

The complaint

Dr C has complained about the quality of a car he acquired under a conditional sale with Close Brothers Limited trading as Close Brothers Motor Finance.

What happened

In May 2021 Dr C acquired a used car under a five-year conditional sale agreement with Close Brothers. The cash price of the car was £6,500. It had covered around 53,800 miles and monthly payments were around £130.

Dr C said he had a major service carried on in August 2021 but later on that month a serious problem developed, and a warning light came on. He said the car was with the supplying dealer for nearly two weeks being repaired. Dr C contacted Close Brothers about the issue. He said he wasn't supplied a courtesy car and that he never received paperwork about the repair from Close Brothers or the supplying dealer. I understand an oil pump was changed.

From what I can see, Close Brothers issued a final response letter to Dr C's complaint on 13 September 2021 saying the supplying dealer had fulfilled its obligations by having the repair carried out, which seemed to have resolved the issue.

Dr C said a further issue appeared in November 2021 and the car needed two litres of oil. He said this resolved things, but the warning reappeared in January 2022 before disappearing again.

Dr C said following on from that he regularly maintained and serviced the car, but it used a lot of oil. In April 2023 he said the previous problem reoccurred but in addition to that the engine failed. He contacted Close Brothers again to reopen his complaint. Close Brothers arranged an independent inspection report to be carried out. The report said it considered there was a lack of compression and it suspected the wet belt had failed causing the fault to occur. It advised the wet belt was replaced and the engine stripped to confirm any other damage. The report said:

We do consider based on the fact that the vehicle has covered 17,479 miles from the point of sale to the date of failure that the current issues would not have been developing at sale and are not the selling agent's responsibility.

Close Brothers issued another final response in May 2023, but it didn't uphold the complaint based on the independent report. Dr C decided to refer his complaint to the Financial Ombudsman.

Dr C didn't agree with the report. He said he'd called the previous dealer that held service record on the car from the previous owner and that it had been brought into that dealer in April 2021. He obtained an invoice for works relating to: *Engine warning fault displaying on central screen and Service light coming on too*. The mileage at that point (in April 2021) was around the same as when Dr C acquired the car. He said the previous owner was probably advised to get rid of the car. He said Close Brothers failed in its due diligence to check before financing the acquisition. He also said without the paperwork for the repairs the

supplying dealer carried out it was impossible to say the issues weren't present or developing at the point of supply. He also explained he didn't receive Close Brothers' final response from 2021.

Dr C said he was never reimbursed for the two weeks the car was in for repair. And for the period the car broke down in April 2023 to when the finance was settled in June 2023. I understand he sold the car at this point and settled the finance of around £4,000. He's unhappy and said he lost out. He said he would have used the difference between the trade in and what was still owed as a deposit but was unable to do this. He said being without the car for those times caused distress and inconvenience. He said if the car had been of satisfactory quality, he could have sold it for between £6,500 and £7,300 but instead he lost the difference between this and the settlement figure.

To put things right Dr C requested compensation for distress and inconvenience; payments to cover loss of use; and equivalent compensation for car hire for the periods of the initial repair and in relation to the more recent issues.

Our investigator looked into things but didn't uphold the complaint. She said she noted two annual services carried out, one in August 2021 with a mileage of around 56,000 and another in August 2022 with a mileage of around 63,500 where Dr C was made aware the timing belt may need to be changed, and a further comment in August 2022 that there was evidence of cracking. Overall, she didn't think the more recent fault was linked to the issues highlighted in April 2021. She noted Dr C had been able to cover around 17,000 miles before the first of the more recent issues occurred. She thought the more recent issues were likely down to wear and tear.

Dr C didn't agree. In summary, he said:

- The car came with a fault.
- The wet belt should have been changed before he bought the car. He said the car was sold as having had the last service carried out, and so the wet belt should have been changed at 50,000 miles – before he acquired the car.
- Close Brothers neglected to check the car was of good quality.
- The engine fault was never fixed by the supplying dealer. It carried on having intermittent issues.
- Close Brothers ignored its responsibilities.
- The car was regularly maintained and serviced while in Dr C's possession.
- There were inconsistencies in the independent report. At one point it said the wet belt was worn and later it said it was broken.
- Close Brothers failed to supply the independent expert details of the repair that the supplying dealer carried out.
- The car had been using a lot of oil which wasn't mentioned and conflicted with the independent report.
- The inspection report was commissioned by Close Brothers and so may have been biased.
- The wet belt issue could have been caused by the previous engine fault and the independent report didn't take everything into account.

