

The complaint

Miss A complains that a used car she acquired through a conditional sale agreement financed by Close Brothers Limited trading as Close Brothers Motor Finance ('Close Brothers') is of unsatisfactory quality.

What happened

In February 2023 Miss A took out a conditional sale agreement to cover the cost of a used car. The car cost £7,975. It was just under ten years old and had around 55,500 miles on the odometer.

Miss A said she was unable to reverse and had problems changing gears in late May 2023. She took the car to a third-party garage (garage A) who undertook repairs to the dual clutch and actuator B clutch. In early July the engine management light (EML) came on. Miss A said the tachometer showed high revolutions while driving and the car was juddering. She took the car back to garage A, who diagnosed a faulty sensor. They referred Miss A to another garage (garage B) as they couldn't undertake the required repair themselves. Garage B replaced a knock sensor on 12 July 2023.

Miss A contacted Close Brothers on 11 July 2023 to tell them about the problems she'd been experiencing. Although Close Brothers treated Miss A's call as a complaint and contacted the dealership Miss A acquired the car from, it doesn't appear anything else was done.

Miss A called Close Brothers again on 18 September 2023. She said the EML had come back on, and the car was juddering through lower gears. Miss A said she could no longer drive the car and was looking to reject it. On 26 September 2023 Close Brothers instructed an expert to carry out a full inspection of the car. The expert's report confirmed that the car was suffering from erratic gear changes and clutch control. It noted that the electronic control unit had stored fault codes relating to the clutch actuator. It was the expert's opinion that further investigation was required, but that the faults Miss A reported related to an unsuccessful repair by the third party.

Close Brothers then issued their complaint response in January 2024. They said that based on the expert report the faults weren't deemed to have been present at the point of supply, and so they didn't uphold this aspect of Miss A's complaint. Close Brothers acknowledged the delay in giving an answer to Miss A's complaint and said they'd pay her £250 for the distress and inconvenience this caused her.

Miss A referred her complaint to our service, where one of our investigators looked into what had happened. While the investigation was ongoing, the dealership who supplied the car agreed to take it back and settle Miss A's finance agreement. Miss A accepted this but said she would like our investigation to continue.

Our investigator concluded that the fault that occurred in May 2023 was present or developing at the time of supply, and so Close Brothers should reimburse Miss A for the repairs she'd paid for, along with a partial refund of the rentals Miss A paid while she had restricted use of the car. The investigator also said Close Brothers should pay Miss A £150

for the trouble and upset caused due to the faulty goods.

Miss A agreed with the investigator's findings, but Close Brothers did not. They said Miss A hadn't given them the chance to repair the car, and so they shouldn't have to reimburse Miss A for the repair costs she'd incurred. Our investigator considered what Close Brothers said, but it didn't change her view of what'd happened. Close Brothers asked for an ombudsman to consider the complaint – and it came to me.

I issued a provisional decision on 26 November 2024, saying I was inclined to uphold Miss A's complaint in part. In that I said:

"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'm inclined to reach a different outcome to that of our investigator. I'll explain why. In doing so I'm going to focus on what I think is the key issue and the crux of Miss A's complaint. This reflects the informal nature of our service.

The Consumer Rights Act 2015 (CRA) is relevant here. It says, amongst other things, that the supplier, (in this case Close Brothers), needs to make sure that goods are of satisfactory quality at the point of supply. When considering what amounts to satisfactory quality, the standard applied is that of a 'reasonable person'. In other words, what a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant factors. In cases involving a car, I think it's likely that the relevant factors a court would take into account might include things like the cost, age, mileage at the time of supply and durability.

Here, Miss A acquired a used car that cost £7,945. It was just under ten years old and had around 55,500 miles on the odometer. I think a reasonable person would expect a car of that age and mileage to have more wear and tear than a new car. And that it may need repair or maintenance sooner than a newer car would.

It no longer seems to be disputed that the car wasn't of satisfactory quality at the time it was supplied. In their response to our investigator's view, Close Brothers said the clutch had failed prematurely at around 56,000 miles and the dealer accepting the unwind of the agreement is acknowledgment of this. I don't think I need to go into significant detail here. But having read the expert report dated 28 September 2023, along with the other evidence, I also agree this was the case, given the low mileage Miss A had travelled before the clutch failed, and the overall mileage of the car at that point. This would indicate the clutch wasn't durable, meaning the car was of unsatisfactory quality at the time of supply.

So, I'll focus on what Close Brothers need to do to put things right for Miss A, which is what remains in dispute. Miss A said the car stopped working properly around 30 May 2023. She couldn't reverse and the gears weren't changing as expected. There is limited information available about exactly what happened here. I've not seen any diagnostics or investigation reports, or an invoice for the work undertaken. Miss A said that garage A carried out repairs to the dual clutch and actuator B clutch. And the expert report said that a visual inspection of the car in September 2023 showed that work had been done to the clutch.

