

## **The complaint**

Mrs D complains that a car acquired with finance from Close Brothers Limited wasn't of satisfactory quality.

## **What happened**

In November 2022 Mrs D was supplied with a car and entered into a conditional sale agreement with Close Brothers.

In December 2022 – and within 30 days of the inception of the finance agreement – Mrs D contacted the dealership and reported an issue with the rear suspension.

Mrs D also contacted Close Brothers and explained that the rear suspension had failed and that she wanted to reject the car.

Mrs D says that the dealership refused to do anything until the car had been returned to them so she paid £250 to have the vehicle uplifted back to the dealership.

Mrs D contacted Close Brothers and told them what had happened. Close Brothers contacted the dealership, who advised that a rejection had not been agreed as they wanted to inspect the vehicle.

Close Brothers arranged for an independent inspection to be carried out. The inspection was completed in January 2023 and concluded that the issues reported by Mrs D weren't present at the point of supply and that the dealership wasn't liable.

Close Brother said that Mrs D had to allow them one opportunity to repair the fault. Close Brothers also said that the wrong type of truck had been used when the vehicle was uplifted to the dealership and that the car had suffered some damage underneath as a result.

Mrs D wanted to reject the car and made a complaint. The dealership sent her a letter saying it was happy to buy the car back deducting a cost for mileage usage and the two sills that had been damaged when the car was uplifted back to them. Close Brothers wouldn't agree to the car being sold because it said there wasn't a fault. The dealership said it was up to Mrs D to sort things out with Close Brothers. It also said that it would charge Mrs D for storing the car at a daily rate of £25 plus VAT.

Mrs D brought her complaint to this service.

Our investigator upheld the complaint. She said that based on the evidence she'd seen, she was satisfied that there was a fault with the rear suspension. The investigator said that Mrs D had asserted her short term right to reject the car within the first 30 days and said she should be allowed to reject the car.

Close Brothers didn't agree. It said the independent inspection report confirmed that there were no faults. It acknowledged that the inspection report hadn't explained why the rear suspension was so low when the pictures were taken but said that this factor didn't bear enough weight to contradict the conclusions in the independent report. Close Brothers said it

had carried out some research and had found that suspension may be temporarily low for a number of reasons, such as cold weather or an auto levelling system. It said that upon starting the car the suspension would be expected to adjust. Close Brothers said that the independent report confirmed that when the car was started and driven, the issue wasn't present. Close Brothers said that on balance the issue was likely to be a temporary one and that there was no evidence that the issue had occurred over an extended period of time.

### **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.

The Consumer Rights Act 2015 is relevant to this complaint. It says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of goods includes their general condition and other things including fitness for purpose, freedom from minor defects, safety and durability.

I would expect a second hand car – such as that supplied to Mrs D – to have a degree of wear and tear and to require repairs more often than a brand new car. In order to uphold Mrs D's complaint, I would need to be satisfied that there was a fault with the car which was present at the point of supply, and which made the car of unsatisfactory quality, rather than a fault which occurred due to general wear and tear.

Under the relevant legislation, where a car isn't of satisfactory quality, the consumer has a short term right to reject it within the first 30 days. After that, a consumer has a final right to reject which can be exercised within the first 6 months. The final right to reject is subject to the business being given one opportunity to repair the fault. The right of repair isn't applicable to the short term right to reject.

In this case, Mrs D reported the failed rear suspension within the first 30 days and asserted her short term right to reject.

Based on the evidence I've seen, I'm satisfied that there was a fault with the rear suspension. I say this because the photos provided by Mrs D show that the rear of the car is much lower than the front. I've also taken into account the evidence provided by Close Brothers about what the dealership said when the car was uplifted back to them. The dealership said the car had been uplifted on the wrong type of truck which resulted in damage being caused to the underneath of the car due to the suspension being so low. Taking these two pieces of evidence into account, I'm persuaded that there was a fault with the rear suspension.

I appreciate that the independent report doesn't conclude that there is a fault with the rear suspension. However, the report doesn't address the photos of the car which clearly shows the rear to be significantly lower than the front. Nor does it address why the height of the rear suspension was a factor in the underside of the car being damaged when it was uplifted to the dealership. I would have expected the engineer to comment on these issues and provide some explanation. In the circumstances I don't find the report persuasive.

I've gone on to consider whether the car was of satisfactory quality when it was supplied. Mrs D reported the issues with the rear suspension within a very short time of getting the car. I'm satisfied based on the evidence that I've seen – including the photos and the evidence relating to the uplift of the car – that there was a fault with the rear suspension at the point of supply.

I've already said that Mrs D asserted her short term right to reject the car within the first 30 days. I'm of the view that she should have been allowed to reject the car at that point because of the fault with the rear suspension. It follows that Close Brothers should take steps to put things right now.

### **Putting things right**

I've already said that Mrs D should be allowed to reject the car.

Mrs D hasn't used the car since 15 December 2022 because of the fault with the rear suspension. The car has been at the dealership since 29 December 2022. I think Mrs D acted reasonably in not using the car. Up until that point, Mrs D covered around 1000 miles in the car. The relevant legislation allows a business to make a deduction for fair usage. Here, I think Close Brothers should retain one monthly payment to reflect fair usage. But any further monthly payments made by Mrs D should be refunded.

It's clear that Mrs D has been caused some distress and inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. She hasn't been able to use the car and has had to make alternative transport arrangements. I think it's fair to ask Close Brothers to pay compensation to reflect this.

The dealership has charged storage fees. I don't think it's fair to expect Mrs D to pay these charges because the car wasn't of satisfactory quality when it was supplied and I think her request to reject should have been allowed when she first made it i.e. in December 2022. Because Close Brothers didn't accept the request to reject when it should have done, it should meet any storage charges sought by the dealership.

### **My final decision**

I uphold the complaint. Close Brothers Limited must:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mrs D

Refund all rental payments made by Mrs D save for the December 2022 payment (which reflects fair usage)

Refund the £250 uplift costs provided Mrs D can provide evidence of this

Pay 8% simple interest per year on all amounts refunded from the date of payment to the date of settlement

Pay compensation of £100 for distress and inconvenience

Remove any adverse information relating to the agreement from Mrs D's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 11 October 2023.

Emma Davy  
**Ombudsman**