

## The complaint

Mr R complains about the quality of a car he has been financing through an agreement with Close Brothers Limited (Close Brothers).

## What happened

I issued my provisional decision on this complaint last month. An extract from that provisional decision is set out below.

*Mr R took receipt of a used car in January 2021. He financed the deal through a conditional sale agreement with Close Brothers.*

*In July 2022 Mr R complained to Close Brothers about problem he was having with the car. He was asked to have the problems diagnosed and he provided two diagnostic reports from different garages. The first from a company I will call LJ only considered the problem Mr R was experiencing with a low pressure warning light. LJ thought that problem was probably caused by a brittle oil pump O-ring that could be considered present when the car was supplied to Mr R. The other diagnostic was provided by a company I will call RTJ, they also noted the low oil pressure problem and also thought it was due to a brittle seal. RTJ also noted problems with the car pulling to the left; a failed air conditioner clutch, a faulty heater flap; and an intercooler hose leak. RTJ thought that "all faults were more than likely to be developing at the point of sale".*

*System notes show that shortly afterwards Close Brothers contacted the dealership and explained that Mr R had "satisfied the burden of proof" and was entitled to have the car repaired. In November 2022 system notes show that Close Brothers considered they should repair the O-ring but that the other faults were likely to be due to normal wear and tear and not their responsibility to fix.*

*In November 2022 the supplying dealership replaced the oil pick up pipe, cleaned the sump, replaced the oil and filter, and freed the track rod ends so tracking could be looked at. Close Brothers refunded four monthly finance instalments in light of the time it had taken to resolve matters for Mr R. But later that month Mr R emailed to explain the repair had been unsuccessful and that warning lights were illuminating as before. He says he then had significant difficulties getting in touch with Close Brothers but eventually, in March 2023, a new member of staff contacted him and wanted a further independent inspection of the car to be arranged.*

*In May 2023 a company I will call A completed that independent inspection. They noted the faults Mr R had raised, including the low oil pressure light. They thought it unlikely those faults would have been present or developing on a car that had completed 25,000 miles since it was supplied to Mr R. Close Brothers, therefore, rejected Mr R's complaint.*

*In late May 2023 Mr R paid for further repairs to be completed by RTJ. They replaced the oil pump but that didn't resolve matters either. He told Close Brothers that RTJ "have now advised the low pressure fault could be an ECU glitch, a loose wire or a potentially catastrophic problem and that (he) has now been advised to just use the vehicle as normal*

*as there is nothing else that can be done from a mechanical perspective.”*

*Close Brothers issued a further final response in August 2023. They were not persuaded to change their original decision and didn't uphold Mr R's complaint. Our investigator wasn't persuaded to uphold the complaint either. She wasn't persuaded there was sufficient evidence the faults were present when the car was supplied to Mr R, and she thought the payments and actions Close Brothers had taken were reasonable. She didn't think there was reason to remove any adverse markers Close Brothers had reported to Mr R's credit file as a result of non-payments.*

*Mr R didn't agree with the investigator's opinion, and he asked for a decision by an ombudsman. The complaint has, therefore, been referred to me.*

### ***What I've provisionally 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 know it will disappoint Close Brothers, but I don't think they've been reasonable here and I'm expecting to uphold Mr R's complaint. I'll explain why.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*Mr R acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Close Brothers, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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.*

*In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr R. The car here was a little over ten years old but it had only completed about 39,000 miles in that time.*

*An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.*

*The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when Close Brothers were responsible for the car's quality. But here, as the faults with the car were not reported until much later than six months I think the onus was on Mr R to demonstrate the issues were developing when the car was supplied to him.*

*Mr R was asked to provide diagnostic reports to demonstrate the problems he was experiencing, and he provided them. Both garages agreed that the problem with the low oil*

pressure was most likely developing when the car was supplied to him. Close Brothers system notes from September to November 2022 show that they agreed that Mr R had “satisfied the burden of proof” and had therefore demonstrated that Close Brothers were responsible for remedying the situation.

The relevant legislation gives the business one opportunity to repair faults in those circumstances. I think Close Brothers had that opportunity when repairs were carried out in November 2022.

I think the evidence suggests that the November 2022 repair failed. Mr R emailed the dealership only a few days after the repair was completed to explain that the “oil lamp was still flickering” and the dealership suggested it may be wise to now replace the oil pump. The independent report commissioned by Close Brothers, and completed by A, also noted that the oil pressure light illuminated but went out after a few seconds. That was exactly the same issue that Mr R had reported to Close Brothers when he first raised his complaint in July 2022. So, I think the repair Close Brothers agreed to because they accepted the car hadn’t been supplied in a satisfactory condition, had failed. In those circumstances the relevant legislation says the consumer can ask for a price reduction or to reject the goods.

