

The complaint

Ms W is unhappy that a car supplied to her under a conditional sale agreement with Close Brothers Limited was of an unsatisfactory quality.

What happened

In April 2024 Ms W was supplied with a used car through a conditional sale agreement with Close Brothers. The agreement was for £12,614 over 60 months; with 59 monthly payments of £210.08 and a final payment of £220.08. At the time of supply, the car was around four years old, and had done 95,101 miles.

Ms W complains that the car became unroadworthy due to mechanical issues. She said this happened in July 2024. She said she had travelled 5,000 miles since she acquired the car. She said she took the car to an independent garage. She said it reported that the car required a new engine, and that the cost of this wasn't proportionate. She supplied a copy of the report that stated that the camshaft chain had broken.

She complained that the car also had an oil leak, and the tyres were perished.

Close Brothers said that they had arranged for an independent inspection, and this was done in August 2024. They said the report identified the fault was a camshaft fracture and the most likely cause was wear and tear. They said the report said the wear and tear was not premature as the car had now done more than 100,000 miles. The report also said that there was no evidence to suggest the car had an underlying condition at the point of sale.

So they did not uphold Ms W's complaint. They said they did pay her £150 for the distress caused by the delay in having an inspection done.

Ms W was unhappy with this response, so she referred her complaint to our service for investigation.

Our investigator said the independent report didn't identify the cause of the fault. She said it only offered wear and tear as a conclusion. She said she felt the report failed to describe any reasonable basis how this conclusion had been reached. She said the report also failed to comment on other faults found in the car's ECU.

She said Ms W should be able to reject the car as Close Brothers had failed to prove that the car was of satisfactory quality when it was supplied to Ms W.

Close Brothers didn't agree with the investigator. They said the independent report clearly stated the car would have been fit for purpose at the time of purchase and of a satisfactory standard, and the issues were as a result of wear and tear through general usage. They also said that in the time Ms W had the car she had done above average mileage, and she had travelled an additional 807 miles after reporting the fault.

Close Brothers also supplied further comments from the independent engineer. It confirmed that the oil leak was due to oil seepage which was normal for a car of this age and did not

affect the car's roadworthiness. It also reported on the other fault codes listed on the report. It said that some of these were related to the engine failure, and that these were a consequence of the failure, and not the cause of the issues.

It stated that "quite categorically" the cause of the camshaft failure was age and mileage related.

Our investigator issued a second view, still upholding Ms W's complaint and recommending she be able to reject the car. She said the independent reports supplied by Close Brothers and by Ms W both said the only way to determine the cause of the engine failure was to strip the engine down. She said that, whilst accepting components fail over time, that because it failed within four months suggested the car wasn't reasonably durable when it was supplied.

Because Close Brothers didn't agree, this matter was passed to me to make a final decision.

I issued a provisional decision on 28 January 2025, where I explained my intention to not uphold the complaint. In that decision I said:

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. Ms W was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Ms W entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances.

In this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The car supplied to Ms W was just over four years old and had done more than 95,000 miles. This is significantly more than the average of around 8,000 miles a year (according to Government statistical data on the .gov website).

I think it is reasonable to expect that mechanical issues might arise in a car that has done this number of miles. So I'd expect to see wear and tear in a vehicle of that age and mileage.

The issue here is whether or not the goods were of satisfactory quality at the point of sale.

Our approach in cases like this one where the problem arose in the first six months is for the business to investigate the issue. And if they found that the issue was present or developing at the point of supply we would expect them to take action to resolve the complaint.

But we wouldn't hold them responsible for issues that were due to wear and tear.

The CRA says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. In this case Close Brothers have provided a report from a qualified and independent engineer that states that was not the case. So, on that basis, I don't intend to uphold Ms W's complaint. I'll explain why.

Ms W first reported an oil leak and issues with the tyres in July 2024, just three months after she got the car. Close Brothers arranged for an inspection to be done. There was a delay that meant the inspection wasn't done until 21 August 2024. Close Brothers paid Ms W £150

to compensate for the delay. I think that award was fair and reasonable.

In the meantime, on 5 August 2024 Ms W reported that the car wouldn't start. She said the breakdown company that attended told her the car required a new engine. This was confirmed by the independent inspection Ms W had done. In that report, the engineer says the camshaft chain was broken.

Close Brothers don't dispute there was a problem with the car. As I've explained above, the issue I have to consider is whether or not the fault with the car was present or developing at the time of sale.

So I've carefully considered the independent report obtained by Close Brothers. At the time the car was inspected, it had travelled 100,435 miles. This means that in the short time Ms W had the car she had travelled more than 5,000 miles. This included more than 800 miles travelled after she first reported faults with the car.

