

Complaint

Mr S has complained about the quality of a car that Close Brothers Limited (trading as "Close Brothers" Motor Finance) supplied to him through a conditional sale agreement.

Background

In November 2022, Close Brothers provided Mr S with finance for a used car. The car was just over nine years old and had completed 59,150 miles. The cash price of the vehicle was £7,295.00. Mr S paid a deposit of £1,000.00 and applied for finance to cover the remaining £6,295.00 he required. Close Brothers accepted Mr S' application and entered into a 60-month conditional sale agreement with him.

The loan had an APR of 22.2%, interest, fees and total charges of £3,755.60 (made up of interest of £3,405.60, an acceptance fee of £340 and a title transfer fee of £10) and the balance to be repaid of £10,050.60 (which does not include Mr S' deposit) was due to be repaid in 60 monthly instalments of £167.51.

Mr S says he asked the supplying dealer whether the car had been serviced. He says he was told that it had and the service history would be provided by post which it never was. In November 2023, Mr S started hearing noises from the engine. As a result, Mr S contacted Close Brothers and he was told to visit a garage. Mr S did so and the garage confirmed that the wet belt had worn to the extent that it had damaged the engine. Mr S complained to Close Brothers saying that the car was not of satisfactory quality when Close Brothers supplied it to him.

Close Brothers didn't uphold Mr S' complaint. It said that Mr S hadn't provided any evidence to show that the car had a fault, or that one was developing at the point that it was supplied to him. Mr S remained dissatisfied with Close Brothers' response and referred his complaint to our service.

Mr S' complaint was reviewed by one of our investigators. She thought that Close Brothers had supplied Mr S with a vehicle that was of satisfactory quality. So she didn't recommend that Mr S' complaint be upheld.

Mr S disagreed with our investigator. So the case was passed to an ombudsman as per the next stage of our dispute resolution process.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied that what I need to decide in this case is whether the car supplied to Mr S was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Close Brothers to do put things right.

At this point it may also help for me to explain that I will reach my decision on the balance of probabilities. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I must reach my conclusion based on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The finance agreement in this case is a regulated conditional sale agreement, which I am able to consider complaints about. Under the conditional sale agreement, Close Brothers purchased the vehicle from the dealership Mr S visited. Mr S then hired the vehicle from Close Brothers and paid a monthly amount to it in return. Close Brothers remained the legal owner of the vehicle under the agreement until Mr S' loan was repaid.

This arrangement resulted in Close Brothers being the supplier of Mr S' vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers conditional sale agreements – such as Mr S' agreement with Close Brothers. Under a conditional sale agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory 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.

Is or was there a fault with the vehicle?

Having considered everything provided, while I accept that there may be a dispute regarding the party responsible for it, I'm satisfied that, at the time of Mr S' complaint at least, there was a fault present on the vehicle.

I say this because Mr S has provided an invoice from a garage showing that the car was checked. This check resulted in a number of advisories being listed on the invoice which required further attention. This included that there was an engine failure due to the oil pressure and the wet belt looked like it had never been changed. The garage suggested that the car required a replacement engine as a result.

Mr S has provided evidence to show that, in the period between our investigator issuing her assessment and the case being allocated to an ombudsman, the engine has since been replaced on the car. So I'm satisfied that there was a problem with the oil pressure in the engine, which resulted in the engine on the car needing to be replaced before it was able to function.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied was present on the vehicle at the time of Ms S' complaint, means that the car wasn't of satisfactory quality at the point of supply.

Was the vehicle that Mr S was supplied with of satisfactory quality?

For the reasons I've explained, it is clear that there are now issues with the vehicle. But just because things might have gone wrong with the vehicle, it doesn't automatically follow that it wasn't of satisfactory quality when it was initially supplied to Mr S. I've therefore considered whether the issues Mr S has experienced means that the car wasn't of satisfactory quality at the time of supply.

The initial invoice (from December 2023), from the garage Mr S took the car to, suggests that it investigated an oil pressure fault and that it had also been told that the car was running rough. The garage's investigation concluded that there was an engine failure because it had low oil pressure. The invoice goes on to state that the wet belt looked like it was very old and breaking up badly.