Mr R also reported other issues to Close Brothers. The independent inspector didn’t think it was likely that those faults were present or developing when the car was supplied to Mr R. He noted that the car had completed 25,000 miles since it was supplied, and he thought it more likely that the faults had developed more recently. I note that A’s inspection was completed about nine months after the additional issues Mr R had complained about were first identified. But even when the issues were first identified, Mr R had already completed about 19,000 miles in the car and had been in possession of the car for about a year and a half. I think it’s more likely that those additional faults occurred in that period than that they may have been present when the car was supplied. I don’t think it would be fair to hold Close Brothers accountable for their rectification.

### **Putting things right**

Mr R has explained that he doesn’t want to reject the car as he’s invested so much time getting it right. He’d prefer a price reduction and I’ve therefore considered what would be an appropriate reduction given the loss of use he’s experienced.

Mr R’s credit agreement required him to pay £137.37 every month for 60 months. The total to pay was £9,242.20. I’ve only been persuaded that the low oil pressure fault was one that was present when the car was supplied to him. I’ve considered the impact that fault has had on Mr R and the likely impact on the residual value of the vehicle.

Mr R was able to drive the car and appears to have been able to complete more than average mileage in it. But he’s been understandably worried about the presence of a low pressure warning, and it looks like all efforts to resolve that issue have now been exhausted. To reflect the impact on the residual value of the car and the loss of enjoyment Mr R will have experienced as a result of the problem, I am expecting to tell Close Brothers to reduce the amount payable under the entire agreement by 20%. They have already refunded four monthly instalments and may include that deduction in any calculation.

Mr R has been inconvenienced by these issues. He’s had to take the car for diagnostic tests, have the car repaired on several occasions, and has had to make arrangements to enable the independent inspector to view the car. Close Brothers have also caused some distress by changing their position on Mr R’s complaint and there appear to have been significant delays when Mr R has explained he, and the credit broker, have been unable to get in touch with Close Brothers. The first repair was completed almost a year and a half ago and I think this matter could have been resolved earlier had Close Brothers been more responsive.

*Mr R has explained he is disabled and I think that would have heightened the inconvenience he experienced as a result of the issues he had. In the circumstances, I'm expecting to tell Close Brothers to pay him £750 in compensation.*

*If Mr R has had to pay for diagnostic reports Close Brothers will need to refund those costs with interest as Mr R has been deprived of the money.*

*Mr R had to pay for repairs to the oil pump and had to buy some of those parts himself so that RTJ could fit them. The repair was unsuccessful and it, therefore, seems it was unnecessary. But I can see that it was the supplying dealership who suggested the oil pump should be replaced so I think it would be fair to ask Close Brothers to refund that expense. It wouldn't have been incurred had it not been for the car being supplied in an unsatisfactory condition.*

*It wouldn't be fair for Close Brothers to report any missed payment or default of the account to the credit reference agencies. Mr R was paying for a vehicle he was experiencing constant issues with, and he was also having to pay out for expensive repairs and diagnostics. In the circumstances, Close Brothers should remove any adverse reports they may have made to Mr R's credit file in relation to this agreement.*

### **My provisional decision**

*I'm expecting to uphold this complaint and to tell Close Brothers Limited to:*

- *Reduce the amount payable under the agreement by 20% to reflect a price reduction.*
- *Pay Mr R £750 to compensate him for the distress and inconvenience caused.*
- *Refund the cost of any diagnostic reports Mr R has had to pay for on provision of proof of payment. Add 8% simple interest per year from the date of payment to the date of settlement.*
- *Refund the cost of the oil pump replacement repair on provision of proof of payment. Add 8% simple interest from the date of payment to the date of settlement.*
- *Remove any adverse reports they may have made to Mr R's credit file in relation to this agreement and agree an affordable repayment plan if there is a balance on the agreement and Mr R is having difficulty paying.*

### **Responses to my provisional decision**

Close Brothers didn't respond to my provisional decision, but Mr R did. He agreed with it, but he has asked me to consider refunding the cost of the oil cooler housing, and oil cooler assembly that RTJ fitted along with the cost of the oil pump work. I wrote to Close Brothers and asked for their comments, but they didn't reply.

### **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.

Although the oil pump repair failed, as I explained in my provisional decision, the supplying dealership had directed the work. It, therefore, seems likely to me that the costs associated with the oil cooler housing and oil cooler assembly that RTJ fitted, along with the cost of the oil pump work, were incurred as a result of the problems Mr R had with an unsatisfactory vehicle. I'm, therefore, asking Close Brothers to refund those costs alongside the redress I have already set out in my provisional decision.

## **My final decision**

I uphold this complaint and tell Close Brothers Limited to:

- Reduce the amount payable under the agreement by 20% to reflect a price reduction.
- Pay Mr R £750 to compensate him for the distress and inconvenience caused.
- Refund the cost of any diagnostic reports Mr R has had to pay for on provision of proof of payment. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Refund the cost of the oil pump replacement repair, the oil cooler housing, and oil cooler assembly on provision of proof of payment. Add 8% simple interest\* from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr R's credit file in relation to this agreement and agree an affordable repayment plan if there is a balance on the agreement and Mr R is having difficulty paying.

\*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 June 2024.

Phillip McMahon  
**Ombudsman**