As the complaint wasn't resolved, it's been passed to me to decide.

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 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'm required to decide matters quickly and with minimum formality. But I want to assure Dr C 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.

I should first highlight that I note there are two final responses relating to this complaint, one from September 2021 and one from May 2023. Dr C says he didn't receive the September 2021 final response letter but, based on what I've seen, I think it was sent to him. The letter explains that Dr C had six months to refer the complaint to the Financial Ombudsman and if he didn't do so, Close Brothers wouldn't consent to the Financial Ombudsman considering the complaint. Dr C didn't refer his complaint about the initial faults to the Financial Ombudsman within six months of the final response letter. Our rules broadly say that in this sort of scenario, unless there are exceptional circumstances, we don't have the power to consider a complaint brought outside of the six-month time limit set out in the final response letter. I don't think there were exceptional circumstances so while I need to look at things holistically to some extent, I don't find I'd have the power to direct Close Brothers to take action with regards to its response concerning the initial repair. But I find I do have the power to consider the complaint relating to the more recent final response from May 2023, because this was brought in time.

Dr C acquired the car under a conditional sale agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Dr C entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. Close Brothers is the "trader" for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

In Dr C's case, the car supplied was used and had covered around 53,800 miles. There'd be different expectations than if it was a brand-new car.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

It's not in dispute there were faults with the car. The evidence of the initial alleged fault isn't conclusive. But the independent report highlighted the issue with the lack of compression, and it suspected the wet belt had failed. The independent report said given the car had covered over 17,000 miles it would not have been developing at the point of supply. The report seems quite definitive on this point, and that it was down to normal wear and tear. While I appreciate Dr C doesn't agree with the report, I'm satisfied it's independent and the expert is suitably qualified to make that finding. The report includes the expert's duty to the court and statement of truth. I think I can fairly put substantial weight on its findings.

I take Dr C's point that the car may have been required to have had the wet belt changed before he acquired it. But I'm conscious I've not been supplied a copy of the sales advert. There's not sufficient supporting evidence that's what he was told so it's hard to reach firm conclusions on that point. I'm also mindful the garage Dr C took the car to for servicing said in August 2021: *Engine timing belt due for replacement ?* And in August 2022 it said: *Alternator belt / age cracks*. So I think there was some warnings given to Dr C about the belts before the more recent failure. The belts need to be changed as part of usual maintenance, and I'd have liked more certainty that the car was not as described when it was supplied with regards to having had the belt replaced prior to acquisition.

Moreover, I understand Dr C thinks the more recent fault could be linked to the issues with the car before he acquired it. And indeed, in relation to the previous repairs while he was in possession of the car. I agree the supplying dealer should have been more forthcoming with the information Dr C asked for in relation to the repair. I'm considering a complaint against Close Brothers primarily about the way it dealt with the more recent fault (for the reasons I gave above). I can see he asked Close Brothers for that information as well. Close Brothers put in the request, but the evidence ultimately wasn't supplied by the dealer. That must have been frustrating for Dr C. But, again, I can only reach conclusions based on the evidence supplied. I've not been provided sufficient supporting evidence to show the more recent fault was linked to something that was present or developing at the point of supply.

All things considered, seeing as though the more recent issues manifested after Dr C had covered over 17,000 miles in the car over nearly two years, and taking into account its age and mileage at the point of supply, I think the onus was on Dr C to show the more recent faults were present or developing at the point of supply. Close Brothers decided to obtain an independent report to establish the cause. Given how long Dr C had the car, it's not clear it was required to do that. But I think it was fair of it to do so.

Based on the findings of the report, I don't think Close Brother's ultimate answer to the complaint was unfair. I do understand Dr C's concerns that the car was using quite a lot of oil, and it would have been helpful to have known a bit more about the earlier repairs. But based on what I've seen, and the evidence presented to Close Brothers, while I sympathise, I don't find I have the grounds to uphold the complaint and direct it to make a payment to Dr C.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Dr C to accept or reject my decision before 25 April 2024.

Simon Wingfield
Ombudsman