

The complaint

Mr N complains that a used car he acquired via a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance wasn't of satisfactory quality. He wishes to reject the car and cancel the agreement.

What happened

In December 2021 Mr N acquired a used car via a 60-month conditional sale agreement with Close Brothers. The car was around seven and half years old and had a mileage of about 124,000.

Mr N says that about one month after acquiring the car a warning light illuminated on the dashboard saying low oil pressure and so he sent the car for an oil service. Mr N says that this, at first, appeared to have solved the issue but the warning light reappeared and so he got the car serviced.

However, within a short time the warning light again illuminated on the dashboard and Mr N contacted the supplying dealer. Mr N says he was advised by the dealership that it could be a fault with the sensor. Mr N took the car to a local garage and paid for a new sensor to be fitted, but after this repair the engine management light illuminated. Mr N then arranged for the car to go back to the supplying dealer for them to investigate in May/June 2022.

Mr N says the car continued to have an intermittent issue with losing power and then breaking down which required him to call out roadside assistance.

The supplying dealer inspected the car but told Mr N they couldn't find a fault and the car was returned to him. But Mr N says the issues with the car remained and he was advised to replace the battery by the roadside assistance company. He says he followed this advice, but the problems with the car's performance persisted.

Mr N was then advised by his local garage that there could be an issue with the starter motor and so in August 2022 Mr N had a new one fitted. The car then broke down three weeks later and Mr N says he hasn't been able to use it since.

Mr N complained to Close Brothers and said he wanted to now reject the car. Close Brothers said that as Mr N had raised faults with the car after more than six months had passed since he'd acquired it, he would need to provide evidence that the current faults were either present or developing at the point of supply. Without this evidence, Close Brothers said, it couldn't uphold his complaint.

Mr N disagreed with the view of Close Brothers and complained to this service. He provided a number of photos of the condition of the engine and of the warning lights that had been illuminating on the dash. He also provided copies of the repair invoices for the work he'd had carried out on the car.

Our investigator recommended that Mr N's complaint should be upheld. She said that although the car wasn't new and would be reasonably expected to have suffered some wear

and tear to its parts, she was satisfied, on the evidence, that the car had a fault at the point of supply. Our investigator said the photos showed signs of severe oil solidification and she believed it was this that had led to the problems Mr N had described with the engine.

Our investigator said looking at the information contained in the logbook as to the car being serviced prior to Mr N acquiring it, it was clear these hadn't been carried out in line with the manufacturer's recommendations. She said the services had either been late or missed and the oil solidification would be consistent with poor servicing and maintenance.

It would therefore be fair, said our investigator, for Mr N to be able to return the car and cancel the agreement with nothing to pay from September 2022 being the point at which Mr N could no longer use the car. She also said Mr N should be reimbursed his deposit; 20% of the monthly payments paid up to September 2022 due to the poor performance of the car; the repair costs he'd paid and the road tax and insurance from September 2022. Finally, she said that Close Brothers should pay £150 compensation to Mr N for the distress and inconvenience caused to him by dealing with the faulty car.

Mr N agreed with the view of our investigator, but Close Brothers disagreed. Although Close Brothers said it agreed there was some evidence of oil solidification, it said there wasn't any evidence as to what the current issue actually was with the car. Close Brothers said that it wasn't confirmed that the level of solidification found with the oil had caused the breakdowns rather than another issue with the car. It said there were no accompanying reports or statements from the garage that had dealt with the car setting out what was the suspected cause of the breakdowns.

As the parties were unable to reach an agreement the complaint has been passed to me.

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.

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. And where evidence is missing or contradictory then I must decide what I think is the most likely thing to have happened.

As the conditional sale agreement entered into by Mr N is a regulated consumer credit agreement this service is able to consider complaints relating to it. Close Brothers is also the supplier of the goods under this type of agreement, and 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 wasn't new being over seven years old and with a mileage of around

124,000. I think that, taking into account these things, a reasonable person would have expected there to be issues with maintenance and repair since components of the car would have been subject to wear and tear through use. So, unlike a new car, there wouldn't be expectation that the car was fault free.

Mr N says that he first had an issue with the car after around one month and this resulted in the car having a new oil filter fitted and an oil service. However, this didn't fix the car which repeatedly suffered from the same issues of a warning light being illuminated and the car's power being affected leading to breakdowns. A number of repairs have been attempted in an effort to fix the issue with the car, these have included a new oil pressure switch fitted in April 2022, a new oil filter and starter motor fitted in August 2022 and a new battery. From September 2022 the car has not been useable, and the latest quote provided by Mr N indicates the car may require a new engine.

