

The complaint

Mr T complains about the quality of the vehicle supplied to him by Close Brothers Limited ("Close Brothers").

What happened

Mr T entered into a conditional sale agreement with Close Brothers in August 2023 to acquire a used car. The car was around 12 years old and had covered approaching 94,000 miles when it was supplied.

In November 2023, Mr T raised concerns having been advised by an independent garage that there was a major oil leak in the engine. He raised a complaint about this with Close Brothers towards the end of November 2023. He also mentioned some issues with the brakes.

Close Brothers arranged for an independent engineer to inspect the car in early December 2023, and the mileage at this point was noted as being 99,387. After some confusion about how long Mr T had had the car, the engineer confirmed that whilst there was an oil leak, in their opinion, this most likely wasn't present or developing when the car was supplied and had developed more recently, most likely since Mr T was supplied with the car. They also said that the rear brake discs were 100% worn. They said they could not take the vehicle for a road test as it had illegal window tints on both front doors, and they couldn't confirm the oil levels in the vehicle. Finally, they noted some damage around the pre catalytic filter, saying there was a large cut to the assembly which they suspected was tampering.

Close Brothers relied on this report and didn't uphold the complaint. They issued their final response letter (FRL) on 24 January 2024 confirming their findings.

On 26 January 2024, Mr T had the car inspected at a main dealer, who produced a report which said the car had been remapped and modified with a catalytic converter/dpf filter having been removed.

Mr T brought his complaint to our service at this point, and it was investigated. The investigator didn't uphold the complaint, saying that they weren't persuaded that the oil leak was present when the car was supplied, and was likely to be wear and tear on a car of this age and mileage. They also confirmed they couldn't accept that the car had been mis sold due to the remapping/modification issue, because there was no proof it had occurred before Mr T owned the car, indeed there was no proof of when it had happened, and they felt that as these issues weren't mentioned on any of the previous job sheets or the engineers report about the car, they weren't persuaded that the car had been supplied with these modifications.

Mr T supplied further evidence, in the form of messages from a garage which previously carried out MOTs on the car, before Mr T had been supplied it. They said they had spoken to the previous owner who had said the modifications were present then.

The investigator considered this new evidence but still didn't uphold the complaint, saying

that this evidence was not persuasive as it was just some text messages, and there was no proof that they were true. Mr T asked for an Ombudsman to make a final decision, so the case was passed to me to make that 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr T was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Close Brothers are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Close Brothers can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr T to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr T took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Close Brothers to put this right.

Mr T was given his first opinion by the investigator in April 2024, and then subsequently after supplying more evidence, this was updated in June 2024. In July 2024 he came back to tell us there were more problems with the engine, and he had been quoted £9,000 for repairs, but I don't think it's reasonable for us to consider any further issues so long after he originally complained to Close Brothers, and they gave their final answer. He sent a video showing a mechanic showing a leak from the coolant system, but I'm not considering this as it's not been raised with Close Brothers. Mr T can raise a complaint about this to Close Brothers if he chooses to do so.

The issues raised whilst Close Brothers were investigating the complaint were the oil leak, the brakes, and then the modifications to the car. I will deal with each in turn.

Firstly, the brakes. Brakes are a wear and tear item, and Mr T had covered approaching 6,000 miles before complaining of an issue. The independent engineer identified that the rear brake discs were 100% worn, and this is most likely the cause of the issue. I'm satisfied that these were legal when the car was supplied as it passed an MOT shortly before supply.

They would seem to have worn out during the near 6,000 miles Mr T has covered since the car was supplied. Wear and tear parts are to be expected when buying any car, and for a car 12 years old and approaching 100,000 miles, they are a normal maintenance cost of owning a car. I'm not upholding this concern.

