

The complaint

Ms P complains that car she acquired via a conditional sale agreement with Close Brothers Limited wasn't of satisfactory quality.

What happened

In January 2022 Ms P acquired a used car via a five-year conditional sale agreement with Close Brothers. The car was over seven years old and had a mileage of 135,000. The car was supplied with a warranty.

Two days after acquiring the car Ms P complained to the supplying dealer that there was a fault with the O2 sensor and one week later that there was a fault with the heat matrix. The supplying dealer says they agreed for these to be fixed under the warranty.

Ms P also says that after taking the car she found it had a cracked windscreen, corrosion on the driver's side door and a dent in the wing. She says that she had the windscreen fixed under the car's insurance she had obtained. The supplying dealer didn't agree to fix any cosmetic issues as they said these would have been evident at the time Ms P agreed to take the car.

In February 2022 Ms P contacted the supplying dealer about the car's oil and coolant consumption. She says the oil light had illuminated, and the car was found to have only one litre of oil so three litres were added but nine days later it had needed a further three litres to be added. Ms P said the dealer said these leaks would be investigated at the same time as the heat matrix was repaired. However, this didn't happen, the supplying dealer says Ms P didn't take the car into them.

Ms P says that one week later a loud tapping noise was heard, and the car was found to be empty of oil again. The car was taken to the warranty garage for investigation. It has remained there to date.

Ms P complained to Close Brothers in April 2022. It arranged for the car to be independently inspected at the garage. When the independent engineer attended, they found that the car had been dismantled and the sump and rocker had been removed. The technician at the garage informed them that they had added four and half litres of oil. There was also a five litre can of oil in the boot of which four litres had been used.

On inspection, the independent engineer said there were signs of oil starvation, the big end bearings and crankshaft journals displayed signs of lack of lubrication. The independent

engineer said that the oil pump was working and that these issues weren't linked to the issues with the O2 sensor or DPF.

The independent engineer concluded that the cause of the knocking noise had been a lack of oil which had resulted in consequential damage to the car's engine. They said this wouldn't have been present at the point of supply and any repairs would be Ms P's responsibility.

In light of the conclusion of the independent engineer, Close Brothers didn't uphold Ms P's complaint. Ms P disagreed with the view of Close Brothers and complained to this service. She said she wasn't able to use the car and that it required a new engine. Ms P said she either wanted the car repaired or to be able to reject it.

Our investigator recommended that Ms P's complaint should be upheld. She said she was satisfied that the car hadn't been of satisfactory quality at its point of supply to Ms P as Ms P had complained to the supplying dealer about the oil and coolant faults within one month from inception of the agreement.

Our investigator said it would be fair for Close Brothers to cover the costs of the repairs to the O2 sensor, the oil fault and the consequential engine damage and the excessive coolant fault if this was economically viable. If it wasn't, then our investigator said Close Brothers should consider a rejection. She also said it would be fair for Close Brothers to reimburse the cost of the oil purchased by Ms P, to pay £75 for compensation distress and inconvenience caused by dealing with the faulty car and remove any adverse information about this account from Ms P's credit file.

Ms P agreed with our investigator's view, but Close Brothers disagreed. Although Close Brothers said it agreed that the supplying dealer would be liable for the repairs to the heat matrix and O2 sensor it didn't agree there was liability for the oil fault and the subsequent damage this had caused. Close Brothers sought clarification from the independent engineer about their findings and the timeline of events. The independent engineer said they weren't able to comment on the original cause of the oil issue due to the condition of the engine (it having been dismantled). But they said had Ms P taken into consideration the car's oil consumption when using the car then the damage to the engine could have been avoided.

Close Brothers said there wasn't evidence that the car had required an excessive amount of oil. It said this was based on the opinion of the independent engineer who had said that Ms P had driven 7,249 miles between January and April 2022, and the extent of the oil consumption in that period couldn't be confirmed, but oil consumption was not abnormal. Close Brothers said Ms P had responsibility to maintain the engine oil level to prevent consequential damage from developing. And if engine oil is allowed to fall to a depleted state the wear and damage will occur to the engine.