I've thought about this carefully. Based on what I've seen I'm not inclined to say Close Brothers should reimburse Miss A for the cost of the repairs. I'll explain why. I think it's clear from what Miss A said that there was a problem with the car. But there's no evidence to show what garage A's inspection found and why the repair

was required. I'm mindful here that the car broke down again just over a month after the repair, so it doesn't appear that garage A's repair was successful. I don't think it's reasonable to ask Close Brothers to pay for the repair as it wasn't carried out on behalf of Close Brothers or at their suggestion. I'm also mindful here that the repair ultimately doesn't appear to have fixed the problem.

Close Brothers said they didn't get the chance to inspect the vehicle and carry out repairs in May 2023. Miss A told us the car only had a one-month warranty and so she assumed the dealership wouldn't be able to help. But I think it would've been reasonable for Miss A to have at least contacted Close Brothers as owners of the car to tell them what had happened, and to ask if they could help. Miss A chose not to do this and instead arranged for the repairs to be done herself. In doing so, Miss A denied the Close Brothers the opportunity to put things right. Overall, I don't think it would be fair or reasonable to ask Close Brothers to reimburse Miss A the repair costs she incurred in May 2023.

Following the repairs Miss A was able to use the car until 5 July 2023 before the EML came on again. She reported high revolutions when driving the car and juddering during gear changes. It's worth noting there is again a lack of evidence from this point. Miss A said she took the car back to garage A and they diagnosed a NOx sensor fault. She provided an invoice from garage B, which shows they replaced a knock sensor.

NOx sensors and knock sensors are distinctly separate parts that fulfil different functions. So, there's some discrepancy here about what repair was needed in July 2023. And I've not seen any diagnostics or investigation reports from either garage A or B regarding the matter. Issues with either the NOx or the knock sensor would lead to the engine light illuminating, leading to a MOT fail. The car passed its MOT two days after Miss A acquired it, so I'm inclined to say that the fault with the sensor – whether NOx or knock – wasn't present at the time of supply.

There's a question of durability though, as knock sensors are generally expected to last for the lifetime of a car, whereas NOx sensors have a typical life span of 100,000 to 150,000 miles – and the car Miss A acquired had travelled around 56,000 miles at that point. This would speak to the satisfactory quality of the car, and as set out above, this point appears to have been resolved.

Given the lack of evidence of what repair was required I'm not persuaded that the replacement sensor was necessary. I'm also mindful here that the replacement sensor doesn't appear to have resolved the problems Miss A was experiencing with the car, as the EML came on soon after the replacement. Taking all this into account, I don't intend to ask Close Brothers to reimburse Miss A for the repairs garage B undertook in July 2023.

Miss A said the EML came on again on 16 September 2023 and she called Close Brothers as she no longer had funds to repair the car. Miss A said she'd not driven the car since then and it doesn't appear that she incurred any repair costs during this time. She did however continue to pay the monthly rentals to Close Brothers. The car's MOT records support what Miss A said about her use of the car between September 2023 and February 2024. So I'm inclined to say Close Brothers should refund Miss A's rentals from 16 September 2023 until the date the agreement was settled.

While there clearly were problems with the car before September 2023, I can see Miss A was able to drive the car – so I think it's fair for Close Brothers to keep the

majority of the monthly rentals Miss A paid during that period. But it's clear that the car wasn't performing in the way it should have between 30 May 2023 and 16 September 2023, and this affected Miss A's driving experience. And so, I think Close Brothers should refund 10% of the payments Miss A made during that period to account for the impaired use of the car.

It's not clear from the evidence I have whether the settling of the finance agreement included a refund of the £1,000 deposit Miss A paid when she acquired the car. If this wasn't refunded, Close Brothers should do so now.

Being supplied with a car that wasn't of satisfactory quality resulted in multiple trips to the garage, and this will have caused Miss A some distress and inconvenience. All things considered, I think Close Brothers should pay Miss A £150 to compensate her for the upset caused."

Both parties responded and said they accept my provisional decision. Miss A added that she'd not yet received her deposit back.

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.

As both parties accepted the provisional decision, I've got nothing further to add – my findings are unchanged from those set out above.

Putting things right

I uphold this complaint. To put things right for Miss A, Close Brothers should now:

- refund 10% of each monthly rental payment Miss A paid between 30 May 2023 and 16 September 2023;*
 - refund the monthly rental payments Miss A made from 16 September 2023 to the date the agreement was settled;*
 - refund Miss A's deposit of £1,000, if this hasn't been done already;*
 - pay a further amount of £150 for any distress and inconvenience that's been caused due to the faulty goods;
 - remove any adverse information from Miss A's credit file in relation to the agreement.
- *Close Brothers should pay 8% simple yearly interest on these amounts from the date of payment until the date of settlement. If Close Brothers considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss A how much it's taken off. It should also give Miss A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I'm upholding Miss A's complaint. Close Brothers Limited trading as Close Brothers Motor Finance need to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept

or reject my decision before 3 January 2025.

Anja Gill
Ombudsman