

The complaint

Mr B complains about the quality of a used car he acquired through a finance agreement with Close Brothers Limited ('Close Brothers'). Mr B says he had problems with the car very soon after he acquired it. And as he has not been able to drive the car for a significant period this has caused him a lot of inconvenience and distress, particularly with his employment.

What happened

Mr B's complaint is about the quality of a car he acquired in October 2023. The car was used, and it was first registered in August 2011. So, it was over twelve years old when Mr B received it. It had covered 97,855 miles.

Mr B acquired the car using a conditional sale agreement that was started in October 2023. The vehicle had a retail price of £8,218. Mr B paid a £150 deposit meaning £8,068 was financed. The agreement was to be repaid through 36 monthly instalments; the first instalment was for £261.56 followed by 35 monthly repayments of £271.56. If Mr B made repayments in line with the credit agreement, he would need to repay a total of £9,576.16.

Below is a summary of the issues complained about by Mr B and the investigation and repair work that has been carried out by the dealership, alongside what has happened in respect of the complaint.

The day after acquiring the car Mr B contacted a local garage as a window was not closing properly. I understand the supplying dealership covered the cost of the repair that was needed to a window motor.

Mr B then says that on 4 January 2024, an engine management light ('EML') appeared on the car dashboard. I understand this was related to the car's oil levels. Mr B says he let both the dealership and Close Brothers know about this on 6 January 2024. He took the car to a garage shortly after this time to be looked at and I understand he hasn't been able to drive the car since 8 January 2024.

Mr B has had the car looked at by a garage. This garage sent him an email dated 31 January 2024 about what was wrong with the car. The email said that the car was booked in for an oil leak and a wheel alignment. It said that it found the front of the timing chain cover was leaking oil, a lot of gearbox oil had leaked, and the plastic oil filler housing was broken. The car had very low gearbox oil and it looked like it would need a new gearbox.

Mr B has contacted the car dealership and the warranty company about the faults with the car. I understand that the warranty company said it would pay for repairs up to a cost of £2,000. But as the repairs are likely to cost around £3,400 then Mr B would still have a substantial amount to pay. Mr B didn't want to pay this.

Mr B complained to Close Brothers in January 2024 saying that he was having problems with the car and that the dealership would not cover the full cost of the repairs.

Close Brothers asked for an independent report to be completed and it has provided a copy of this. The report is dated 7 February 2024 and it said that the car was in a generally good condition. It had travelled 99,638 miles at the time of inspection. It said the engine oil levels were correct and some EML codes were showing. It found a timing cover oil leak, a rocker cover oil leak, an engine vibration and misfire and the gear selection was harsh. It said the car needed some repairs and the engine and gearbox needed further investigation.

The report concluded that faults of this nature would generally be due to wear and deterioration and would not be unexpected on a vehicle of this age and mileage. As Mr B had been able to drive the vehicle about 4,638 miles then the faults would not have been present at the point of sale.

Close Brothers then considered Mr B's complaint and it didn't uphold it. It said that it had instructed an independent engineer to inspect the vehicle and provide their expert opinion. The engineer had said that due to the mileage covered in Mr B's ownership the fault with the car would not have been present or developing at the point of sale.

Mr B didn't agree with this and brought his complaint to the Financial Ombudsman Service.

Our Investigator upheld Mr B's complaint. She said that the third party engineers report concluded that the faults with the car had developed after the point of supply due to the amount Mr B had driven the car. But the report had used an incorrect mileage travelled of 4,638 whereas Mr B had only driven the car 1,783 miles over three months.

She went on to say that this seemed to be the deciding factor that led to the engineer concluding that the faults weren't present at the time of supply. But as this was incorrect, and Mr B hadn't driven the car very far, or used it for very long, then the faults were likely to have been present at the time of supply. She thought that the car wasn't of satisfactory quality and that Mr B should be able to reject it.

Close Brothers didn't agree with the Investigator. It acknowledged there was a fault with the window within the first 30 days of ownership. And it agreed that the liability was with the dealership for the car's faults. But it thought that the car should be repaired, and after some correspondence with the independent reporting company, it now agreed to do this. It didn't think that Mr B should be able to reject the car.

Mr B has confirmed that he still wants to reject the car. So, as no agreement has been reached, 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 was 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 ('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. 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.

