

## The complaint

Mr W is unhappy that a car supplied to him under a conditional sale agreement with Close Brothers Limited was of an unsatisfactory quality.

## What happened

In June 2022, Mr W was supplied with a used car through a conditional sale agreement with Close Brothers. The agreement was for £5,500 over 36 months; with 35 monthly repayments of £194.72 and a final payment of £204.75. At the time the car was around eleven and a half years old and had done 106,170 miles.

The car broke down on 18 December 2022. The supplying dealership collected the car on 6 January 2023. They told Mr W there was a problem with the engine, that it required replacing, and that he would have to contribute towards the cost of repair. Mr W didn't think this was fair, and he complained to Close Brothers.

Close Brothers arranged for an independent engineer to inspect the car, but the inspection couldn't take place because the car battery was dead. So, the car has remained untouched at the dealership, and Close Brothers haven't issued any response to Mr W's complaint.

As Close Brothers didn't issue a final complaint response letter within eight weeks of receiving the complaint, Mr W brought his issues to us for investigation.

Our investigator said she was satisfied there was a fault with the engine but couldn't say what caused this. She also said she was satisfied the car broke down within six months of it being supplied to Mr W, as he had supplied text messages from the day of the breakdown. So, she thought it was Close Brothers responsibility to show whether the issue that caused the breakdown was present or developing at the point of supply.

As Close Brothers hadn't done this, and instead argued that the car may've broken down after Mr W had had it for more than six months, the investigator said they'd caused Mr W to wait an unreasonable period of time and caused him significant inconvenience. As such, under the Consumer Rights Act 2015 (CRA), it was reasonable to let Mr W reject the car.

The investigator said that Close Brothers should refund Mr W any payments he'd made since the car broke down, plus statutory interest, as well as paying him £350 for the trouble and upset he'd been caused.

Close Brothers didn't agree with the investigator and they didn't agree there was any evidence that showed the car had broken down within the first six months after supply. And they said that Mr W had only provided evidence that *"the vehicle cut out because the battery was flat"* and not *"due to a mechanical fault."*

Close Brothers also contacted Mr W and told him *"the text messages provided is not sufficient evidence that the supplying dealer was contacted within 6 months."* As such, they asked him to provide an independent report on the car, at his cost, before they could respond to his complaint.

Because Close Brothers didn't agree with the investigator, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr W was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The CRA says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Close Brothers are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Close Brothers can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr W to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr W took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Close Brothers to put this right.

It's not disputed that there's a fault with the car, but the main point of dispute seems to be when the car broke down. I've seen a text message exchange that took place in the evening of Sunday 18 December 2022, where Mr W explains that the car "*cut out*" outside a location where he had just dropped off his parents. He also says the "*battery was flat*."

Close Brothers have taken the comment about the battery to mean that the car didn't breakdown at this point, and therefore must've broken down on a later date. I could understand this argument *if* Mr W had tried to start the car at home, and it wouldn't start. And this would likely mean that something like the lights, radio etc. had been left on that resulted in the battery being drained.

However, the text exchange is clear that this happened mid-journey i.e. when he dropped his parents off. So, the alternator should've been charging the battery during the journey. Which means that, at the very least, the alternator had failed, and this meant the battery wasn't recharging. But I think it's more likely than not that, after stopping the car to drop his parents off, the engine wouldn't restart. And Mr W assumed this was the battery. And this is very different to this definitely being the battery, and that the battery went flat for reasons other than an underlying mechanical fault or other issue.

As such, I'm satisfied that the car broke down on 18 December 2022. It's not disputed that Mr W didn't contact the supplying dealership about the issues with the car until January 2023, which Mr W says was because they were closed for the Christmas and New Year break. Which seems a reasonable explanation. The car was supplied to Mr W on 23 June 2022, which means it broke down within six months of supply, but the dealership weren't notified of this breakdown until after six months from supply.

Close Brothers arguments about the car also seem to be based on when the supplying dealership was notified of the breakdown. But I don't consider this relevant as the CRA doesn't require any faults to be raised with the supplier within the first six months. But, as I've already said, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Close Brothers can show otherwise.

Close Brothers instructed an independent engineer to inspect the car, with a view to identifying the fault and whether this was present or developing at the point of supply. However, this inspection couldn't go ahead as the battery was dead. As the car was at the dealership at the time, this wasn't something that was in Mr W's control. So, I would've expected the dealership to either put a new battery on the car so the inspection could take place or arrange to charge the battery ready for a rearranged inspection. But neither of these actions took place.

Instead, the car has remained at the dealership and Close Brothers have asked Mr W to arrange for an independent inspection to take place. I don't consider this to be a fair course of action as, because the car broke down within six months of supply, it's for Close Brothers to show that the fault wasn't present or developing at the point of supply, not for Mr W to show that it was.

While the CRA allows Close Brothers one chance at repair, section 23 also says:

*(2) if the consumer requires the trader to replace or repair the goods, the trader must –*

*(a) do so within a reasonable time and without significant inconvenience to the customer.*

The car has been with the dealership for around six months, during which time no action has been taken to identify the reason for the fault with the car, let alone repair it. And, during this time, Mr W has been without access to a car he's still paying for. Given this, I'm not satisfied that Close Brothers have acted within the requirements of section 23(2)(a) of the CRA. As such, I don't think it's reasonable that Close Brothers should still be given their one chance of repairing the car. And Mr W should now be allowed to reject it.

### **Putting things right**

Based on what I've seen, I'm satisfied that the car hasn't been drivable since 18 December 2022, although I understand Mr W has continued to maintain payments to Close Brothers. As the car isn't drivable, and as Mr W hasn't been provided with a courtesy car to keep him mobile, I don't think it's fair for him to pay for something he isn't getting the benefit of. So, I think that Close Brothers should also refund all the payments he's made from 18 December 2022 onwards.

Finally, I'm satisfied that Mr W has been significantly inconvenienced and frustrated by what's happened. Despite the car breaking down within six months of supply, and Mr W providing Close Brothers evidence of this, they have continued to ask him to supply proof of when the car broke down, and to arrange and pay for an inspection on a car that's not currently in his possession.

What's more, they continued to do this even though they'd received our opinion that he should be given the right to reject the car. So, I'm satisfied Close Brothers should compensate him for this. And they should:

- end the agreement with nothing further to pay;
- collect the car at no cost to Mr W;
- refund the payments Mr W has made from 18 December 2022 until the agreement is ended;
- apply 8% simple yearly interest on this refund, calculated from the date Mr W made the payments to the date of the refund †;
- remove any adverse entries relating to the above payments being refunded on Mr W's credit file; and
- pay Mr W an additional £350 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†HM Revenue & Customs requires Close Brothers to take off tax from this interest. Close Brothers must give Mr W a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr W's complaint about Close Brothers Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 July 2023.

Andrew Burford  
**Ombudsman**