Most of the problems appear to have been caused by an oil leak. I give most weight to the independent inspection here, which identifies the leak, and concludes that it's most likely that it was not present or developing at the point of sale and has developed during the near 6,000 miles use that Mr T has had since the car was supplied. Unfortunately, for a car that is twelve years old, and has covered approaching 100,000 miles, these kinds of issues are more likely, and form part of owning a car of this age and mileage. A reasonable person would say that things like oil leaks will be likely to happen with an older/higher mileage car and they wouldn't make the car of unsatisfactory quality.

As described in the CRA, when a fault develops inside the first six months, it is for the business to prove that it wasn't present or developing at the point of sale. In this instance, I am satisfied that the independent engineer report confirms that the oil leak wasn't likely to be present or developing at the point of sale. Alongside this, I don't think an oil leak at this age and mileage shows a lack of durability. It's part of the general wear and tear and maintenance required when owning an older and higher mileage car.

The final issue raised is the modifications/remapping of the car. Mr T has said this must have happened before he bought the car. Firstly, none of the problems described with the car would seem to have any link to these modifications, so this isn't a question of proving the car is of unsatisfactory quality. A car that has been modified and/or remapped can be fine, these changes don't in themselves make the car of unsatisfactory quality.

Mr T has said the car was mis sold to him, as he didn't know it had been modified or remapped. He's provided some text messages which are apparently with the garage which carried out three MOTs on the car prior to Mr T being supplied with the car. They suggest that they've spoken to the previous owner of this car for him, who said it was modified when they owned it.

I've thought about this, and I'm afraid I'm not persuaded that this is adequate evidence to prove to me that the car was already modified without his knowledge when sold to Mr T. Even if it was true, the message also says that the dealership, when this individual part exchanged the car, had said they would put the car back to normal before selling it on. So, it's possible they set the car back to normal, and it was remapped again by Mr T. It's also possible that Mr T knew it was modified and chose to buy it anyway.

But fundamentally, this is text messages from an unrelated garage to this contract, quoting a third party who is apparently the previous owner of the car. I can't be satisfied that any of these parties are who they say they are, or that anything they say is correct. Mr T believes that it isn't fair that he must try to prove the modifications were present when he bought the car. I agree with the investigator who said that they'd have expected a previous job sheet or report on the car to have highlighted these modifications if they were already in place.

Alongside this, Mr T had the opportunity to inspect the car before purchasing it, which would have shown these modifications if he had chosen to do so himself, or he could have arranged for a mechanic or similar to look at it with him.

Finally, with regards to the car potentially being mis sold, in law this would be about a misrepresentation, which persuaded Mr T to enter into the contract for the car. To be misrepresentation, Mr T would need to have been told something about the car, which proved not to be true, and which persuaded him to enter into the contract. In this case,

there's no suggestion that this happened, Mr T hasn't said or provided evidence that he was told the car was unmodified for example.

When acquiring a used car of this age and mileage, it would fall upon the purchaser to carry out the amount of checks they see fit to ensure the car was fit for their purpose. The car had passed an MOT, so was road worthy. Wear and tear of parts of a car, particularly when its this age and mileage, would be expected, so a consumer may decide to do more checking of the car including the engine to satisfy themselves the car would meet their needs.

Mr T has commented on the three-month warranty he had not covering a lot of the repairs needed, but this warranty doesn't form part of this finance agreement, so I won't be commenting on it.

I empathise with Mr T for the subsequent problems he's had with the car, but don't agree that Close Brothers are responsible for the repairs required on the car, or that it was mis sold to him. He's had the car for several months and covered near 6,000 miles before complaining, and I'm satisfied that the faults were down to wear and tear for a car of this age. I'm not persuaded that the car was supplied to him with modifications that he didn't know about, as on the balance of probabilities, it feels more likely that modifications were carried out after the car was supplied to him.

Close Brothers did offer to contribute towards some of the repairs as a gesture of goodwill, but I don't now know if the car is on the road or not now after some of Mr T's comments. If Mr T would like to discuss this with Close Brothers, I invite him to speak to them directly. But I won't be asking Close Brothers to do anything more here.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 April 2025.

Paul Cronin
Ombudsman