Close Brothers said the independent engineer had stated about Ms P's complaint that "*Oil consumption is not abnormal on internal combustion engines, oil depletion/usage during normal service use has a set value, which if exceeded, will require maintenance repairs this figure varies from manufacture to manufacture but is often set at between 600 to 1200 miles per litre as a general rule and will be detailed in the handbook. High-performance engines and higher mileage vehicles often use oil at a higher rate than more normal production vehicles or low mileage vehicles*".

It also said the engineer had stated that "*At the time of our inspection clearly, the engine was showing signs of oil starvation and the bottom end of the engine had become damaged as the result, this would normally be consistent with inattention in oil content maintenance.....On the basis of a 1000 miles per litre 7 litres of oil use since sale would not be considered unacceptable as a general rule*".

Close Brothers said that Ms P had raised the issue with oil consumption with the supplying dealer around 48 days after the point of supply. And that based on the total number of miles covered by Ms P which were between 3,500 and 4,500 at that time, this would have been enough to have fully drain the vehicle of oil had it been full which would have been unlikely.

Close Brothers also said Ms P hadn't mitigated the damage to the engine from lack of oil.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the conditional sale agreement entered into by Ms P was a regulated consumer credit agreement this service was able to consider complaints relating to it. Close Brothers was also the supplier of the goods under this type of agreement and was responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here the car was around eight years old and had a mileage of about 135,000. So, issues of maintenance and repair would have been expected over time due to wear and tear to the components from use. However, I'd seen that Close Brothers wasn't disputing that the supplying dealer had liability for the faults with the heating matrix and O2 sensor, so I didn't need to consider the responsibility for the cost of those repairs. The issue for me to consider was whether there were other faults with the car which Close Brothers would have liability for, namely an oil and coolant fault.

Close Brothers said there wasn't enough evidence there had been a fault with the car's oil consumption and that although the car had required oil being added this could have been considered normal for a car of that age and mileage when taking into account the number of miles driven by Ms P. This was based on its view that Ms P had needed to put oil in the car around six weeks after she had acquired it and the independent engineer saying that it wasn't unusual for car to use one litre of oil per 1,000 miles. However, I disagreed with the view taken by Close Brothers.

While I accepted there was no confirmation of the actual amount of oil added to the car by Ms P, I'd seen from the receipts provided by her that she had purchased oil at least twice. She had said that the car's oil light illuminated within a very short time of her taking the car from the supplying dealer and that she had added three litres. Ms P also said that nine days later the light had illuminated again and a further three litres had been added and then around two weeks later a further three litres had been added when the car went for its MOT. It was about one week later that the car had made the loud noise and was taken to the garage where four and half litres of oil had been added (this had been confirmed by the technician to the independent engineer). This would have meant a total of nine litres of oil had been added before the car had broken down and was found to again require oil.

I accepted what Ms P had said about adding the oil was accurate as I thought she had been consistent about what she had said had happened. And although she hadn't raised the car requiring oil until February with the supplying dealer I wasn't surprised by that since the first need for oil wouldn't have necessarily meant there had been a problem but having to repeat

it would have alerted Ms P to a potential issue. I'd seen that Ms P had told the supplying dealership in a text that the car "*had been drinking oil like no tomorrow for 2 months*". So, I didn't accept Close Brother's view that there wasn't evidence that there had been a fault with the oil consumption by the car.

I also thought that as the issue with the oil arose from the time Ms P had acquired the car then the liability for any repair rested with Close Brothers. Close Brothers also said that Ms P had caused further damage to the car's engine by using it when there was insufficient oil. However, as I accepted Ms P had added oil to the car each time the light illuminated, I thought her use had been reasonable. I didn't think Ms P would have reasonably been aware that the car was losing the amount of oil that it was or that the engine was sustaining damage. I thought it was fair for Close Brothers to be liable for any engine damage that had arisen from the fault with the oil.