I understand that the garage believed that the issues with the wet belt were responsible for the engine failure. In the absence of any other evidence to the contrary, I'm prepared to accept that this is the case. Mr S has argued that this means that the car wasn't of satisfactory quality as the wet belt caused the engine failure and he'd been told that it had been changed before he acquired the vehicle.

For the sake of clarity and as this has some effect on whether the car was of satisfactory quality when the car was supplied, I've started by considering what, if anything, Mr S was told about the wet belt and led to believe about it, around the time the car was supplied to him.

Was Mr S directly told, or misled into believing, that the wet belt had been changed on the car?

Mr S has provided a copy of the sales advert he saw before visiting the supplying dealer in order to support his position. I've considered what Mr S has said and have looked at the copy of the sales advert he has provided.

In the first instance, I would say that I'm reasonably satisfied that the advert Mr S has provided, is a copy of the advert or is, at least, a close representation of the advert that Mr S saw prior to Close Brothers supplying the car to him. I've also noted that the sales advert states:

*"Each vehicle goes through a wide-ranging multipoint mechanical inspection with any items that require attention taken care of before delivery (including larger items **such as cambelt change¹ if required** [my emphasis])".*

I think it's fair to say that if the wet belt had been due to be changed around the time of the sale, this change would have been required. Therefore, bearing in mind the content of the sales advert, Mr S would quite reasonably have believed that the wet belt had been changed if this had been due around this time.

I've therefore considered whether the wet belt was due to be changed around the time Mr S took custody of the car. In order to do so, I've looked at the manufacturer's guidelines on the service intervals for the car and what needs to be carried out at the time of each particular service. In relation to timing/wet belts, the manufacturer's guidance is that the belt is changed the earlier of every 150,000 miles, or every ten years.

As I've previously explained, when Close Brothers supplied the car to Mr S it had completed around 59,000 miles. And bearing in mind the car's age it will have had its nine-year service. So while there was nothing to prevent the wet belt from being replaced as part of the service, which for the avoidance of doubt Mr S accepts was carried out, this would have been ahead of schedule.

It's also fair to say that wet belt was due to be replaced when the car was next due to be serviced in September 2023, as this would have been its ten-year service. Therefore, while I can understand that Mr S may be frustrated at having purchased the car in between these services, I cannot reasonably conclude that a wet belt replacement was required when the

¹ A wet belt is a form of cambelt.

car was supplied in November 2022. And in these circumstances, I don't think that the sales advert provides a clear expectation that the wet belt will have been replaced.

I appreciate that Mr S says that he was, in any event, told that the wet belt had been changed. I don't know if Mr S is saying that he directly asked this question and was told the wet belt had been changed. Or if he relied on the content of the advert, as what he says he was told about the belt being changed has the context of referring to what he's described as the supplying dealer's false advertising.

In any event, I simply don't have sufficient evidence to corroborate what Mr S says he was told. I say this particularly as he accepted delivery of the car without the service history in November 2022. I appreciate that the events since Mr S took delivery of the car and the issues with the wet belt may have heightened the importance of what may or may not have been discussed at the time. But it's difficult for me to conclude that the service history and the wet belt having been replaced, ahead of schedule, was as important to Mr S, as he now says it was, when he left the supplying dealership without it.

In circumstances, where Mr S did not contact Close Brothers, like he did when the car required repair, about the lack of documentation to support that the wet belt was replaced and there is no mention of the car being supplied with a full service history in the advert either, I simply don't have sufficient evidence to be able to conclude that Mr S was told the wet belt had been replaced prior to him acquiring the car.

Notwithstanding the fact that the wet belt wasn't replaced, does the fact that it failed in November 2023 mean that it was defective at the time that the car was supplied, or that it wasn't durable?

Even though I've not been persuaded that Mr S was told that the wet belt was replaced on the car prior to it being supplied to him complained, it doesn't automatically follow that the car was of satisfactory quality when it was supplied to Mr S. After all, a couple of the aspects of section 9(3) of the CRA and whether goods supplied were of satisfactory quality relate to the goods being free from minor defects and also being durable.

