

## **The complaint**

Miss L complains about the quality of a used car she acquired through a conditional sale agreement with Close Brothers Limited trading as Close Brothers Motor Finance ('Close Brothers').

## **What happened**

Miss L acquired a used car in May 2022. The car was about four and a half years old and had covered 123,600 miles.

Miss L acquired the car using a conditional sale agreement. The vehicle had a retail price of £22,500. Miss L paid £4,000 at the start which was partly used as a deposit and to pay for some other things such as the warranty. £19,897 was financed and the agreement was to be repaid through 59 monthly instalments of £454.37 and then a final instalment of £444.37. If Miss L made the repayments in line with the credit agreement, she would need to repay a total of £29,275.20.

The finance was settled in November 2023. Miss L says she has sold the car.

Below is a summary of the issues about the car Miss L has complained about and the investigation and repair work that she says has been carried out. There has been some investigation by a specialist garage, but I've not seen an independent report.

Miss L says that when she acquired the car a warning light appeared on the dashboard the day after she received it. She says that she took it to the dealership who told her that it wasn't a serious problem, and it was rectified.

In July 2022, Miss L took the car to the dealership again. She says there were more problems with warning lights and sensors. Invoices from the garage show that the repairs made at this time, between the 18 and 23 July 2022, were:

- A warning light was present due to a fault with an engine glow plug and a diesel particulate filter. These were repaired and the warning light was no longer showing.
- An NOx sensor was also replaced. This rectified some fuel quality warnings, various fault codes the garage had found and an engine restart problem.
- An exhaust pressure sensor had failed, this was replaced.

These were all covered by the warranty Miss L had taken out. Miss L says that she also paid for a new oxygen sensor.

The invoices and job sheets from the garage do note that there was an engine 'rattling' sound when the car was running, and the engine turned over a few times before starting. These were noted as advisory issues.

Miss L says that she brought the 'rattling' sound to the dealership's attention. She says she was told that this couldn't be fixed unless the car was 'actually broken'. Miss L has provided

some correspondence between her and the aftersales department when she raised the engine noise with them. The dealership said that:

*'A noise does not constitute a fault with the vehicle, to be able to advise if we can assist, we require a confirmation of a current fault. If the engineer could supply a report with his findings that would be great.'*

As far as I have been made aware there was no further correspondence about the car engine at this point.

In July 2023 Miss L contacted Close Brothers as the car had broken down. Close Brothers responded and asked Miss L for some further information including an independent report about the problems with the car.

Miss L says that the garage had told her that the car would require a new engine and that these issues should have been fixed earlier. She has provided a report from the garage that shows there are a number of issues with the engine including that it needs a timing chain repair and that there is some 'swarf', that is particles of metal, in the engine. The garage recommended that the car wasn't driven any further.

Miss L complained to Close Brothers saying that the car was faulty as it had engine issues resulting in reduced performance. She says she would like the car repaired or replaced.

Close Brothers considered the complaint. It said that Miss L should provide evidence of the faults that she was now experiencing with the car, and that these faults were likely to have been present at the time of sale. Miss L couldn't do this and so, in time, it closed the complaint not upholding it. Miss L brought her complaint to the Financial Ombudsman Service.

Our Investigator didn't uphold Miss L's complaint. They said that it was clear there was a fault with the car. But they didn't think it was shown that the issues that caused the recent breakdown were present at the time of sale. This was particularly given that the car had travelled a significant number of miles before Miss L acquired it and so it was likely to have some wear and tear when she purchased it. And Miss L had the car for around a year and had driven 13,682 miles before the recent engine faults became apparent.

Miss L didn't agree with the Investigator. She said that:

- When she notified Close Brother's about the problems in 2022 it should have provided guidance to the garage about the work that needed completing.
- The engine faults were mentioned early on and should have been dealt with then, this was within six months of the car supply.
- It has not dealt with the complaint well and has ignored her at times.

