

The complaint

Mrs J 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.

What happened

On 25 April 2022 Mrs J entered a conditional sale agreement with Close Brothers to acquire a used car from a dealership. The car cost £7,850 and Mrs J paid a £785 deposit. The total amount payable under the agreement was £10,837.80 payable by 59 monthly payments of £167.38 and a final payment of £177.88, to include the £10 car ownership transfer fee. The car was seven years old when supplied to Mrs J with a mileage of approximately 99,218.

On 21 November 2022 the car broke down and had to be recovered by a breakdown provider. Its engineer recorded that the timing belt had snapped and the car was taken to Mrs J's home. The mileage was 104,000 miles at that time.

Mrs J took her car to a third-party garage for inspection. Its report of 8 February 2023 says the water pump had seized which caused the timing belt to snap. The garage changed the water pump and timing belt but the car still wouldn't start and after further investigation the garage told Mrs J a new engine was needed.

Mrs J complained to Close Brothers about the quality of the car and provided various evidence which she said showed the car was of unsatisfactory quality.

Close Brothers' final response letter on 9 August 2023 didn't uphold the complaint. It said as the fault developed over six months after the car was supplied to Mrs J it was for her to show that the fault was present or developing when she acquired the car. Close Brothers said Mrs J hadn't provided that evidence.

Mrs J complained to this Service. The evidence she sent us included a service report showing the car's timing belt kit had been replaced in February 2021. Mrs J said she'd paid for repairs to try to fix the car but that hadn't worked and she hasn't been able to drive the car since the fault occurred. She had to buy another car and she was still making the payments under the finance agreement for the faulty car which was financially difficult. She'd been told by Citizens Advice that Close Brothers should do something to put her situation right. She wanted to reject the car.

Our Investigator asked Close Brothers for its business file several times but it didn't respond. So our Investigator made her recommendations based on the evidence Mrs J provided. Our Investigator considered that the car wasn't of satisfactory quality when it was supplied to Mrs J as the failure of the replaced timing belt kit and water pump meant the car wasn't durable. She thought the repair cost was likely to be disproportionate to the value of the car so she didn't think it would be fair to tell Close Brothers to do the repairs.

Our Investigator recommended that Mrs J should be able to reject the car and Close Brothers should: end the finance agreement with nothing further for Mrs J to pay; collect the car at no further cost to Mrs J; refund Mrs J's deposit/part exchange contribution

of £785; refund the monthly payments Mrs J's made from 21 November 2022 to the date of settlement; refund to Mrs J the repair costs she'd paid (£1,423) once she's provided evidence of those costs; pay 8% simple yearly interest on all refunded amounts; pay Mrs J £200 compensation for her distress and inconvenience; remove any adverse information from Mrs J's credit file in relation to the finance agreement.

Mrs J accepted the recommendation. Close Brothers didn't accept, in summary it said:

- The car was inspected by a third-party garage and the investigative repairs didn't determine liability for the fault.
- The fault occurred over two years and 30,474 miles after the car's timing belt kit and water pump had been replaced. The water pump is a wear and tear item completed as part of a car's required maintenance. If the replacement had been unsuccessful it would be reasonable to expect the fault to have occurred earlier.
- The car isn't 'prestige' and had covered 5,000 miles in Mrs J's possession.
- There's no evidence to suggest that a repair would be unfeasible and if it had agreed to the recommendation it would want the opportunity to exercise its right to repair the car under the Consumer Rights Act 2015. If while in for a repair the cost was unfeasible then it would agree to Mrs J rejecting the car.

Our Investigator explained why her recommendations hadn't changed and asked Close Brothers if it wanted the complaint referred to an Ombudsman for decision or if it wanted to get a quote to see if the repairs would be economically viable. Close Brothers wants the complaint referred for an Ombudsman's 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.

The conditional sale agreement between Mrs J and Close Brothers is a regulated finance agreement. So this Service is able to consider complaints relating to it. Close Brothers is the supplier of the goods under this type of agreement and is responsible for Mrs J's complaint about the car's quality.

In considering what's 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 Consumer Rights Act 2015 (CRA) 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. 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 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.

The car was seven years old and had travelled about 99,218 miles when Mrs J acquired it. The price of the car was lower than it would have been if it had been supplied new.

I think it's fair to say there's a greater risk a car of that age might have already suffered wear and tear. And there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road worn when it was supplied.

At the time Mrs J complained to Close Brothers there were faults with the car. I've seen the report for the breakdown provider from 21 November 2022 which says the timing belt had snapped. The third-party garage's report from 8 February 2023 details that the water pump had seized which caused the timing belt to snap. The garage changed the water pump and timing belt but the car still wouldn't start so the cam cover was stripped down. The report says 16 rockers were broken. These were replaced but the car still didn't start, so the head was taken off and it was found that the pistons were marked with rollers from the rockers. I've seen the text from the garage telling Mrs J a new engine was required.

The faults occurred outside the first six months of Mrs J acquiring the car, they occurred in month seven. Close Brothers says that as the fault occurred after six months Mrs J needs to show the fault was present when it supplied the car to her, that's broadly the legal position and in line with the CRA.