This in effect means that there is an expectation that any goods (and by extension the components making them up) should not be defective and that they should last a reasonable period of time. I've therefore considered whether the wet belt on the car was either defective, or not sufficiently durable.

In doing so, I have to keep in mind that Mr S took possession of a car that was not only used, but it was just over nine years old when it was sold and had completed just under 60,000 miles. There are clearly different expectations regarding the expectations of quality when comparing a vehicle which has had some use, to a new car. I think it's fair to expect an older car will require repair or maintenance work sooner than a newer or less used model.

It's fair to say that the garage's invoice has concluded that the worn wet belt is likely to be responsible for the oil pressure problems and engine failure. However, the garage hasn't provided an opinion on the likely state of the wet belt at the time the car was supplied, or more importantly hasn't stated that the wet belt was excessively worn to the extent that it was defective at that point either. Equally, Mr S hasn't been able to provide an independent report or anything else which clearly states that the wet belt was excessively worn or defective, for some other reason, when the car was supplied to him either.

I'm also mindful that the invoice has Mr S supplied from his garage states the mileage at the time the invoice was prepared was 72XXX. I don't know why the garage has been imprecise.

Nonetheless, I take what has been stated on the invoice to mean that the mileage was between 72,000 and 73,000 miles at this time.

This means that Mr S completed over 12,000 miles of his own in the period that he had custody of the car. I think it is unlikely that Mr S would have been able to travel 12,000 miles in the car had the wet belt had been excessively worn to the point that it was defective, at the time Close Brothers supplied the car to Mr S. So, in the absence of any independent evidence suggesting otherwise, I've not been persuaded that Close Brothers supplied Mr S with a car that had a defective wet belt.

I've also considered whether the wet belt was durable, notwithstanding the fact that it wasn't defective when the car was supplied. However, a wet belt is considered to be a serviceable item and as this is the case there is an expectation that it will need to be changed during lifetime of the car. I've already explained that the manufacturer guidelines are that the wet belt is changed at the earliest of every 150,000 miles, or every ten years. I've also explained that the wet belt wasn't due to be changed at the time the car was serviced prior to being supplied to Mr S in November 2022.

However, by the time of the next service, which would have been due in or around September 2023 (which was a couple of months prior to Mr S having issues), the car will have been ten years old. Therefore, while the car might not have done 150,000 miles by then, based on the manufacturer's guidelines, the wet belt will have been due to be replaced as the car was now ten years old.

It's unfortunate that the wet belt was due to be changed a few months after Mr S acquired the car and I can understand why Mr S is unhappy with it failing. But given the wet belt failed past the point when the manufacturer recommended that it should be changed, I'm satisfied that it was durable.

For the sake of completeness, I would also add that in the absence of any other report or equivalent suggesting that the engine failure was related to some other issue present at the time the car was supplied to Mr S, I'm unable to say that the car was not of satisfactory quality for some other reason either.

Overall and having considered everything that Mr S has said as well as everything he has provided, in relation to the issues he's had with the vehicle Close Brothers supplied to him, I've not been persuaded that was misled, or that he was supplied with a car that was not of satisfactory quality.

I've been provided with sufficient evidence to be persuaded that the supplying dealer told Mr S that the wet belt had been replaced on the car. I've not been persuaded that this could be reasonably inferred from the content of the sales advert that Mr S has provided either. Furthermore, I've not been persuaded that the wet belt on the car was worn to the point it was defective at the time of supply, or that it wasn't durable.

The information I've been provided with leads me to think that the issues Mr S has had are related to the general wear and tear a car of such age and which has had as much use would reasonably be expected to have. I accept that the issues may have deteriorated after Mr S was supplied with the car. However, this is be expected as the vehicle's age and use increased over this time. Bearing all of this in mind, I've not been persuaded that the car Close Brothers supplied to Mr S in November 2022 was not of satisfactory quality and it follows that I'm not upholding Mr S' complaint.

I appreciate that this is likely to be very disappointing for Mr S – particularly as the car wasn't operational for some time and he's had to pay for repairs before he could once again use it.

But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 March 2025.

Jeshen Narayanan
Ombudsman