There was some further correspondence, but no new issues were raised. Because Miss L 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated conditional sale agreement – so we can consider a complaint relating to it. Close Brothers as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that ‘the quality of the goods is satisfactory’.

To be considered ‘satisfactory’, the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the car’s history.

The CRA quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

The car was about four and a half years old when Miss L acquired it and it had over 123,000 miles on the clock. The cash price was about £22,500. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there’s also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn’t new. Miss L should have been able to use it for a reasonable period of time before it needed significant work.

### **Was there a fault with the car**

As I’ve outlined above there were several problems with the car sensors, filters and exhaust components when Miss L acquired the car. These were repaired under warranty. The work done at this time also noted that the car had an ‘engine rattle’ and would not always start first time. The garage noted that this was an advisory issue and, as I said above, I can’t see that any further action was taken about this at the time.

And it’s established that the car had an engine problem before Miss L sold it in 2023. It kept ‘cutting out’ and the garage that looked at it said that it shouldn’t be driven for this reason. It’s not entirely clear what the underlying issue is, as it still needed investigation. But there was some swarf in the engine and a timing chain problem, and this could mean the car needs a new engine.

So, I think it’s reasonable to say the car had a fault with its engine in 2023, even though it’s not entirely clear what this was.

### **Was the car of satisfactory quality given these faults**

Miss L thinks that because the work that was completed in July 2022 identified an ‘engine rattle’ that the problems that came about in 2023 were in their early stages then. She thinks that the problems she had later with the car were present or developing at the time of sale. She also thinks that Close Brothers should have acted differently when it was informed about the engine rattle and the problems with the sensors.

The crux of this complaint is that whether it is fair to say that the engine problems were present or developing in 2022. And should Close Brothers have identified them and acted to remedy them before the car failed in 2023.

As a starting point the car was already four years old at the point of supply and it had travelled 123,660 miles. Ms L was able to drive the car for 2,209 miles, over around two months, before any problems became apparent with it. And I think it's clear most of the problems that were identified in 2022 were wear and tear related.

Miss L has said that the invoices from the 2022 work indicate that the later engine problems were already present. Whilst there was some noise from the engine, there is no further information about what was causing this, and the garage didn't seem to feel that further tests or work was urgently needed at the time. It did do significant work on the car so it isn't unreasonable to say that it would likely have noticed a serious problem.

Miss L did bring the 'rattle' to the attention of the dealerships after sales department. It did ask for further information about the problem and said if the garage could identify a fault, it would investigate this further. It's not clear if there was any further correspondence at this point, but I've not seen that the garage was able to investigate and determine if there was an engine fault in 2022.

And Miss L was able to drive the car for over a year after she acquired it, and cover nearly 14,000 miles before the 2023 engine problems with the timing chain and deposits in the oil were identified. Because of this it seems unlikely that there was a serious engine problem in 2022. I don't think she would have been able to drive it for this time and distance if this was the case.

Whilst the garage has looked at the car and identified what problems it had in 2023. It didn't say they were present in 2022. It could be that the 'rattle' heard in 2022 might be completely unconnected to the engine problems that came about in 2023. I don't think I can reasonably say there is a connection between what was identified as a potential engine problem in 2022 and the actual engine problem in 2023.

So, can't say it's likely that the 2023 faults were apparent or developing at the time the car was supplied to Miss L. It follows that, having looked at everything, I don't think there is enough for me to say that the car was not of satisfactory quality in respect of the engine when the car was supplied.

Miss L thinks that Close Brothers didn't look at her complaint properly. But whilst its response was relatively brief it has done what it needed to. And Miss L has had the opportunity to have her complaint considered at the Financial Ombudsman Service.

And lastly Miss L has said that the contract may have been misrepresented. Particularly in respect of the deposit she paid. I've not seen that Close Brothers has been able to consider this aspect of the issues she has raised. Miss L needs to complain to Close Brothers about this part of her complaint before the Financial Ombudsman can consider it.

### **My final decision**

For the reasons set out above, I don't uphold Miss L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 3 January 2024.

Andy Burlinson  
**Ombudsman**