr K disagreed with our investigator’s view and asked for his complaint to be passed to an ombudsman for a final decision. So the complaint has been passed to me to decide.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and

reasonable in the circumstances of this complaint.

I'm satisfied that what I firstly need to decide in this case is whether the car supplied to Mr K was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Close Brothers to do to put things right.

Having carefully considered matters, I'm satisfied that the vehicle Close Brothers supplied to Mr K was of satisfactory quality. And I'm therefore not upholding Mr K's complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Close Brothers purchased the vehicle from the dealership Mr K visited.

Mr K then hired the vehicle from Close Brothers and paid a monthly amount to it in return. Close Brothers remained the legal owner of the vehicle under the agreement until Mr K's loan was repaid.

This arrangement resulted in Close Brothers being the supplier of Mr K's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Mr K's agreement with Close Brothers. Under a hire-purchase agreement, there are implied conditions that the goods supplied, amongst other things, will be of satisfactory quality and must be as described.

The CRA says the aspects of the quality of the goods and whether they are satisfactory, amongst other things, includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. Furthermore, any goods supplied also have to match the description provided.

Is or was there a fault with the vehicle and was it supplied as described?

I've read and considered everything provided. I accept and acknowledge that Mr K has provided a number of submissions. It's fair to say that both parties have significantly differing views on whether there is a fault with the vehicle that Close Brothers supplied to Mr K and whether it was as described.

Before I go any further, I think it would be helpful for me to set out that while I've not referred to each individual submission that Mr K has made, it's not because I've failed to take his concerns on board. It's simply that I've focused on what I'm satisfied I need to decide in order to reach what I think is the right outcome here. Our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

For the sake of completeness and given the comments Mr K has made in response to the investigator's assessment, I would also add that as an independent dispute resolution service tasked with determining complaints quickly and with the minimum of formality, there are limits to the powers that we have as well as what we can and should do.

For example, we don't have the power to compel evidence from non-parties to a complaint – such as the salvage yard. So we are unable to compel the salvage yard to provide any information on the car in the photograph. This is particularly as there is no dispute that Mr K hasn't ever been a customer of the salvage yard either.

I now turn to the evidence that Mr K has provided.

Before I consider the content of the report and the photographs, I do think that it is worth commenting on the content of the emails that Mr K had with the salvage yard. Mr K has said that after he provided the VIN for his car, the salvage yard cited confidentially for not confirming whether the car in the photograph was the vehicle he was supplied with.

However, the first email the salvage yard sent to Mr K on 7 November 2023, which was before he supplied his VIN, stated that it would only be able to provide a response to him if the car was the same car and he purchased the car from it. In these circumstances, I cannot reasonably draw the inference that the car in the photo is the same car Close Brothers supplied Mr K with, simply because the salvage yard has refused to confirm or deny this, in the way that Mr K has.

I've therefore considered the content of the photos, advert and everything else Mr K has said and provided in order to make my own determination of whether I think it is more likely than not (not just possible) that the car in the photographs, is the car that Close Brothers supplied Mr K with, in August 2019.

I accept that the advert and photographs which Mr K has provided are for a make and model of a vehicle of the type which Close Brothers supplied to him in August 2019. But other than this, which suggests it is possible that the car in the photographs and the car Mr K was supplied with are one and the same, there isn't anything in the content of the photographs which clearly and conclusively shows that it is more likely than not that this is the case.

I also think that there are a number of reasons for me to conclude the two cars aren't the same. To start with, I've noted that the advert and the photograph that Mr K has provided are from a sale which took place in April 2018. This is well over a year before Close Brothers supplied Mr K with his car. Equally, the milage on the car in the photograph is 374 and the milage on the car Mr K was supplied with was 711.

It's also worth noting that the date recorded next to the mileage on the car in the photograph is 1 January 2016. I accept that may be an error in the date and time as a result of the damage that the car in the photograph sustained in the accident it was clearly involved in. But it is clear that there are inaccuracies and so there is a limit to what conclusions I'm able to draw from this photograph.

