

The complaint

Mrs W complains about the quality of a car supplied to her by Close Brothers Limited trading as Close Brothers Motor Finance ("Close Brothers").

Mrs W has been represented. For clarity, I'll only refer to Mrs W throughout this decision.

What happened

Mrs W acquired a used car under a 60 month conditional sale agreement with Close Brothers in August 2022. The car cost around £12,500 and Mrs W paid a cash deposit of £1,000. Under the agreement, Mrs W was required to make 60 payments of £271.56. At the time of supply, the car was around ten years old and had covered around 121,500 miles.

In July 2023, Mrs W complained that the car engine had failed and she hadn't driven the car for a month. Close Brothers didn't uphold the complaint. This complaint has already been considered by this service. So this decision will not comment on it.

In December 2023, Mrs W complained to Close Brothers. She said there was a discrepancy with the 2019 service and MOT. She said she wanted Close Brothers to pay her compensation or to take the car back.

Close Brothers issued its response to Mrs W's complaint in February 2024. It said there was a minor mileage discrepancy and said the mileage may have been incorrectly recorded as a result of human error, during the MOT or service in 2019. It said the HPI report showed there were no mileage concerns. It said it disagreed the services recorded were fraudulent and that public information showed the garages were still active.

Mrs W said she was unhappy with this and said two of the garages that the car had been serviced at in 2018 and 2019, were listed as dissolved prior to them carrying out services on the car. She also mentioned she was told there was a gearbox problem. She said the reason the engine had failed was due to the service not being carried out properly. She said she only acquired the car because of the service history. Unhappy, Mrs W referred her complaint to this service.

Our investigator looked into the complaint and she agreed there was one mileage discrepancy in the service history. However, she said she thought this was down to human error, rather than any illegal activity being carried out. She also suggested that Mrs W seek legal advice if she was unhappy with the conduct of some of the servicing and MOT garages.

As Mrs W remained unhappy, the complaint was 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.

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

I've read and considered the whole file and acknowledge that Mrs W has raised a number of different complaint points. I've concentrated 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. The rules of this service allow me to do this.

I want to start by saying that it isn't my role to confirm whether or not a third-party garage acted fraudulently when carrying out a service or an MOT on a car. Whilst I appreciate Mrs W feels strongly about this, this decision will not make this finding and neither will it comment on this point. Mrs W is free to take independent legal advice should she wish to pursue these complaint points outside this service.

What I need to decide in this case is whether the car supplied to Mrs W was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated conditional sale agreement. So our service is able to consider complaints relating to it. Close Brothers is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers conditional sale agreements. Under a conditional sale agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mrs W acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this case, Mrs W reported that the car had a mileage discrepancy. She said this showed that the car hadn't been serviced correctly which led to the faults she experienced with the car after purchasing it. At the time Mrs W made this report, the car was around 11 years old and the mileage was more than 126,000.

Mrs W says there is a mileage discrepancy because the service history shows:

October 2018 – 82,040 miles

April 2019 – 90,288 miles

July 2020 – 98,625 miles

And the MOT history shows:

July 2018 – 74,406 miles

July 2019 – 90,090 miles

July 2020 – 98,626 miles

Mrs W says the mileage discrepancy in 2019, means the car wasn't serviced correctly and this has led to problems with the car.

I've considered all of the information carefully. I accept there is a discrepancy in the mileage recorded during the service in April 2019 and the MOT that was carried out in July 2019. The mileage discrepancy is 198 miles.

I can see why Mrs M is unhappy, however on balance, I think it's more likely than not this was an error either in recording the mileage when the service was carried out or when the MOT was carried out. And I don't think that this means that the car wasn't serviced or that it hadn't been maintained correctly.

The service book has been hand stamped in 2019 and the mileage has been handwritten in, alongside all the things that were checked during the service. The MOT carried out in 2019 lists six advisories. In 2018, only one advisory is listed when an MOT was carried out. I think on balance the car did have an MOT carried out in 2019, given it listed six different things that needed to be monitored or repaired.

In addition, none of the subsequent services or MOTs have mentioned a mileage discrepancy or note that certain things that should have been replaced during a service weren't checked or replaced. The HPI check that was carried out before Mrs W acquired the car didn't mention this. The independent inspection that was carried out in 2023 mentions there is no service history recorded on the manufacturer's system. However, the service carried out in 2012 was carried out by a manufacturer authorised dealer. It seems more likely than not, that the services may not have been recorded on the manufacturer system, but this doesn't mean they weren't carried out. I also would have reasonably assumed that if the car hadn't been serviced as it should have, for example certain parts weren't replaced, that this would have been highlighted by one of the numerous different companies that checked the car after 2019.

The mileage discrepancy is also low considering the overall mileage the car has now travelled. Had the service not been completed correctly in 2019, I wouldn't reasonably expect that the car would have been able to travel the extensive mileage that it has since then, without issue.

Overall, whilst I accept there was a recorded mileage discrepancy of 198 miles, I think on balance, it's more likely than not that the car was correctly maintained through servicing and MOT and so, I think the car was of satisfactory quality at the time it was supplied to Mrs W. It follows that I'm not asking Close Brothers to do anything further.

My final decision

My final decision is that I do not uphold Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 19 August 2024.

Sonia Ahmed
Ombudsman