

The complaint

Miss E complains about the quality of a car supplied to her by Close Brothers Limited trading as Close Brothers Motor Finance ("Close Brothers").

What happened

Miss E acquired a used car under a conditional sale agreement with Close Brothers in February 2018. The car cost around £10,500. Under the agreement, Miss E was required to make 48 payments of £178.89, followed by a final payment of £3,697.50. At the time of supply, the car was around four years old and had covered around 31,000 miles.

In February 2022, Miss E said whilst driving, the engine management light illuminated in the car, it lost all power and cut out completely. She had the car recovered to a local car dealership and says it confirmed the car's timing chain had likely snapped.

Miss E raised a complaint with the manufacturer and says she was told it could only investigate if the car was taken to a manufacturer authorised dealership. So she arranged for a third party to do this. The dealership contacted Miss E and told her she would need to replace the whole engine at a cost of around £9,000. She says she was also told the engine failure couldn't be covered as a gesture of goodwill, as a third party garage used the wrong oil when servicing her car and it also used a non-manufacturer branded oil filter. She says she was told all these things contributed to the timing chain failing.

As Miss E remained unhappy with the manufacturer's response, she made a complaint to Close Brothers. She said the timing chain failing was a common fault for this type of car. She said she had maintained the car and had it serviced at regular intervals. She said she didn't think the car was of satisfactory quality and said the timing chain wasn't a serviceable part and so, it shouldn't have failed.

Close Brothers issued its response to Miss E's complaint in February 2022. It said it wouldn't allow Miss E to voluntarily terminate the agreement as it was in a poor state of repair. But it said it would defer the final payment, pending the decision made on Miss E's appeal to the manufacturer.

Unhappy with this, Miss E referred her complaint to this service and said she thought the car supplied to her by Close Brothers was of unsatisfactory quality.

Our investigator looked into the complaint but thought the car was of satisfactory quality when it was supplied. She said Miss E had been able to drive around 30,000 miles in the car and so she said if Miss E thought the car was of unsatisfactory quality, she would have expected Miss E to raise this sooner than she did. She said the problems appeared to be due to a reasonable level of wear and tear.

Miss E disagreed. She said she maintained the car as she was expected to and so the engine shouldn't have failed within 60,000 miles. She said although manufacturers recommend timing chains are replaced between 80,000 and 120,000 miles, a reasonable person would expect a timing chain to last at least around 150,000 miles or more. She also said she couldn't raise her concerns about the timing chain earlier than she did, as there were no warning signs leading up to the failure. And she said the timing chain snapping without warning was a safety issue.

As Miss E remained unhappy, the complaint was passed to me to decide.

I issued a provisional decision on 29 November 2022, in which I said the following:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Miss E has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome.

What I need to decide in this case is whether the car supplied to Miss E was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated conditional sale agreement. So our service is able to consider complaints relating to it. Close Brothers is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers conditional sale agreements. Under a conditional sale agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Miss E acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and – of particular relevance to this case - durability.

In this case, Miss E reported that the car cut out in February 2022. This was around four years after it was supplied to her, during which she had been able to cover around 29,000 miles in the car.

After the car cut out, it was taken to a garage. A job sheet from this garage confirms there was a timing chain failure and the car required a new timing chain, along with rectifying other possible internal damage.

The car was then recovered to a manufacturer's garage to have further tests carried out. The manufacturer confirmed the timing chain had snapped and said the engine needed to be stripped to confirm the damage. It said a replacement engine would cost around £9,000. A further email from the manufacturer said the car wasn't running as the timing chain had snapped and the manufacturer could visually see this.

Having carefully considered this, I'm satisfied the car supplied to Miss E had a fault as the timing chain snapped and two different garages confirmed this. I now need to consider whether this fault makes the car of unsatisfactory quality.