I've also noted that the ownership record of the vehicle Mr K acquired did not change in or around April 2018, when the car in the photographed appears to have been auctioned. Indeed, from what I can see Mr K's car was first registered in March 2018 and then the next change in ownership occurred when Mr K acquired it in August 2019. So the registered keeper history of Mr K's car does not appear to tie up with what the registered keeper history for the car in the photographs should show either.

In reaching my conclusions, I've also thought about the screenshot of a check which Mr K has run on his vehicle. I accept that there is an exclamation mark (indicating an issue found) next to the entry for salvage history. However, without any detail at all of what this issue is, or when it is from, I cannot reasonably argue that this ties the car Mr K was supplied with by Close Brothers to the car which Mr K has provided the details of and which was auctioned in April 2018.

Indeed, cars do suffer from damage while they are being used and are frequently satisfactorily repaired after such incidents. It is also fair to say that on some occasions cars are involved more significant instances and a car might suffer more extreme and structural damage which will mean it cannot be repaired.

However, in this case, Mr K has not supplied an independent, or any other kind of, report stating any sort of opinion on whether the car he was supplied with was ever involved in a significant accident, or currently has any issues as a result. The only independent commentary I have which directly comments on Mr K's car is the MOT history that is available on publicly held records.

This MOT information does not show that there have ever been any advisories relating to the structural integrity of the car and its safety as a result, or anything at all to indicate that the car supplied was involved in an accident.

Furthermore, Mr K himself hasn't said that he ever noticed any cosmetic or mechanical issues indicating that the car may have been involved in a significant accident prior to it having been supplied to him. From what Mr K has said, it would appear that the first time he had any reason to question the possibility of the car having been involved in an accident was when his prospective buyer decided against purchasing it, in the autumn of 2023.

In these circumstances, I simply don't have sufficient evidence to make the finding that it is more likely than not that the car Close Brothers supplied Mr K with is the same car in the advert and photographs, which Mr K has provided details of and which was involved in an accident in early 2018.

As this is the case and in the absence of any evidence of any other faults with the car, I'm not persuaded that it is more likely than not that there is a fault with the vehicle that Close Brothers supplied to Mr K, or that it was not as described.

Misrepresentation

I've also considered what my findings on whether the car Close Brothers supplied to Mr K was involved in an accident mean for Mr K's argument that the car and the finance agreement were misrepresented to him.

Under s56 of the Consumer Credit Act 1974 ("CCA"), Close Brothers, as Mr K's credit provider, is responsible for any "antecedent negotiations" that took place at the time of the sale of the car. These antecedent negotiations include any negotiations "*conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement.*"

Therefore, Close Brothers could be responsible for any misrepresentations the supplying dealer made to Mr K during the course of negotiations. Mr K alleges that he queried why the vehicle was being resold so soon after it was factory new and the supplying dealer misrepresented why this was the case.

Mr K says that the supplying dealer told him that the car was being sold because "*the previous owner was an executive that came into financial difficulties*". Mr K says that this was neither a complete nor truthful answer and therefore a misrepresentation took place.

However, a misrepresentation requires a false statement of fact, or law, to have been made. Mr K's allegation that the representation made to him, on why the car being sold when it was, was false is based upon his argument that the car he acquired had a significant accident. And therefore the main driver for the previous owner deciding to sell the car.

However, I've already explained, in some detail, why I'm not persuaded that it is more likely than not that the car in the documentation and photographs Mr K has provided is the same

as the one that Close Brothers supplied to him in August 2019, or that the car he acquired was involved in a significant accident.

As this is the case, it follows that I've not been persuaded that significant accident damage was the main driver behind the sale of the car in August 2019, rather than any financial difficulty that the previous owner may have had, or that the supplying dealer made a false statement or fact or law in the way that Mr K is arguing.

Overall and having considered everything, I'm not upholding Mr K's complaint. I appreciate that this is likely to be very disappointing for Mr K – particularly as he feels strongly about this matter. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr K's complaint.

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

Jeshen Narayanan
Ombudsman