

The complaint

Ms B complains that the car she acquired financed through a conditional sale agreement with Close Brothers wasn't of satisfactory quality.

What happened

In April 2022 Ms B acquired a car financed through a conditional sale agreement with Close Brothers.

Not long after acquiring the car Ms B experienced some problems with the vehicle which required removal of the diesel particulate filter (DPF) and a refit. Ms B raised a complaint which eventually came to our service and was upheld. In May 2023 Close Brothers agreed to repair the vehicle which by then included problems related to the gasket, turbo and timing chain.

Ms B then experienced further issues with the car's turbo which was repaired under warranty. In January 2024 the car engine seized and was recovered to the dealer. The car required a new engine. Close Brothers arranged another independent inspection but did not uphold Ms B's complaint, so it came to this service.

Our investigator issued a view upholding the complaint. She concluded there was something wrong with the car and that it wasn't of satisfactory quality when it was supplied. She concluded that the evidence provided and the testimony from the third-party garage indicated the replacement turbo had failed prematurely which had resulted in the engine seizing, caused by an oil leak. She said Close Brothers should allow Ms B to reject the car. She recommended a refund of deposit and rentals and an award for the distress and inconvenience caused. She also recommended adverse information related to the agreement be removed from Ms B's credit file.

After receiving the investigator's view Ms B provided this service with new information concerning a change in circumstances. Ms B explained that the car had to be moved from the garage it was in, so she had it collected and had repairs done on the car to get it 'driveable'. She said scrap parts were used. But that all the warning lights were still on and all the faults were still present. She then informed us that the car had been stolen and that the matter was in the hands of the police and insurance company. She said the insurance company had offered her £10,800 for the value of the vehicle and would settle the finance.

Because of the change in circumstances our investigator issued a second view not upholding the complaint. She said she could no longer ask Close Brothers to settle the agreement as it was an insurance matter. She said as Ms B had informed our service that repairs had been done and she was able to drive the car, and now the car was stolen it wasn't possible to establish if there was further damage or wear and tear to the vehicle. Ms B didn't agree and asked for a decision from an ombudsman.

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 realise this will come as a disappointment to Ms B but having done so I won't be asking Close Brothers to do anything further for the reasons I've outlined below.

In considering what is fair and reasonable I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. Ms B's conditional sale agreement is a regulated consumer agreement and as such this service can consider complaints relating to it.

Close Brothers, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Ms B. Whether or not it was of satisfactory quality at that time will depend on several factors, including the age and mileage of the car and the price that was paid for it. The car that was supplied to Ms B was about six years old and had been driven approximately 87,000 miles. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on several factors.

If I am to decide the car wasn't of satisfactory quality, I must be persuaded faults were present at the point of supply. Faults that developed afterwards are not relevant. Moreover, even if the faults reported were present at the point of supply this will not necessarily mean the car wasn't of satisfactory quality. This is because a second-hand car might be expected to have faults, for example tyres may be damaged from wear and tear but this will not necessarily mean the car is not of satisfactory quality.

Is there a fault?

I've looked through the evidence including the independent inspection (August 2024) and explanations of faults related to previous repairs from the garage estimate (July 2024) and it does seem that when Ms B brought the complaint to Close Brothers there was likely a fault with the vehicle.

However, since then, while the complaint was being investigated by this service, Ms B has said she has had the car repaired to some extent (driveable) using scrap parts. It's not clear to me when the car had this repair between August and October, and what the mileage is on the vehicle and how much Ms B was able to drive it. Ms B said the car was driveable but there were still fault codes after the repairs, but I've seen no evidence to support this. As the car was stolen it is no longer possible to assess what repairs were done, whether they were done correctly or whether they have caused further damage or wear and tear, especially given scrap parts were used. So, I'm not able to say with any degree of certainty there is a fault with the vehicle.

Satisfactory quality at the point of supply?

As I'm unable to say if the vehicle has a fault, it follows that I am unable to conclude it wasn't of satisfactory quality at the point of supply. In addition to this the situation with the car is now in the hands of the insurance company who will be arranging financial settlement if appropriate, if it hasn't already done so. So, it wouldn't be fair or reasonable to ask Close Brothers to do anything further.

Ms B has explained the impact the vehicle failing in January has had on her and the distress this has caused. She has also said she's incurred costs for hire cars and insurance costs on her daughter's policy so she could drive her car. I'm sorry to hear this and I do understand her situation. But due to the change in circumstances between August and October I am

unable to say that the car wasn't of satisfactory quality so it wouldn't be fair or reasonable for me to instruct Close Brothers to refund these costs.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 24 February 2025.

Maxine Sutton
Ombudsman