I'm satisfied that Mrs J has provided enough evidence to persuade me that the fault was more likely than not to be present or developing when Mrs J acquired the car. I also need to decide whether the fault means that the car wasn't of satisfactory quality, taking into account the factors I've detailed above. Mrs J's evidence persuades me that the car was probably not of satisfactory quality when it was supplied.

I've seen the photo of the car's service history which shows that on 3 February 2021 the timing belt kit was replaced. The mileage was recorded as 73,526 at that time. Our Investigator called the garage who did that service and repair. It told us that a water pump would have been included in the kit, so that would have been replaced in February 2021.

The water pump and timing belt broke about two years and 30,474 miles after those parts were replaced causing the car's engine to fail. Close Brothers says the water pump is a wear and tear item and if the replacement of the parts had been unsuccessful the fault would have probably occurred earlier. From my own research I understand that a replaced water pump and timing belt should last considerably longer than two years and 30,474 miles so I'm not persuaded that the failure is due to wear and tear. I think the parts and car weren't durable when supplied to Mrs J. A reasonable person wouldn't expect a car's engine to fail when they had the car for seven months and driven 5,000 miles, which is what happened to Mrs J.

Close Brothers says the car isn't 'prestige' but that doesn't make a difference to my findings. The car wasn't of satisfactory quality when it was supplied to Mrs J for the reasons I've explained above.

As I think the car wasn't of satisfactory quality Close Brothers needs to do something to put things right. It wants the opportunity to repair the car, which would be to put a new engine in the car. As Mrs J rejected the car after 30 days from when she acquired it the CRA says Close Brothers can have one chance to repair the faulty car, unless it's disproportionate.

Close Brothers said if it found that the repair costs were disproportionate it would then agree to Mrs J rejecting the car. It hasn't provided any evidence about the cost of replacing the engine and it's had opportunity to do so. From my own research the cost of replacing the car's engine, including labour costs, is more likely than not to be more than the car's value. So I think it's probable that Close Brothers would ultimately accept Mrs J's rejection of the car.

Although the CRA outlines specific remedies, the rules we operate under enable us to consider cases on a fair and reasonable basis, and to depart from the law if we think it's appropriate in all the circumstances.

I think Close Brothers should have reasonably known when it first knew of the evidence that the car wasn't of satisfactory quality. It should have offered Mrs J the repair or replacement remedy then. Instead the car being of unsatisfactory quality has meant Mrs J hasn't been able to drive the car since 21 November 2022, that's nearly two years. She's had to make the monthly payments under the finance agreement for a car she can't use. And at the same time she's been making payments for a replacement car she had to buy so she had a car that works.

In these particular circumstances I don't think it's fair and reasonable for Mrs J to have to wait for Close Brothers to get a quote for repair, with the probable outcome being that the car would be rejected due to the disproportionate cost of repair.

I think the fair outcome is for Mrs J to use her final right to reject the car now. That means Close Brothers should collect the car, end the finance agreement and return the deposit of £785 that Mrs J paid for the car. Interest should be added on the returned payments as I've detailed below.

Close Brothers must remove any adverse information from Mrs J's credit file in relation to the finance agreement.

Mrs J hasn't been able to use the car since 21 November 2022 because of its faults. So Close Brothers should refund the finance agreement payments Mrs J made after this date, plus interest as I've detailed below.

Mrs J arranged and paid for repairs to try and mitigate the losses, but the repairs failed. It's reasonable for Close Brothers to reimburse Mrs J for those repair costs once she'd provided evidence of those costs. Mrs J says she's had to pay the garage £500 for the diagnostics, £823 for the repairs and £100 to have the car transported to the garage, so a total of £1,423. Interest should be added to the reimbursed costs as I've detailed below.

Mrs J has been affected by the car being of unsatisfactory quality in several ways. She's arranged and paid for repairs to try to resolve the car's fault. As the car hasn't been driveable for two years she's had to rely on other methods of transport. Then she's had to find and finance a replacement car at the same time as still paying for an unusable car which has caused her financial hardship. I think Mrs J has been caused distress and inconvenience as a result and Close Brothers must pay her £200 compensation in recognition.

My final decision

I uphold this complaint and require Close Brothers Limited trading as Close Brothers Motor Finance to:

- End the finance agreement with nothing further for Mrs J to pay;
- Collect the car at no further cost to Mrs J;
- Refund to Mrs J her deposit of £785;
- Refund to Mrs J the payments she's made under the finance agreement from 21 November 2022 to the date of settlement;

- Refund to Mrs J the £1,423 costs she incurred in attempting to have the car repaired, once she's provided evidence of those costs;
- Pay 8% simple yearly interest* on all refunded amounts from the date of Mrs J's payments until the date of settlement;
- Pay Mrs J £200 compensation for her distress and inconvenience this situation has caused her;
- Remove any adverse information from Mrs J's credit file in relation to the finance agreement.

*If Close Brothers Limited trading as Close Brothers Motor Finance considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mrs J how much it's taken off. It should also give Mrs J a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 22 November 2024.

Nicola Sisk
Ombudsman