There is an email from the manufacturer which states it ran tests on the oil used in the engine of the car. It says the test results, which it hasn't provided a copy of, confirm the oil used isn't within manufacturer guidelines. It goes on to say, "When the wrong oil is used, it can contribute to the timing chain snapping/braking. We believe this to be the case for your car". And it says the car doesn't qualify for its goodwill process, as it must be maintained within manufacturers guidelines. The manufacturer also referred to what happened as when "things unexpectedly go wrong"

So, thinking about this, I'm satisfied the manufacturer here has said the timing chain unexpectedly broke, specifically because of the type of oil that had been used when the car

was serviced. It seems to me that this is the crux of the complaint here and what I need to consider. If I believe the oil used was of the right kind, then it seems fair for me to reach the conclusion that the timing chain, and so the car, wasn't reasonably durable according to what the manufacturer themselves has explained.

The handbook for this model of car says:

"When selecting an engine oil, make sure that the SAE viscosity grade is 0W-40, 0W-30, 5W-40 or 5W-30, as otherwise malfunctions or engine damage could result. The engine oil quality is decisive for the life of the engine."

It also says under "approved oil grades":

"(manufacturer) Longlife-04"

Miss E has provided a copy of job sheets which confirm when the car was serviced. And she's provided an email from the garage which carried out the servicing of the car to confirm what grade oil was used during the servicing. The oil grade is also listed on the job sheets of the car. These confirm:

- 28 March 2019 – 6 litres of oil – grade 5W30 – mileage 44,156
- 7 September 2020 – 5 litres of oil – grade 5W30 – mileage 56,090

From the job sheets, it's also possible to identify the specific manufacturers of the oil that was used at each point. For each of these services, the oil that was used had an approved oil grade of (manufacturer) Longlife-04.

The manufacturer official website states that:

"We recommend booking an Engine Oil Service every two years (or 18,000 miles – whichever comes first)."

The car cut out in February 2022 at around 60,000 miles. So the next service was due on the car in September 2022 or when the car had travelled around 74,000 miles, whichever was earlier. So taking into account the manufacturer official servicing recommendations and supporting information Miss E has provided, I'm satisfied she had the car serviced as she was expected to. And I'm satisfied that the engine oil used was as per the recommendations listed in the manufacturer's handbook. And so, I'm not persuaded with the statement made by the manufacturer that the wrong oil was used, which contributed to the timing chain snapping.

The car was around four years old at the time it was supplied and the mileage was around 30,000. One of the considerations of whether goods are of satisfactory quality is durability. Here, the timing chain snapped and the engine needed repairing when the car was around eight years old and at around 60,000 miles.

Having thought about this, I think a reasonable person would consider that a timing chain would last longer than this. I appreciate that the car was able to travel around 30,000 miles before it cut out, but the timing chain is a part which a reasonable person would expect to last a considerable amount of time. And it wouldn't be reasonably expected that a car would suffer a major component failure, without any prior notification, considering the age and mileage at the time the car failed. And so, given Miss E maintained the car as she was expected to, I don't think the timing chain was sufficiently durable. It follows that I don't think the car was of satisfactory quality when it was supplied to Miss E.

I've gone on to think about what Close Brothers needs to do to put things right.

Miss E has said she needed access to a car and so arranged for the car to be repaired. This was carried out in August 2022. She's provided evidence to show the cost of the repair was £3,600. I think Close Brothers should pay this amount to Miss E with applicable interest. The invoice also lists some other items that needed repairing but as Close Brothers hasn't had

an opportunity to consider a complaint about these items, I haven't considered them as part of this decision.

When the car broke down in February 2022, Miss E contacted a third party recovery company to assist recovering the car to a local dealer. Miss E has provided her bank statement which shows this was at a cost of £149. Miss E hasn't provided a copy of the invoice from the third party recovery company to show why this cost was incurred. So I think Close Brothers should pay this amount to Miss E with applicable interest, given it was as a result of the fault Miss E has complained about, upon receipt of an invoice from the third party company to confirm the amount.

The local dealer carried out a diagnostic test the following day and also recovered the car to a manufacturer owned dealer. This was at a cost of £216 to Miss E. Miss E has provided an invoice to confirm this cost and so, I'm satisfied Close Brothers should pay this cost with applicable interest, as it was only incurred as a result of the fault with the car.

