

The complaint

Mr W 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 W was supplied with a used car through a conditional sale agreement with Close Brothers. He paid a deposit of £447.25, and the agreement was for £5,497.75 over 60 months; with monthly payments of £131.75. At the time of supply, the car was around 11 and a half years old and had done around 112,000 miles.

The car broke down on 29 December 2022, due to issues with the timing chain and the failure of the head gasket. Mr W complained to Close Brothers, and they arranged for the car to be inspected by an independent engineer. In April 2023, following this inspection, Close Brothers agreed to repair the car. And they paid Mr W £150 compensation for the trouble and upset he'd been caused.

On 19 May 2023, Mr W was advised the car was repaired and ready for collection. He attempted to collect the car on 22 May 2023, but there were still faults present. Close Brothers arranged for the independent engineer to reinspect the car, and, on 6 July 2023, they agreed Mr W was able to reject the car.

Close Brothers arranged for the car to be collected, and refunded five payments to Mr W, as well as reimbursing him for five months of road tax and car insurance payments - a total of £1,015.55. Mr W wasn't happy with the amount he'd received, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Close Brothers acted reasonably by allowing Mr W to reject the car. But he didn't think they'd done enough to put things right. The investigator said Mr W was without the car from when it broke down on 29 December 2022, to when it was collected by Close Brothers in early July 2023. So, he thought Close Brothers should refund a total of six payments, not just the five they had. But, as Mr W had an obligation to keep the car taxed and insured, he didn't think they should pay anything more towards these costs.

The investigator also said that Close Brothers should refund the deposit Mr W paid, pay statutory interest on the refunds, and increase the compensation for the trouble and upset caused to a total of £300.

Mr W didn't agree with the investigator. He said that Close Brothers had since refunded him an additional £861.23 and paid him an additional £250 compensation, taking the total to £400. However, he didn't think that this was sufficient to compensate him for the stress and inconvenience he'd been caused for not having use of the car for six months.

The investigator reissued their view, saying that the remedy Close Brothers had put in place was sufficient, and he didn't think they needed to do anything more. Mr W still didn't agree that the £400 element of this was sufficient, and he's 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.

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 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 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 the car, nor that this made it of an unsatisfactory quality when it was supplied to Mr W. 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, if anything, to put things right.

In a situation like this, I'd expect Close Brothers to allow Mr W to reject the car, which is what they did. I'd also expect them to refund the deposit and any payments Mr W paid while he wasn't able to use the car, plus statutory interest.

The car wasn't able to be used from 29 December 2022, and rejection was agreed on 6 July 2023. During this period, Mr W paid six payments totalling £790.50. He also paid a deposit of £447.25, meaning Close Brothers should refund him £1,237.75. Their actual refund was £1,876.78. However, it's my understanding this refund also included what Mr W paid for road tax and car insurance, and £250 for the trouble and upset he'd been caused.

Based on what I've seen, this means the amount of the deposit and payment refund (including interest) was £1,269.08. So, I'm satisfied that Close Brothers have refunded the payments I would've expected them to refund and paid statutory interest on the refunds. As such, I won't be asking them to refund anything more.

I've noted that HM Revenue & Customs requires Close Brothers to take off tax from the statutory interest they've paid to Mr W. They must give Mr W a certificate showing how much tax they've taken off if he asks for one.

Turning now to the amount paid by Close Brothers to compensate Mr W for the trouble and upset he'd been caused. This was £400, paid in two payments - £150 in April 2023, and £250 after the car was collected in July 2023. Mr W doesn't think this is sufficient for six months of being without a car and having to rely upon alternate transportation.

Mr W has referred to the information on our website in this matter, pointing out that we may make an award of between £300 and £750 *"where the impact of a mistake has caused considerable distress, upset and worry - and/or significant inconvenience or disruption that needs a lot of extra effort to sort out. Typically, the impact lasts over many weeks or months."*

Every case is dealt with on its own merits, and the overall impact is taken into consideration when considering what, if any, award to make. As such, the information on our website is general guidance of what **may** be awarded and is not a rule that we are required to apply to every complaint.

Saying that, it's clear from the facts of this case that Mr W was impacted over an extended period of months. However, I'm satisfied that Close Brothers acted reasonably in this matter. They provided Mr W with his rights under the CRA – the right of repair and, when this repair failed, the right of rejection. What's more, they obtained an opinion from an independent expert, at no cost to Mr W, at each stage in the process, and they followed the expert's recommendations. So, with reference to the guidance Mr W has referred to, I'm not satisfied that he was put to 'a lot of extra effort' to sort things out. And this itself would've significantly reduced the impact on him.

In addition to this, by refunding the payments and interest, Close Brothers have mitigated any additional costs that Mr W may've incurred in the use of alternate transportation. While this doesn't lessen how Mr W felt about the matter, or the impact on him, I'm satisfied that these circumstances don't warrant the upper levels of the £300 to £750 range Mr W has referred to.

Instead, I'm satisfied that the £400 he's already been paid is reasonable when taking into consideration all the circumstances and is in line with what I would've directed had no award already been made. So, I see no compelling reason to increase the compensation, and I won't be asking Close Brothers to pay anything more.

My final decision

For the reasons explained, I uphold Mr W's complaint about Close Brothers Limited, but I won't be asking them to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 October 2023.

Andrew Burford
Ombudsman