

## **The complaint**

Miss L complains about a car she acquired under a hire purchase agreement funded by Close Brothers Limited.

## **What happened**

In February 2021 Miss L entered into a regulated personal contract purchase agreement with Close Brothers Limited for a used car. The car was a little over a year old, having been registered at the end of December 2019, and the mileage was 7,780 miles. The cash price was £23,500. She paid a deposit of £3,000, and the balance was to be paid over 47 monthly payments of £306.61 and then a balloon payment.

Miss L says that in September 2022, when she tried to pull away from some traffic lights, the accelerator did not respond, and instead the car rolled backwards. She had to pump the accelerator three times to get the car to move. She says this problem has recurred intermittently ever since, and that it is dangerous, due to the risk of colliding with a car behind her, as well as causing other drivers to become angry with her. However, when she took the car to the garage for this matter to be investigated, the garage was unable to replicate it or to find the cause of the problem. Then in November 2022 the car broke down and had to be towed to the garage. But the fault could still not be found.

Miss L took some brief videos of her pressing the accelerator pedal, to prove that the fault was real, but the dealership did not think these were convincing. In May 2023 she took the car to her local garage, which was not affiliated with the dealership or the manufacturer. That garage was able to confirm that the problem existed, and briefly described its findings in writing in its invoice (which was for £270). It said that the fault was electrical, but it had been unable to find it.

Miss L sent that invoice to Close Brothers Limited, but it did not accept it, for a number of reasons. It had asked for her evidence to be sent as a PDF document, but the invoice was a Word document, which Close Brothers said could easily have been edited by Miss L, or created by her from scratch. It did not list the engineer's qualifications, or contain a statement of truth, or state the mileage. And it did not state that the fault had been present at the point of sale. Close Brothers concluded that Miss L had failed to prove her case.

Miss L then brought this complaint to our service. Our investigator spoke to the engineer on the phone and verified that the invoice was authentic. The engineer confirmed that the fault was dangerous.

The investigator shared this information with Close Brothers Limited, and asked it if it would agree to a further inspection, but it declined. It said that under the Consumer Rights Act 2015, the onus was on Miss L to prove her case.

The investigator did not think there was enough evidence to prove that the fault had been present at the point of sale, but she thought that it was a fault which should not have developed so soon on a car that had been less than three years old. So she concluded that the car must not have been sufficiently durable, and on that basis she decided that the car

had not been of satisfactory quality when Miss L had acquired it. She upheld this complaint.

The investigator recommended that Close Brothers Limited end the agreement with nothing further to pay, collect the car at no cost to Miss L, and refund her ten percent of the monthly payments she had made since November 2022, to reflect her loss of use of the car (taking into account the times when she had been provided with a courtesy car). She also recommended that Close Brothers refund the cost of the third party garage's invoice, and pay her another £200 for her inconvenience.

Close Brothers Limited did not accept that opinion. It did not agree that lack of durability had been established on the available evidence. It said that electrical faults can occur suddenly. It said that an unidentified, intermittent fault could have a variety of different causes, and so it was not reasonable to hold Close Brothers liable for it without evidence of the specific cause. It could still just be wear and tear. It asked for an ombudsman to review this case.

Miss L also disagreed with the investigator's opinion. She said that she did not want to return the car, as the cost of cars has soared since she bought it. She also said that the clutch had been replaced in April 2023, and that this had appeared to resolve the fault (although that was one month before the fault was detected by the third party garage). She asked for compensation instead.

On 5 January 2024 (over six weeks ago now), I wrote a provisional decision, which read as follows. (I have corrected one error, about the age of the car.)

### **What I've provisionally 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.

I've also considered the relevant law, which is the Consumer Rights Act 2015.

Having done so, I am currently not minded to uphold this complaint. I will explain why.

Firstly, I do not think that the fault was repaired by the clutch being replaced in April 2023, because the fault recurred again in May, when it was verified by the third party garage which produced the invoice.

As I've said, this invoice has been verified as an authentic document, and I have listened to the recording of the phone call between the engineer and the investigator. I've also watched Miss L's videos of the problem. I'm satisfied that the fault is real. However, the cause has still not been diagnosed. I don't think that is the dealer's fault, because the fault is intermittent. But since the third party garage detected the fault, it is a pity it was not able to diagnose the cause. Under the heading "Next steps", the engineer has written:

*"There is definitely an electrical fault with the [car] and it is proving problematic to find out where the fault is coming from."*

There were no relevant fault codes.

Close Brothers Limited is only liable for a fault which was present when the car was delivered to Miss L. The law says that when a fault is discovered within six months of goods being sold or hired to a consumer, the burden of proof is on the seller or hirer to prove that the fault was not present at the point of sale or hire. But if a fault becomes apparent after six

months, it is for the consumer to prove that the fault was present all along.<sup>1</sup>

There is no evidence that this fault was always present. But it was a statutory implied term of Miss L's contract with Close Brothers Limited that the car would be of satisfactory quality, and this includes durability.<sup>2</sup> The investigator inferred that for the accelerator or the throttle to have failed on a car which was, in September 2022, only 33 months old, meant that the car must not have been durable when it was delivered to Miss L.

I think it will sometimes be reasonable to infer that a fault means that a car was not durable when it was supplied, but I'm afraid that I do not agree that it would be safe to draw that inference in this case (at least about the accelerator). Without knowing exactly where the fault is, or which component has failed, or even whether this is a software or a hardware issue, I don't think that a fair assessment about the cause can be made.

I would suggest that one way forward would be for Miss L to obtain a diagnosis from an engineer, initially at her own expense, but I will require Close Brothers Limited to reimburse her for that cost if I uphold this complaint. (The engineer's report should list his qualifications and contain a statement of truth and an expert witness's statement as required by the Civil Procedure Rules.) Or the parties could jointly instruct an expert.

Meanwhile my provisional decision is that I do not intend to uphold this complaint.

### **Responses to my provisional decision**

Close Brothers Limited had nothing to add. Miss L tried to obtain further evidence from another technician, but without success. I extended the deadline for her to provide that evidence, but unfortunately I cannot keep this case open indefinitely.

There is no reason for me to depart from my provisional findings, and I confirm them here.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 18 March 2024.

Richard Wood  
**Ombudsman**

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<sup>1</sup> Section 19(14) and (15) of the Consumer Rights Act 2015.

<sup>2</sup> Section 9(1) and (3)(e).