In February 2022, the car was recovered to a manufacturer represented dealer. It remained there until August 2022, when the car was recovered to another garage for repairs. In February 2022, Miss E had paid all the monthly payments owed under the agreement and only the final payment remained outstanding. However, Close Brothers agreed to hold off on collection of the final payment pending the outcome of this complaint. Miss E hasn't made any further payments to Close Brothers since February 2022. And so, she isn't owed a refund of any monthly payments.

I've also considered the impact of Miss E being without a car for around six months. Miss E has told this service she was stressed out whilst she wasn't able to use the car, as she needed access to the car. She said whilst she didn't need to travel to carry out her job, she used the car to visit family members who lived between 45-80 miles away from her house. She's told us one of her family members is unwell and she wasn't able to visit them as much as she would have liked to due to poor transport links. And she said not having a car took away her flexibility as she was required to rely on using her partner's car or another car she had access to. She also said she made a number of phone calls to try and resolve the issue.

Having considered the impact Miss E detailed, I'm persuaded she was caused distress and inconvenience as a result of being without a car for six months. And so I think Close Brothers should pay Miss E £350 to reflect the distress and inconvenience caused.

My provisional decision

My provisional decision is that I intend to uphold Miss E's complaint. I'm minded to instruct Close Brothers Limited trading as Close Brothers Motor Finance to put things right by doing the following:

- *Pay Miss E £3,600 for the cost of the engine repair;**
- *Pay Miss E £149 for the recovery cost after the car broke down in February 2022, upon Miss E providing Close Brothers Limited with a receipt of an invoice from the third party recovery company;*
- *Pay Miss E £216 for the diagnostic report and further recovery cost in February 2022;*
- *Pay Miss E 8% simple interest on these amounts from the date of each payment until the date of settlement;***
- *Pay Miss E £350 for the distress and inconvenience caused; and*
- *Amend any adverse information reported to credit reference agencies about this conditional sale agreement.*

**Close Brothers Limited is entitled to deduct this amount from the final payment owed by Miss E under the conditional sale agreement, should it consider it appropriate to do so. If it decides to do this and no outstanding balance remains payable by Miss E under the*

conditional sale agreement, it should also transfer ownership of the car to Miss E, in addition to the other instructions mentioned above.

***If Close Brothers Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss E how much it's taken off. It should also give Miss E a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate."*

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.

Close Brothers didn't respond to my provisional decision.

Miss E responded and said that the car required an oil change following the engine repair. But she said she accepted the provisional decision.

As no new evidence has been provided for me to consider following my provisional decision, it follows that there is no reason for me to reach any different conclusion than set out in my provisional decision.

Putting things right

For the reasons given in my provisional decision which I have outlined above, Close Brothers Limited trading as Close Brothers Motor Finance should:

- Pay Miss E £3,600 for the cost of the engine repair;*
- Pay Miss E £149 for the recovery cost after the car broke down in February 2022, upon Miss E providing Close Brothers Limited with a receipt of an invoice from the third party recovery company;
- Pay Miss E £216 for the diagnostic report and further recovery cost in February 2022;
- Pay Miss E 8% simple interest on these amounts from the date of each payment until the date of settlement;**
- Pay Miss E £350 for the distress and inconvenience caused; and
- Amend any adverse information reported to credit reference agencies about this conditional sale agreement.

*Close Brothers Limited is entitled to deduct this amount from the final payment owed by Miss E under the conditional sale agreement, should it consider it appropriate to do so. If it decides to do this and no outstanding balance remains payable by Miss E under the conditional sale agreement, it should also transfer ownership of the car to Miss E, in addition to the other instructions mentioned above.

**If Close Brothers Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss E how much it's taken off. It should also give Miss E a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Miss E's complaint. Close Brothers Limited trading as Close Brothers Motor Finance should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 26 January 2023.

Sonia Ahmed
Ombudsman