

## The complaint

Mr H 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 November 2022, Mr H was supplied with a used car through a conditional sale agreement with Close Brothers. He paid a deposit of £978.56, and the agreement was for £24,521.44 over 60 months; with 59 monthly payments of £570.12 and a final payment of £580.12. At the time of supply, the car was around five and a half years old and had done 63,950 miles.

Mr H had problems with the car from the day it was supplied – he said that warning lights for oil, water, and tyre pressure kept coming on. He contacted the dealership around six weeks after being supplied with the car, and they asked him to bring the car back for investigation. A date for this was booked, however Mr H didn't attend the appointment.

Mr H had the car inspected by an independent garage on 5 January 2023. A diagnostic check indicated faults with the audio control module, the HVAC control module, the instrument panel cluster control, the powertrain control module, and the telematic control unit module. The mileage at the time of this diagnostic isn't recorded on the report. Mr H says he had the nox sensors replaced at this time. Mr H then had the car serviced on 4 April 2023.

Mr H complained to Close Brothers in April 2023, and they arranged for the car to be inspected by an independent engineer. This inspection took place on 27 May 2023, at which point the car had done 68,831 miles – around 5,000 miles since being supplied to Mr H.

The independent engineer said there was a fault with the car's transmission but *"based on the time and mileage covered, we do not consider this fault was developing at policy inception."* Based on this report, Close Brothers didn't uphold Mr H's complaint. So, he brought it to the Financial Ombudsman Service for investigation.

Our investigator said there was evidence the faults with the car were present in early January 2023 – around six weeks after the car was supplied to Mr H. They also said that the service history of the car showed that the 42,000 mile service was carried out late at 52,634 miles, and that no service had been carried out on the car between December 2020 and when Mr H had the car serviced in April 2023.

Because of this, the investigator thought it was likely the fault with the car was present when it was supplied to Mr H, and Close Brothers needed to do something to put things right. As such, and because they said Mr H hadn't been using the car since 24 May 2023, they thought Mr H should be allowed to reject the car, with a refund of the deposit and all payments since May 2023, plus an additional £200 compensation for the distress and inconvenience caused.

Close Brothers asked for copies of the diagnostics Mr H had on the car in January and July 2023, which were supplied to them. However, they made no further comment on the investigator's opinion.

I issued a provisional decision on 11 June 2024, where I explained my intention to uphold the complaint. In that decision I said:

*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 H 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 H to show it was present when the car was supplied.*

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

*I've seen a copy of the independent engineer's report, dated 27 May 2023. In this report, the engineer concluded there was a fault with the transmission but, due to the time Mr H had been in possession of the car, and the mileage he'd travelled, the engineer concluded the fault wasn't present or developing when the car was supplied.*

*However, this report is based on the transmission failure taking place on 28 April 2023. This isn't the case, and the diagnostic report of 5 January 2023 shows multiple faults with the car, including the powertrain (transmission). As such, I'm satisfied this report isn't based on the full facts so can't be entirely relied upon.*

*Close Brothers were provided with copies of the diagnostic report for 5 January 2023, as well as a follow up report dated 27 July 2023 that also shows audio control module, HVAC control module, and powertrain control module faults. These were supplied to them in January 2024, and again in March 2024.*

*As I've stated above, the CRA implies the faults were present at the point of supply unless Close Brothers can show otherwise. And, for the reasons stated, I'm not satisfied the independent engineer's report shows this. Close Brothers have had plenty of opportunity to provide the independent engineer with the diagnostic reports, and to get his opinion on whether this changed his outcome. But they haven't done so.*

*Given this, and based on the evidence I've seen, I'm satisfied it's more likely than not that the faults were present when the car was supplied, and that Close Brothers should do something to put things right.*

*The investigator has recommended that Mr H be allowed to reject the car and receive a full refund of the payments he's made since May 2023. This recommendation was based on the independent engineer's comments that "no road test was able to be carried out at the time of inspection due to the state of the transmission fault." Given this, the investigator said that Mr H would reasonably have stopped using the car from the date of the inspection.*

*However, I don't believe this to be the case. I say this because the car passed an MOT test on 27 July 2023, two months after the independent engineer's report. The mileage at this point was recorded at 69,057 miles – around 200 miles more than when the car was inspected. What's more, as I've said, a further diagnostic report took place on the same day, and this confirmed the transmission fault was still present.*

*Mr H has also provided the current mileage for the car, which is 69,110 miles. This shows the car travelled a further 53 miles after the MOT on 27 July 2023. Given this, I think it's reasonable to say that Mr H actually stopped using the car at the end of July 2023, and not after the May 2023 inspection as stated by the investigator.*

*Section 24(5) of the CRA says "a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract." This is known as the single chance of repair. And Close Brothers haven't had this single chance of repair.*

*However, section 23(2) of the CRA states:*

*If the consumer requires the trader to repair or replace the goods, the trader must –  
(a) do so within a reasonable time and without significant inconvenience to the consumer*

*Given that Close Brothers have been in possession of the diagnostic evidence that the fault occurred in January 2023 since no later than January 2024, and they've taken no action following receipt of this evidence, it's arguable they failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr H should be able to reject the car.*

*As I've stated above, Mr H has not been able to use the car, due to the transmission fault, since the end of July 2023, and he hasn't been supplied with a courtesy car. As such, he was paying for goods he was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Close Brothers failed to keep Mr H mobile; I'm satisfied they should refund the payments he made since 1 August 2023.*

*Finally, it's clear that Mr H has been inconvenienced by what's happened. So, I think Close Brothers should compensate him for this. The investigator had recommended Close Brothers pay him £200, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.*

*Therefore, I think that Close Brothers should:*

- *end the agreement with nothing more to pay;*
- *collect the car at no collection cost to Mr H;*
- *remove any adverse entries relating to this agreement from Mr H's credit file;*

- *refund the deposit Mr H paid (if any part of this deposit is made up of funds paid through a dealer contribution, Close Brothers is entitled to retain that proportion of the deposit);*
- *refund the payments Mr H has made from 1 August 2023 until the agreement is ended;*
- *apply 8% simple yearly interest on the refunds, calculated from the date Mr H made the payments to the date of the refund<sup>†</sup>; and*
- *pay Mr H an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

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

## **Responses**

Both Mr H and Close Brothers have accepted my provisional decision without further comment.

## **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.

As both parties have accepted my provisional decision, I see no compelling reason why I shouldn't now adopt this as my final decision and ask Close Brothers to do something to put things right.

## **Putting things right**

For the reasons stated above, Close Brothers should:

- end the agreement with nothing more to pay;
- collect the car at no collection cost to Mr H;
- remove any adverse entries relating to this agreement from Mr H's credit file;
- refund the deposit Mr H paid (if any part of this deposit is made up of funds paid through a dealer contribution, Close Brothers is entitled to retain that proportion of the deposit);
- refund the payments Mr H has made from 1 August 2023 until the agreement is ended;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr H made the payments to the date of the refund<sup>†</sup>; and
- pay Mr H an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

*†If HM Revenue & Customs requires Close Brothers to take off tax from this interest, Close Brothers must give Mr H 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 H'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 H to accept or reject my decision before 25 July 2024.

Andrew Burford  
**Ombudsman**