This car was over 12 years old when Mr B acquired it and it had travelled nearly 100,000 miles. I think a reasonable person would accept that such a vehicle would probably have some parts that were 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 Mr B should have been able to use it for a reasonable period before it needed significant work.

Was there a fault with the car

The car needed a repair to one of the window mechanisms a few days after Mr B acquired it.

And it has been confirmed, by a garage and an independent reporting company, that the car now has a gearbox oil leak, the timing cover is also leaking oil, the rocker cover is also leaking oil, there is a vibration and misfire from the engine and the gearbox selection is harsh with a metallic rattling noise from it.

I think it's established, and there is no disagreement that the car did have, and still has most of, these faults.

Was the car of satisfactory quality bearing in mind the faults

Close Brothers initially said the faults happened too far on from the point of supply for them to have been present when supplied. And the independent report does say this. I've considered if this is the case.

The problems with the car happened about three months after Mr B received it, and after he had driven it around 1,783 miles. Whilst the car was relatively old, and well-travelled, Mr B had only owned it for a short period of time, and he hadn't driven it very far, before he noticed the engine and gearbox problems. This indicates to me there was already a problem with the car when it was supplied.

And it's worth noting that Mr B's complaint wasn't upheld by Close Brothers due to the independent report saying that the faults were not present at the time of supply. The engineer who carried out the investigation said this was because Mr B had travelled 4,638 miles since he acquired the car. But, as I've outlined above, this wasn't correct and so it's difficult to rely on the conclusions in the report as it's based on incorrect information.

And the CRA says that if a product develops a fault within six months of purchase, it's presumed to have been faulty at the time of purchase. And as the independent report isn't accurate enough to say the faults developed while Mr B owned the car it isn't enough to change this presumption.

So, I don't think the car was durable and I think it has failed prematurely. And I agree that this means the car wasn't of satisfactory quality.

Whilst Close Brothers hasn't directly agreed that the car wasn't of satisfactory quality, it has recently said that it would repair the car. It did this after it informed the independent reporting company about the mileage error in the report, and it received some further information from it about this. It's not disclosed this further information, but it did agree that the car should be repaired after this. So, I think there is an acceptance from Close Brothers that something needs to be done to put this right.

Close Brothers thinks that the car should be repaired. I don't disagree that a repair could have been a reasonable way to resolve this dispute, and this is what Mr B asked for at the start of the complaint process.

But the CRA says that repairs must be made '*within a reasonable time and without significant inconvenience to the consumer*'. Mr B has been unable to use the car for over a year now and he has been caused significant inconvenience due to this. So, I don't think a repair would be right. It has taken far too long for this to be right thing to do now.

And added to this, the CRA also specifies that a trader has one opportunity to repair a car that doesn't conform to the contract. If the car needs further repairs to bring it in line with the contract, then the consumer has a final right to reject it. As I've outlined above the repairs to the engine / gearbox would be a second repair for issues that were present or developing at the time of sale.

So, Mr B should now have the opportunity to reject the car and receive compensation on the basis that the finance is unwound.

Mr B couldn't use the car from 8 January 2024. So he should receive back any repayments he has made since then. I understand he only made one payment after January 2024.

He also paid for the car to be looked at by a garage who inspected the gearbox. I don't think it's right that he pays this. The invoice I've seen shows the cost for this work is £504. Close Brothers should either pay the third party directly for this invoice or provide the funds to Mr B to allow him to pay them.

Mr B was inconvenienced on several occasions by having to take the car back and forth to a garage. I can also imagine it would have been very frustrating and stressful a car he says he needed for his work to have broken down. And he has said that the situation with the car may have made getting to his place of work problematic. All of this clearly has had a negative impact on Mr B's life, So I think the £200 suggested by our Investigator for the distress and inconvenience he experienced is fair.

Putting things right

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and direct Close Brothers to:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr B.
- Refund Mr B's deposit/part exchange contribution of £150.
- Pay £504 directly to Mr B, or contact the garage, to pay the invoice for the gearbox inspection.

- Refund all of Mr B's finance payments from 8 January 2024, to the date the complaint is settled.
- Pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- Pay a further amount of £200 for any distress or inconvenience that's been caused due to the faulty goods.
- Remove any adverse information from the customer's credit file in relation to the agreement.

If Close Brothers considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr B's complaint.

Close Brothers Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 March 2025.

Andy Burlinson
Ombudsman