This is a significant number of miles in a relatively short time – but not excessive. It does confirm that Ms W had reasonable use of the car. I might ordinarily consider that Ms W wouldn't have been able to travel that many miles if the fault had been present or developing at the time she got the car.

But in making this decision, I intend to rely on the contents of the report supplied by the independent engineer. It categorically states that the fault was not developing at the time of supply. It clearly states that the fault was due to wear and tear. And I've said above, I would expect to see wear and tear in a car that had done more than 100,000 miles.

In his report, the engineer explains how the car wouldn't start and that there was a loud clicking noise present, with no visible movement of the camshaft. He said he inspected the underside of the engine and reported evidence of an oil leak. He said there was no obvious cause such as coolant or oil leaks in the engine bay, and no evidence of driver error that could have caused the issue.

He went on to explain how the camshaft fracture could have been caused by lack of oil supply, a loss of valve to piston timing, or even caused by power driving techniques. He said there was no evidence of driver error and that the most likely cause of the failure was "age-related general wear and tear and would not be considered as premature wear on a vehicle that has covered over 100,000 miles."

Importantly, he also explained that in his expert opinion, and based on his experience he was satisfied that the fault wouldn't have been present at the time of supply. He said: "there was no other evidence to suggest that the vehicle had an underlying condition at the point of sale which has induced the current symptoms leaving us to conclude that the sales agents are not responsible for the repair cost as we do not believe the current issues are anything other than the result of anything other than age-related wear and tear.

Having now inspected this vehicle, we are able to confirm that it would have been considered fit for purpose at the time of purchase and of a satisfactory standard. Although there are some underlying issues, these are the result of wear and tear through general usage and have only developed into an issue that requires rectification after purchase".

The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

So based on this report, I'm satisfied that the car was of satisfactory quality at the point of sale. I don't agree that the car wasn't sufficiently durable because it broke down within four months. At that point, the car had travelled more than 100,000 miles and this is a sign of its

durability.

As I've explained, the test here is whether or not the fault that caused the breakdown was present or developing at the time of supply. In this instance the engineer has given evidence that explains why that was not the case. So I don't think that Ms W should be allowed to end the finance agreement or receive a refund of her payments. This means that I don't intend to ask Close Brothers to take any further action to resolve this complaint.

I understand the failure of the car has caused Ms W great inconvenience and the loss of a drivable car has impacted heavily on her circumstances. I appreciate that it would have been very upsetting to find that the car she had purchased only a few months previously was now no longer working.

But I can only uphold this complaint if I find that the car was faulty when supplied. I've seen no evidence of that. So, I don't intend to uphold her complaint for the reasons I've given above.

Responses

Ms W disagreed with my provisional decision. She made a number of points including:

- The report I relied on was biased
- The burden of proof was on the seller
- The camshaft failure was premature
- It was not possible for her to detect the fault when she acquired the car
- The car became undriveable within a short time, indicating a pre-existing issue

She said that the car was not of a satisfactory quality and the dealer has not been told to repair the car, as set out in the CRA.

Close Brothers did not respond.

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've carefully considered Ms W's response to my provisional decision. She suggested that the report I relied on has been manufactured to suit Close Brother's interests. She said that a biased, self-serving report is not sufficient proof.

As I explained in my provisional decision, the diagnostic report was provided by an independent engineer, who confirmed in their declaration their duty was to the courts as an independent expert. I see no reason why I cannot rely on the report.

Ms W also said the burden of proof was on the seller. I addressed this in my provisional decision: Close Brothers would have been responsible, but they have shown through the independent report that *"there was no other evidence to suggest that the vehicle had an underlying condition at the point of sale"*. So I'm satisfied they have addressed the burden of proof point by providing evidence I find persuasive that there were no faults with the car at the time of supply that led to the breakdown.

Ms W also said that the camshaft failure was premature. She argues that it should last significantly more than 100,000 miles. That can be the case, but it is dependent on a number of factors, including the service history of the car. I've been provided with no evidence about this, so again I rely on the report from the independent engineer who's opinion was that the failure was due to age related wear and tear.

As I said in my provisional decision, I understand how upsetting it was for Ms W to find herself with a car that was no longer working a few months after she purchased it. But I'm persuaded by the report that the failure was not related to any faults that were present or developing at the time of sale.

So I am adopting my provisional view as my final decision, and not upholding Ms W's complaint. That means that Ms W should not be allowed to end the finance agreement or receive a refund of her payments, and Close Brothers don't need to take any further action to resolve this complaint.

But I do remind Close Brothers of their responsibility to take account of Ms W's circumstances and treat her with due consideration when seeking payment from her.

My final decision

For the reasons explained, I don't uphold Ms W's complaint about Close Brothers Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 19 March 2025.

Gordon Ramsay
Ombudsman