I'd seen that Ms P had also raised an issue with the coolant needing frequent top ups, but any potential leak had not been investigated. Looking at the timeline of when this fault had been discovered by Ms P, and that this was within the first six months of the inception of the agreement, I agreed with the view of our investigator that any of the faults found would be presumed to be the responsibility of Close Brothers to repair. I hadn't any evidence that an issue with the coolant had arisen through wear and tear from use by Ms P.

Ms P had raised an issue with a crack in the windscreen, corrosion and dented bodywork. However, I hadn't seen any evidence about the windscreen except Ms P had said the crack hadn't been there when she'd test-driven the car. But a crack can occur for a number of reasons which wouldn't be the responsibility of the dealer to fix. I also thought it was reasonable to have expected Ms P to have examined the car before she had agreed to take it. And I thought it was fair to say Ms P had accepted the car in that condition. So, I didn't intend to ask Close Brothers to take any action in respect of these issues.

For the reasons set out above I was intending to uphold Ms P's complaint. I thought it would be fair for Close Brothers to arrange and pay for the repairs to the car in regard to the fault relating to the oil and the consequent damage to the engine. It should also pay for any fault that was related to any coolant leak. If these repairs weren't viable, taking into account the value of the car, then it should allow Ms P to reject the car and end the agreement.

I'd seen Ms P had been unable to use the car since March 2022 and I thought it would be fair for Close Brothers to reimburse any payments made by Ms P under the agreement from April 2022 until either the car had been repaired or, if agreed the car couldn't be repaired, the point the agreement was ended.

I thought it would also be fair for Ms P to receive £100 compensation for the distress and inconvenience caused dealing with the faulty car. This amount included any expenses faced by her for adding oil and coolant.

Finally, I asked Close brothers to remove any adverse information about this account from Ms P's credit file.

Ms P has agreed with my provisional decision and Close Brothers hasn't asked me to look at any parts of my view again.

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.

Although neither party has asked me to reconsider any parts of my provisional decision, I have reviewed the evidence and the conclusions that I drew from it. And I haven't changed my view, I'm still upholding Ms P's complaint.

For the reasons set out above, I'm satisfied that the car hadn't been of satisfactory quality when supplied to Ms P and that Close Brothers is responsible for the necessary repairs in respect of the oil and coolant leak. It is also liable to fix any damage to the car's engine that was caused by using it when there was oil leaking. If these repairs aren't economically viable due to the value of the car, then it would be fair for Ms P to reject the car and for the agreement to be unwound.

I still think that Ms P was caused distress and inconvenience having to deal with the faulty car and that £100 compensation is fair and reasonable in respect of that.

Since Ms P hasn't been able to use the car since March 2022, then it's fair any monthly payments made by her under the agreement should be reimbursed with interest.

Putting things right

I'm asking Close Brothers to do the following:

- Arrange and pay for the repairs in relation to the oil fault including the consequential damage to the engine arising from the lack of oil.
- Pay for any repair relating to a coolant leak Should the repairs above be considered unviable then arrange for the car to be rejected by Ms P and the agreement ended.
- Reimburse any monthly payments made by Ms P since April 2022 until the date either the car is repaired, or the agreement is ended if repairs aren't carried out. This amount should have interest added at the yearly rate of 8% simple from date of payment until the date of settlement.
- Pay Ms P £100 compensation for the distress and inconvenience caused dealing with the faulty car.
- Remove any adverse information concerning this agreement from Ms P's credit file.

My final decision

For the reasons set out above I'm upholding Ms P's complaint. I'm asking Close Brothers Limited to do the following:

- Arrange and pay for the repairs in relation to the oil fault including the consequential damage to the engine arising from the lack of oil.
- Pay for any repair relating to a coolant leak Should the repairs above be considered unviable then arrange for the car to be rejected by Ms P and the agreement ended.
- Reimburse any monthly payments made by Ms P since April 2022 until the date either the car is repaired, or the agreement is ended if repairs aren't carried out. This amount should have interest added at the yearly rate of 8% simple from date of payment until the date of settlement.
- Pay Ms P £100 compensation for the distress and inconvenience caused dealing with the faulty car.

- Remove any adverse information concerning this agreement from Ms P's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 9 December 2022.

Jocelyn Griffith
Ombudsman