

The complaint

Mr H complains about the quality of a car that was supplied to him under a conditional sale agreement with Close Brothers Limited, trading as Close Brothers Motor Finance ("CB").

What happened

On 27 August 2021 Mr H took out a conditional sale agreement with CB for a car. The car was eight years old and had travelled approximately 61,000 miles. The cash price was £6,494. Mr H agreed to pay a deposit of £2,000, followed by 49 monthly instalments of £134.18.

Mr H has told us that the gearbox failed on 8 November 2021. He says he complained to CB four days after this happened, but that he had to chase them numerous times to try to get things resolved. He says in the meantime he had to pay the costs of running another vehicle so he could get to work.

CB obtained an independent engineer's report on the fault and provided their final response to Mr H's complaint on 6 June 2022. They said the engineer had confirmed the fault wouldn't have been present at the point of supply, so they wouldn't do anything more to resolve the complaint. But they said they'd be happy to arrange another inspection of the car if Mr H wanted a second opinion.

Unhappy with CB's response, Mr H referred his complaint to our service. Our investigator said she didn't think the car was of satisfactory quality when it was supplied, because she didn't think it was sufficiently durable. She felt it would be fair for CB to cover the cost of the repair, upon production of a valid receipt. She said that, if the work had already been carried out, Mr H should also receive interest on the amount he'd paid.

The investigator noted Mr H hadn't been able to use the car since December 2021. She thought he should receive a refund of the payments he'd made since then, with interest, and that any adverse information about this agreement should be removed from his credit file.

Our investigator felt Mr H had experienced distress and inconvenience because he'd been supplied with a car that wasn't of satisfactory quality. She thought it would be fair for CB to pay him £150 compensation for this.

CB disagreed. They acknowledged that the original mechanical inspection they'd obtained said further investigation would be needed to determine the specific cause of the fault. But they said they'd accounted for this by seeking advice from another independent engineer. CB said the second independent engineer's opinion was that, based on the information they'd seen in the first engineer's report, the car was likely to have been driven hard and a gear missed.

CB said they accepted that a well-maintained gearbox should last more than 67,000 miles. But they said the car had covered over 5,000 miles since they supplied it, and it couldn't be confirmed that it had been properly maintained or that it hadn't been driven in a manner that would cause damage.

Mr H said he was happy with the outcome the investigator had proposed. He provided further comments, which I'll summarise:

- On the day the first inspection took place, Mr H complained that the inspector had only opened the bonnet and requested a proper inspection on a ramp.
- The second engineer decided that another inspection was unnecessary, based on the first report. Mr H didn't consider this report to have been based on a proper inspection.
- Mr H expressed concern about the information the inspector had been given about the fault, because he'd started the conversation by saying "I'm going to take it for a test drive". The report said the car had a 2.0L engine, when in fact it's a 1.2.
- CB told Mr H they weren't liable for the fault as the car had been modified. The retailer hadn't informed Mr H that it had been modified in any way, and no modifications had been made since he'd had the car.
- CB told Mr H they'd cover the additional costs of running another vehicle due to this car having failed. He said this was a substantial amount, as the faulty car still needed to be insured as well as the replacement vehicle.
- Mr H had been very proud of this car, never missing a payment, and was distraught when it failed so quickly. CB failed to deal with the complaint in a timely manner, breaking promises to act or call back despite the numerous attempts he'd made to chase things. He felt £150 to be a paltry amount for this.

The case has come to me for a 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.

Mr H's complaint is about a car supplied under a conditional sale agreement. Entering into consumer credit contracts like this as a lender is a regulated activity. So, I'm satisfied I can look into Mr H's concerns about CB.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of the goods is satisfactory.

The CRA says the quality of goods includes their state and condition. It says things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. It seems likely that in a case involving a car, the relevant circumstances a court would take into account might include things like its age, mileage, and history.

In this case, I bear in mind that the car was eight years old and had covered around 61,000 miles when it was supplied to Mr H. It cost £6,494, which is significantly less than it would've cost when it was new. I don't think a reasonable person would have the same standards for this car as they would a newer one with less mileage.

I don't think a buyer would expect the car to be in perfect condition - I think they'd probably expect some parts of the car to have suffered a bit of wear and tear. But I think they'd still

expect it to be free from anything other than minor faults when it was supplied - and to be able to drive the car for a reasonable amount of time without major issues.

Was the car of satisfactory quality?

I've seen a copy of the independent engineer's report, referring to his inspection on 6 December 2021. The report records the car to have travelled around 67,406 miles at that time. The engineer reported that:

"The vehicle is noted to be on lowered suspension." [R8]

"There were two pieces of the gearbox casing loose underneath the vehicles bonnet and around the engine bay area." [R9]

"There was a gear on the passenger side seat which is a cross pin bent from the differential and also one planet gear." [R10]

The engineer said his opinion was that:

"Taking into consideration the time and mileage since finance inception the above listed fault would not have been present at that time."

