

## The complaint

Mr H complains about the quality of a car he has been financing through an agreement with Close Brothers Limited, trading as Close Brothers Motor Finance (who I'll call Close Brothers).

## What happened

Mr H took receipt of a used car on 19 June 2023. The car was a little over six years old and the finance agreement Mr H entered into with Close Brothers to fund the car said it had completed 39,827 miles.

On 5 July 2023 Mr H took the car to a third party garage who initially diagnosed a problem with cylinder compression and also noted problems with the clutch and a gear box leak.

An independent inspector confirmed the presence of those faults in August 2023 and the dealership agreed to repair the problems. Mr H says that they fixed the clutch but when he got the car back in October 2023 it failed again. Mr H had the car recovered to his home address as it wasn't, and remains, undriveable.

Close Brothers didn't uphold Mr H's complaint. They noted that the third party garage had suggested the car had "*suffered from abuse*" and "*driver error or misuse*".

Our investigator disagreed. He thought it more likely that the faults were present or developing when the car was supplied to Mr H and he suggested that Close Brothers should now allow him to reject the car.

The complaint has been referred to me, an ombudsman, for a 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.

I know it will disappoint Close Brothers, but I agree with the investigator's opinion. 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 H 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 H. The car here was a little over six years old and had completed about 39,000 miles.

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, unless they can demonstrate otherwise.

Mr H had the car for a little over two weeks before he first reported issues with the engine and clutch. He appears to have completed about 1,250 miles in that time. That wasn't much time within which he could have caused that amount of damage through any alleged misuse.

The third party garage who looked at the faults haven't been able to come to a conclusion about whether the damage was incurred before or after Mr H took receipt of the car. I note that they think it unlikely that Mr H wouldn't have noticed problems during a test drive, considering the amount of damage they identified on the fly wheel and clutch, but I can see that they explained in their September 2023 report to the supplying dealership, that the clutch had not failed. I don't think it, therefore, follows that Mr H would necessarily have noticed any clutch fault that was present, and I note that the independent inspector didn't think so either, although I accept his report was provided on the basis of a more limited inspection.

On balance, I don't think Close Brothers have been able to provide sufficient information to demonstrate that the car wasn't faulty when it was supplied. As a repair has already been attempted but has failed, they should now allow Mr H to reject the car.

Close Brothers should collect the car at no cost to Mr H and they should end the finance agreement.

They'll need to refund any deposit Mr H has paid and, as he's been deprived of that money, they will need to add interest to that refund.

Mr H had to pay a third party garage to have the faults diagnosed. Close Brothers should refund the £84 that cost, and they should add interest.

Mr H has been inconvenienced by these issues. He's had to have the faults diagnosed and has had to make arrangements to be present for an independent inspection. He's needed to get the car recovered and he's also had to escalate his complaint to this service when I think it could have been resolved earlier. In those circumstances, Close Brothers should pay him £250 compensation for the distress and inconvenience he's experienced.

Mr H has had very little use of the car since July 2023. It broke down shortly after he collected it from the garage in October 2023. On that basis I think Close Brothers should refund all payments he's made towards the finance agreement since July 2023 (inclusive),

They'll need to add interest to that refund too.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Close Brothers Limited to:

- Allow Mr H to reject the car and end the finance agreement.
- Collect the car at no cost to Mr H.
- Refund any deposit that has been paid and add 8% simple interest\* per year from the date of payment to the date of settlement.
- Refund all finance instalments paid since July 2023 (inclusive) in respect of loss of use. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Refund the £84 Mr H spent on his diagnostic report. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Pay Mr H £250 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to Mr H's credit file in relation to this issue.

\*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 H to accept or reject my decision before 18 July 2024.

Phillip McMahon  
**Ombudsman**