While I appreciate there is no actual report from a garage setting out what had been found nor what was the cause of the fault, I think the photos of the engine, together with the service history, Mr N's description of the issues he has experienced while using the car and the various attempted repairs are sufficient for me to be able to reasonably say that there is fault with the car, and that the fault is more likely than not due to the condition of the oil. I'm aware that oil in the condition shown in Mr N's car's engine will have had a significant impact on its parts and running.

I also think that looking at the chronology of the faults and the other evidence that it's reasonable to conclude that it's more likely than not the issue with the car's oil was either present or developing at its point of supply to Mr N. So, even though, due to the age and use of the car, there wasn't an expectation for it to be fault free, I don't think the condition of the oil would meet the standard that would be reasonably expected, particularly as it appears to be due to poor maintenance in the past. I'm satisfied the car wasn't of satisfactory quality when Mr N acquired it.

Close Brothers has raised that under the Consumer Rights Act 2015 the supplying dealer should be provided with an opportunity to repair the car before it's rejected by the consumer. But I've seen that the dealership took the car back for a period and Mr N says they said they could find nothing wrong with it. I've also seen Mr N raised the problems he was having with the dealership on a number of occasions, but no action appears to have been taken. In light of this and the length of time Mr N has been struggling with the faulty car I think it's fair to say the supplying dealer has already had the opportunity to repair and has failed to do so. I therefore think it's reasonable for Mr N to reject the car and for the credit agreement to be ended.

I've seen that Mr N was able to make use of the car between the time he acquired it and September 2022 when it broke down and that it hasn't been used since. I think it was reasonable for Mr N not to seek to use the car further or carry out further investigations and repairs from this point. I agree with Mr N that it had become clear there was a serious issue with the car. So, I don't think it's fair for Mr N to pay the monthly contractual payments from September 2022. However, I also accept that in the period he was able to use the car it wouldn't have performed as he would have reasonably expected. I agree with our investigator's view that he should be reimbursed 20% of the payments made between December 2021 and September 2022 to reflect that.

I also don't think Mr N should have paid for the car insurance and road tax from September 2022 onwards as he wasn't able to use the car from that point. These expenses should be reimbursed by Close Brothers.

In an attempt to fix the car Mr N has arranged and paid for a number of repairs and

replacement parts. While I've seen that Mr N didn't seek Close Brothers authorisation before doing so, I don't think his actions were unreasonable. He was hoping that the issue with the car was only a minor one but as time went on it became clear the issue with the car was significant. I think he was only trying to keep the car on the road, and he doesn't appear to have received much support from the supplying dealer during this time. I therefore think that it's fair for Close Brothers to reimburse Mr N the costs of the various repairs he had carried out.

I've seen Mr N was caused inconvenience and distress dealing with the faulty car. He has had to call out roadside assistance and take the car to the garage on several occasions trying to ascertain what the fault was. I therefore think that £150 compensation is fair and reasonable when considering the impact this has had on him.

For the reasons set out above I'm upholding Mr N's complaint.

Putting things right

I'm asking Close Brothers to do the following:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to the customer.
- Refund Mr N's deposit/part exchange contribution of £500.
- Reimburse Mr N all the monthly payments made under the agreement from September 2022 to the date of settlement as Mr N had stopped using the car.
- Reimburse Mr N 20% of the monthly payments made between December 2021 and September 2022 to cover any loss of use or impaired use of the car because of the inherent quality issues.
- Refund Mr N £1,625 for the additional expenses which have been incurred as a result of the inherent quality issues with the car. This amount is made up from £515 for car insurance and road tax, £983.81 for reasonable repair costs and £126.47 battery change cost.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay Mr N £150 as compensation for any distress or inconvenience that's been caused due to the faulty goods.
- Remove any adverse information from Mr N's credit file in relation to this agreement.

My final decision

For the reasons set out above I'm upholding Mr N's complaint. I'm asking Close Brothers Limited trading as Close Brothers Motor Finance to do the following:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to the customer.
- Refund Mr N's deposit/part exchange contribution of £500.

- Reimburse Mr N all the monthly payments made under the agreement from September 2022 to the date of settlement as Mr N had stopped using the car.
- Reimburse Mr N 20% of the monthly payments made between December 2021 and September 2022 to cover any loss of use or impaired use of the car because of the inherent quality issues.
- Refund Mr N £1,625 for the additional expenses which have been incurred as a result of the inherent quality issues with the car. This amount is made up from £515 for car insurance and road tax, £983.81 for reasonable repair costs and £126.47 battery change cost.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay Mr N £150 as compensation for any distress or inconvenience that's been caused due to the faulty goods.
- Remove any adverse information from Mr N's credit file in relation to this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 27 April 2023.

Jocelyn Griffith
Ombudsman