

The complaint

Ms H complains that a car acquired with finance from Close Brothers Limited (“CB”) wasn’t of satisfactory quality.

What happened

In March 2022 Ms H was supplied with a car and entered into a conditional sale agreement with CB. At the point of supply the car was around 9 years old and had covered around 119,000 miles.

Ms H noticed that there were marks on the floor where she’d parked. She also noticed white smoke coming from the exhaust. She took the car to a garage in May 2022. The garage found an oil leak, as well as some other issues.

Ms H reported the oil leak to the supplying dealer, who said it would carry out repairs.

When Ms H got the car back following the repairs. She was told that the oil sump had been resealed and that she needed to drive the car more for the white smoke to stop. Ms H took the car back to her local garage because the oil light had illuminated.

Ms H’s local garage told her that the oil sump had been replaced with an after market one which didn’t have an oil sensor, which is why the oil light was illuminated. It told Ms H that the car was fit to drive.

In October 2022 Ms H experienced further issues with the car. She took the car to her local garage, who diagnosed a broken DPF. Ms H found a mechanic who could weld the DPF but he told her that the whole exhaust needed replacing. Ms H didn’t proceed with the repairs because the cost exceeded the value of the car.

Ms H complained to CB. In its final response, it said it hadn’t been able to get in touch with Ms H since she logged her complaint. Ms H has told this service that she tried to speak to CB multiple times and didn’t receive a response from them.

Our investigator partially upheld the complaint. He said the oil leak had been confirmed in May 2022 and that because a new sump had been fitted to the car in February 2022, around one month prior to the point of supply, and because Ms H had only driven around 1000 in the car when the oil leak was diagnosed, he didn’t think the leak should’ve been present that early on. The investigator said he was satisfied that the oil leak was present or developing at the point of supply and said that CB should refund Ms H the costs of the diagnostic report and pay compensation (the costs of repairs having been covered under Ms H’s warranty).

The investigator said that in relation to the fault which occurred in October 2022 (exhaust broken at DPF) he didn’t think the fault had been present or developing at the point of supply because Ms H had managed to drive for 6 months and had covered 3000 miles before the fault occurred. The investigator said that in relation to the issue with the turbo and DPF in February 2023, there wasn’t enough evidence to say that the car wasn’t of satisfactory quality at the point of supply.

Ms H didn't agree so I've been asked to review the complaint.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of goods includes their general state and condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Ms H was around 9 years old and had covered around 119,000 miles. So it's reasonable to expect that the car would already have suffered some wear and tear and that it would require repairs and maintenance sooner than a brand new car.

Under the Consumer Rights Act 2015, where a fault occurs with a car within the first 6 months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the car.

Where a fault occurs outside of the first 6 months of the point of supply, the burden of proof is reversed and it's up to the consumer to show that the fault was present or developing at the point of supply.

I've reviewed the available evidence about the issues which Ms H experienced with the car. Based on what I've seen, I'm satisfied that the car had a fault. I say this because I've seen a diagnostic report confirming that the car had an oil leak and a broken DPF. I've also seen job cards showing that repairs have been carried out.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

I've reviewed the vehicle health check dated 10 May 2022. This states that the car has an oil leak. I can see that the dealership carried out repairs at no cost to Ms H. Given that the oil sump had been replaced around one month prior to the point of supply, and given that Ms H had only driven the car for around 1000 miles in the two months between the point of supply and the oil leak being diagnosed, I think it's likely that the oil leak was present or developing at the point of supply. This means that the car wasn't of satisfactory quality when it was supplied.

I can see that the supplying dealer repaired the oil leak, which is in line with its obligations under the relevant legislation. Ms H had paid for the cost of the vehicle health check which diagnosed the oil leak. I think it's fair to ask CB to refund the cost of this.

I'm aware that Ms H is unhappy that the oil sump which was fitted to the car around a month prior to the point of supply wasn't a genuine part. She's said that the supplying dealer told her that the part was genuine but that her local garage told her that it was an after market part. The diagnostic report dated July 2022 states that the oil sump in the engine isn't the original sump – but I'm not surprised at this because we know the sump was replaced prior to the point of supply.

Ms H says that the supplying dealer told her at the point of supply that the sump had been

replaced with a genuine part. I haven't seen any evidence of the discussions which took place between Ms H and the dealership prior to the point of supply so I can't be certain of exactly what was said. But even if the supplying dealer did say that the oil sump had been replaced with a genuine part, and even if the sump isn't genuine (which isn't clear from the evidence) I don't think this was the main reason for Ms H's decision to enter into the agreement. So I'm not persuaded that there's been a misrepresentation.

Irrespective of whether the sump was a genuine part or an aftermarket part, there's no evidence to suggest that the supplying dealers repair to the sump in May 2022 wasn't successful. I appreciate that Ms H took the car to her local garage with the oil light illuminated following the repair. However, the garage didn't diagnose a fault and stated that the car was fit to drive.

Ms H experienced an issue with the exhaust being broken at the DPF in October 2022. At the time this fault was diagnosed, Ms H had been driving the car for around 9 months and had covered around 3000 miles.

I've already explained that where a fault occurs outside of the first 6 months of the point of supply, it's up to the consumer to show that the fault was present or developing at the point of supply. Ms H hasn't provided any evidence that there was a fault with the DPF or the exhaust at the point of supply. If there had been a fault with the DPF at the point of supply, I don't think it would have been possible for Ms H to drive the car for the time and mileage elapsed.

Ms H has told this service that in February 2023 she discovered that the DPF was blocked and that the car had a possible engine fault because there was high oil consumption. Ms H has provided an undated document to support this. I've reviewed the document, but it isn't enough evidence for me to say that there was a fault with the DPF at the point of supply. In relation to the high oil consumption, there's no evidence that this is linked to the previous repair to the sump. The previous repair involved resealing the sump because of a leak and was not related to an issue with high oil consumption.

I appreciate that Ms H has experienced some issues with the car and I understand how frustrating this can be. However, based on what I've seen, and having regard to the relevant legislation, I'm unable to say that CB are responsible for any of the issues beyond the initial oil leak, which has already been repaired.

Putting things right

To put things right CB should refund the cost of the vehicle health check.

It's clear that the issues with the oil leak caused some distress and inconvenience to Ms H. She had to take the car to be checked and then take it back to the supplying dealer for repairs. I think it's fair to ask CB to pay some compensation for this.

My final decision

My final decision is that I partially uphold the complaint. Close Brothers Limited must:

Refund the cost of the vehicle health check £89.21

Pay 8% simple interest per year on all amounts refunded calculated from the date of payment to the date of settlement

Pay compensation of £100 for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 1 December 2023.

Emma Davy
Ombudsman