

The complaint

Mr C is unhappy that a car supplied to him under a conditional sale agreement with Close Brothers Limited, trading as Close Brothers Motor Finance, was of an unsatisfactory quality.

What happened

In March 2022, Mr C was supplied with a used car through a conditional sale agreement with Close Brothers. He paid an advance payment of £3,000 and the agreement was for £26,885 over 60 months; with 59 monthly payments of £540.16 and a final payment of £550.16. At the time of supply the car was around seven years old and had done 36,468 miles.

Mr C had problems with the car relating to a coolant leak, the alternator, and the starter motor. These issues were dealt with by the Financial Ombudsman Service under a different complaint reference number and do not form part of this complaint.

In March 2023 the engine on the car failed. Mr C initially believed this was as a result of the work that had been done on the car to fix the previous issues, and he contacted Close Brothers to let them know this. He tried to claim against his insurance for this. The insurer investigated the matter and, in a letter dated 20 August 2023, stated that the failed engine could not be inspected as Mr C had already authorised repairs and the damaged engine disposed of.

However, the insurer also said that, after discussing the matter with the garage who replaced the engine *“our engineer determined that the coolant leak from the vehicle was not due to any poor workmanship on the previous repairer’s part but had been an underlying issue for some time as evidenced by the corroded camshafts.”* As a result, the insurer didn’t approve the claim as the engine failure had been caused by *“wear and tear, mechanical, electrical, electronic computer breakdowns, failures or breakages.”*

Mr C complained to Close Brothers, but they didn’t uphold his complaint. So, he brought the matter to us for investigation.

Our investigator said there was a fault with the car, but there was no evidence this fault was present or developing at the point of supply – Mr C had been in possession of the car for around a year and had travelled over 10,000 miles before the engine failed. Given this, the investigator didn’t think the engine failure made the car of an unsatisfactory quality, so they didn’t think Close Brothers needed to do anything more.

Mr C didn’t agree with the investigator’s opinion. He said the engine failed 3 days after the cooling system fault was repaired, and that he’d had the car repaired three times in eight months *“with the hopes the car would work flawlessly afterwards.”* In addition to this, Mr C said he’d not used the car since October 2022 and was no longer in any position to pay for further repairs.

Mr C also said that the previous issues with the car – the cruise control not working, the air-conditioning unit not working, the starter motor not working, and the coolant leak, were all

caused by underlying corrosion. So, he believed that Close Brothers were responsible for repairing the issues with the car.

Because Mr C didn't agree, 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 C 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 Consumer Rights Act 2015 ('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 C to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr C 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.

Before I explain why I've reached my decision, I think it's important for me to set out exactly what I've been able to consider here. While I appreciate this will come as a disappointment to Mr C, I won't be considering the previous coolant system fault or other issues, or any impact that arose from these. This is because Mr C had already complained about this, and it's been dealt with under a separate reference number. As such, my decision will only focus on the engine failure

Based on the evidence I've seen I'm satisfied there was a fault with the engine that caused it to fail. The email from the manufacturer's garage dated 1 August 2023 confirms the engine had overheated and there was coolant in the oil, resulting in swarf in the oil filter and the engine becoming unrepairable. The insurer's engineer's assessment was that this was not related to the previous cooling system leak.

I've seen the letter, dated 24 August 2022, Mr C has provided from the garage who dealt with the previous repairs. While this letter refers to rust and corrosion on the car that may

have resulted from “*sea water / atmospheric exposure*” it makes no reference to the engine itself, nor does it indicate any underlying problems that may cause a future engine failure. While I’ve noted the potential for sea water related corrosion, it’s also the case that the insurer’s engineer attributes the corrosion to the coolant leak.

Furthermore, I’ve seen the letter from the previous repairer dated 11 December 2023. This says that they found rust and corrosion in the engine bay in October 2022, and this had affected so many parts that an engine replacement would be needed. They also said that this was most likely caused by exposure to “*sea water or other water related elements.*”

However, as confirmed by other evidence, the engine actually failed due to coolant in the oil and the subsequent overheating damaging the engine beyond repair, not because too many parts had failed due to corrosion so that the engine itself failed. It’s also worth noting at this point that coolant emulsifying the oil and causing an engine overheat is something that’s usually related to a head gasket failure.

As such, based on what I’ve seen, I’m not satisfied that the rust described by the previous repairer, whether caused by sea water or not, was the cause of the engine failure. Nor have I seen anything that shows me the engine failed because of an issue that was present or developing at the point of supply. So, while I don’t doubt the car had rust levels that were unusually high for its age and mileage, I’m not satisfied this made it of an unsatisfactory quality at the point of supply.

As such, given the above, I won’t be asking Close Brothers to do anything more.

My final decision

For the reasons explained, I don’t uphold Mr C’s complaint about Close Brothers Limited, trading as Close Brothers Motor Finance.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 8 July 2024.

Andrew Burford
Ombudsman