

## The complaint

Miss P complains that a car she acquired using a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance ("Close Brothers") wasn't of satisfactory quality.

## What happened

In July 2022, Miss P entered into a conditional sale agreement with Close Brothers for a car. The car was over seven years old when Miss P acquired it, had a cash price of £10,750 and had covered 65,550 miles. Miss P paid a deposit of £99.

Miss P says a warning light in the car came on in November 2022. The car was taken to a garage who found no obvious faults. In February 2023, the car's turbo failed when Miss P was on her way to work. It was recovered to a garage who replaced the turbo and put in new oil and a new oil filter. The car at that time had covered around 75,000 miles.

In May 2023, the warning light returned along with a low oil pressure warning and Miss P took it back to the garage who had carried out the previous work. They found that the low oil pressure was due to metal filings in the sump. The garage replaced the oil and oil filter and in their advisory notes said that '*continuing to drive vehicle will cause damage to engine and turbo and brake pump. Advise not to drive*'.

The car was then taken to a different garage for a second opinion. They replaced the vacuum pump. The garage also carried out a block test and noted there was a possible issue with the head gasket. By this time, the car had travelled 77,974 miles.

The car was again returned to Miss P, but the warning lights kept coming back on, so she decided not to drive the car anymore. Miss P then complained to Close Brothers saying that the car wasn't of merchantable quality at the time she acquired it, and that she hadn't been able to use it since the beginning of August 2023.

Close Brothers said they needed an independent inspection of the car, and this was arranged at the end of September 2023. Close Brothers reviewed the report but told Miss P that they didn't agree that the fault identified within it was present or developing at the time she acquired the car. Close Brothers also said to Miss P that the car had covered more than 10,000 miles since it had been with her and so didn't agree there was a durability issue.

Miss P didn't agree. By this time, she had already referred her complaint to our service. Our investigator looked at what happened but didn't recommend that Close Brothers should do anything. He said, in summary, that the problems with the car were likely to have been caused by wear and tear, and that the car wasn't of unsatisfactory quality when it was supplied.

Miss P asked for an ombudsman to review her 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.

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Miss P and Close Brothers that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances,

Close Brothers supplied the car to Miss P under a regulated conditional sale agreement. Because of that, our service is able to consider complaints about the agreement and the goods, i.e., the car, supplied under it. As the supplier of the car, Close Brothers has an obligation to ensure the car supplied was of satisfactory quality – as set out in the Consumer Rights Act 2015 (CRA). Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods, (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It's reasonable in my view to note the car here wasn't new and had already travelled over 65,000 miles at the time of supply. So, it would be unreasonable to expect a used car like this to be in the same condition as it would have been when it was new. But just because the car was used with some mileage, doesn't mean that Close Brothers has no requirements in relation to satisfactory quality.

The car has had some quite significant work carried out since Miss P acquired it. The reasons for that aren't entirely clear in my view. I say this noting the contents of the independent inspection which said that 'the cause of the condition at this stage is not fully confirmed'. They had seen that there was a warning message saying, 'engine inspection required' and fault codes relating to the oil pressure assembly. But they couldn't specifically find what was causing the problems with the car. They speculated that there might have been a sticking oil pressure relief valve, but the car needed to be dismantled to confirm this. And they felt that potentially the injector seals had deteriorated.

The engineer said they needed clarification of the car's service history before Miss P acquired it as this could have been a contributing factor to the faults with the car.

I'm not sure how Close Brothers could have determined from the report that the issues with the car as set out in there weren't present or developing at the time of supply. The engineer didn't go as far as saying that; rather he recommended that further investigation was required (as I've set out above). That included consideration of the car's service history.

I've seen a digital service record for the car. This showed that the car had been serviced a month before Miss P acquired it and that the oil and oil filter had been renewed. It also showed that the car had been serviced a year prior where the cabin air filter, oil, oil filter and engine air filter had been renewed.

It's entirely possible that the work shown in the service history was routine, standard maintenance to ensure the car was working as it should. It's noticeable however that the car wasn't serviced between 2018 and 2021. So, this might indicate that the car wasn't maintained as it should have been at certain points in its history, although that isn't by any means definite. The independent engineer though to my knowledge hasn't commented on the service history. So, it's difficult for me to say that what they set out in the report can be linked back to poor maintenance of the car before Miss P acquired it.

I've considered the pre-delivery inspection report that was completed a month before Miss P acquired the car. This showed that a decoke was required as well as a strainer and that the injectors needed to be cleaned. It's difficult to know whether this was routine maintenance or signs that there were problems with carbon build up which might lead to possible faults occurring in the future if unattended. But I also don't have much evidence to show that the requisite work wasn't carried out at that time. I note that Miss P feels that the previous owner hid the extent of the carbon build-up in the car, but I don't have much more than speculation about that.

This is a very finely balanced case. But considering Miss P had covered around 10,000 miles in the car before it broke down and needed the turbo replacing, I can't rule out the possibility that what happened was down to the overall age of the car and wear that had naturally occurred to it. Had the car been faulty at the time it was supplied to Miss P, I consider it more likely than not the problems would have materialised much sooner than they did and relatively shortly after July 2022. I think it unlikely that the car would have been able to travel around 10,000 miles with an inherent defect as this is a considerable amount of mileage.

I accept that there have been problems with the car and a recommended engine replacement isn't insignificant. However, to uphold the complaint I must be persuaded that the car wasn't of satisfactory quality at the time it was supplied to Miss P. Having considered the submissions from both parties, I'm not persuaded that there is sufficient evidence for me to conclude the vehicle was faulty when it was supplied and was of unsatisfactory quality as a result.

Finally, I note that there was a recall for this car which wasn't actioned, which led to Miss P paying for a replacement vacuum pump. I don't consider this to be related to the faults that has led to the car not now being used by Miss P. So, I haven't considered this aspect in my decision.

I'm sorry to disappoint Miss P as I realise that she has been left with a potentially significant repair cost along with having to continue to pay the monthly payments under the conditional sale agreement. However, for the reasons I've set out above, I won't be upholding this complaint.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 29 November 2024.

Daniel Picken  
**Ombudsman**