Having reviewed this evidence, I'm satisfied that there was a significant fault with the car, which meant it could no longer be driven. I don't disagree that this fault wouldn't have been present when CB supplied the car to Mr H. The point for me to consider is whether this was caused by an issue that was developing, or underlying, when the car was supplied.

The evidence I've seen shows Mr H had little more than two month's use of the car before the gearbox failed, by which time it had only travelled around 67,406 miles. I'm satisfied a reasonable person would have expected it to last significantly longer than this without major problems. For these reasons, I don't consider it to have been sufficiently durable. It follows that I find the car wasn't of satisfactory quality at the time it was supplied.

I appreciate CB disagree – they say the evidence they obtained indicates the fault wasn't present at the time the car was supplied. I've given careful thought to what the independent engineer's report says about the cause of the gearbox failure. It says:

"... we would require the vehicle to be further stripped and the gearbox removed in order to fully assess the gearbox condition to confirm the cause of failure."

As the independent engineer was unable to confirm what caused the failure, I don't find his evidence to be persuasive as to whether that issue was likely to have been present or developing at the time the car was supplied.

CB said they followed this up by making enquiries with a second independent engineer. They've told us the second engineer advised that, based on the information in points R8, R9 and R10 of the first engineer's report, their opinion was that the vehicle had been driven hard and a gear had been missed. CB said the second engineer advised that, in light of this and the mileage covered, their position was unlikely to be any different from that of the first engineer.

But I'm not persuaded that the information provided by either of the engineers provides any firm evidence as to the cause of the gearbox failure in this case. I say this because I've seen clear evidence in the first engineer's report that the cause of the failure couldn't be confirmed without stripping the car and removing the gearbox.

CB accept a well-maintained gearbox should last more than 67,000 miles. But they've said this car had covered over 5,000 miles since they supplied it – and it couldn't be confirmed that it had been properly maintained or that it hadn't been driven in a manner that would cause damage. I've considered this point.

I've seen reference in the engineer's report to the car being on lowered suspension. As Mr H told us he didn't have this carried out, I don't consider him to be responsible for any damage that may have been caused to the car because of that modification. I've seen no evidence to suggest the failure of the gearbox was due to driving style in this case. So, this doesn't affect my decision.

To summarise, I'm satisfied that Mr H was entitled to expect more than two months or 6,000 miles' use from the car without the need for significant repairs. I think he could reasonably expect it to be more durable than that. So, I don't consider the car to have been of satisfactory quality when it was supplied to him.

Putting things right

I think it's fair that CB should cover the cost of repairing the gearbox issue. If Mr H has already had this work carried out, CB should reimburse him for this, on production of a valid receipt or invoice.

Mr H told us that he hasn't been able to use the car since the gearbox failed on 8 November 2021. So, I think it would be fair for CB to refund the payments he's made since that date, to reflect the fact that Mr H had no use of the car.

I appreciate Mr H doesn't feel this fully covers the additional costs he incurred due to having to get a replacement vehicle. He said this was a substantial amount, as the faulty car also still needed to be insured. He says CB told him he'd be able to reclaim the additional travel and insurance costs he incurred due to the car having failed. I've seen no supporting evidence to confirm this, so I've given careful thought to what would be fair here.

Although a business may have done something wrong, we'd still expect consumers to take reasonable steps to avoid incurring unnecessary additional costs. Mr H told us that he didn't make a statutory notification to declare the car was off the road, because he didn't expect it to take so long to get things resolved.

But having got another vehicle, I do think it was reasonable for Mr H to declare this car to be off-road, to avoid the need for him to insure two vehicles. So, I don't think it would be fair for me to direct CB to cover the additional cost of insuring a second vehicle. I'm satisfied Mr H's travel costs are reasonably covered by him being reimbursed for the payments he made under the agreement.

I can see Mr H has also been caused some distress and inconvenience because of the problems with the car. He had to make arrangements to get another vehicle so he could travel to work, as well as chasing CB to try to get his complaint resolved. I do think £150 compensation fairly reflects the distress and inconvenience he's been caused here.

My final decision

For the reasons I've explained, I uphold this complaint and direct Close Brothers Limited (trading as Close Brothers Motor Finance) to:

- Pay the cost of repairing the gearbox issue, on production of a valid receipt or invoice. If Mr H has already paid for this work to be carried out, interest should be

added at 8% simple per year, calculated from the date of payment to the date of settlement.

- Refund the amount Mr H has paid under the agreement since 8 November 2021. Interest should be added to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Pay Mr H £150 compensation for the distress and inconvenience he's been caused.
- Remove any adverse information about this agreement from Mr H's credit file.

If CB consider tax should be deducted from the interest element of the award, they should tell Mr H how much they've taken off. They should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 October 2022.

Corinne Brown
Ombudsman