

The complaint

Miss M is unhappy that a car supplied to her under a conditional sale agreement with Close Brothers Limited ("Close Brothers") was of an unsatisfactory quality.

What happened

On 9 September 2023, Miss M was supplied with a used car through a conditional sale agreement with Close Brothers. She paid an advance payment of £5,000 and the agreement was for £16,248 over 60 months; with 60 monthly payments of £270.80. At the time of supply, the car was around six and a half years old, and was stated in the credit agreement to have done 95,000 miles.

Miss M states that she noticed the engine management light (EML) came on two days after she took possession of the vehicle and also noticed a small crack in the windscreen. She contacted the dealership who advised her to take it to a garage for investigation, which concluded that the EML illuminating was due to the glow plugs needing to be replaced. Due to availability of the glow plugs, this was not carried out until a later date however Miss M states that although following the replacement of the glow plugs the EML did temporarily disappear, it came back on the following day.

In February 2024, Miss M took the car for further investigation due to the EML remaining on. This identified a number of issues with the car including low engine oil level, turbo movement and traces of oil in the turbo and advised the DPF should be reconditioned. The investigation also identified engine oil on the undertray and the engine and found the timing chain tensioner to be leaking. The garage who had carried out the investigation recommended that Miss M drive the car on a motorway, which she did at the end of April 2024. During this journey, Miss M experienced further issues and required the assistance of a breakdown company who recovered the car. Miss M attempted to contact the supplying dealership to deal with the issues however as she was unable to obtain a satisfactory response from them, she submitted a complaint to Close Brothers on 18 June 2024. The car failed an MOT test on 22 June 2024 with a number of defects.

Close Brothers arranged for an independent inspection to be carried out which took place on 22 July 2024. This report considered the condition of the vehicle, reported on the issues, and provided the engineer's opinions. He concluded that based on the mileage and amount of time that had elapsed since Miss M taking possession of the vehicle, that there was no reason to suggest that the faults could be said to be the responsibility of the selling dealer. Close Brothers therefore did not uphold Miss M's complaint.

Miss M wasn't happy with what'd happened, and brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that they agreed with Close Brothers' final decision. He concluded that although it does seem likely that there is a fault with the car, the evidence suggests that it

was most likely due to wear and tear and referred to the mileage and time that had elapsed while the vehicle was in Miss M's possession.

Miss M didn't agree with the investigator's comments and provided additional commentary relating to the issues experienced and the mileage of the vehicle. Because Miss M didn't agree, this matter has been passed to me to make a decision.

Provisional Findings

I issued my provisional decision on 2 June 2025. It said:

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

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. Miss M 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 Miss M to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss M 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.

It is not in any dispute that there is a fault with the car. However, the key point here is whether the issues experienced by Miss M were due to an inherent fault that was present or developing at the time she took possession of the car, or were caused by wear and tear.

The car Miss M bought was around six and a half years old when she bought it, and she experienced issues with the car in the days after taking ownership and reported these to the dealership immediately. It is reasonable to accept that a six and a half year old car would be likely to experience issues or need work done to it sooner than if it were a newer vehicle. Nonetheless, I would not expect that Miss M would experience issues with the car as soon as she states that she did.

Miss M reports that the EML light issue was present immediately after she took possession of the car. This was identified initially as being linked to an issue with the glow plugs which were replaced. I do not know exactly how long this replacement took to be carried out which was not immediate due to parts being unavailable. Based on the correspondence I have been provided, it appears that the cost of this was covered in full or part by the supplying

dealership as it was not covered by the warranty. Miss M states that the replacement of the glow plugs caused the EML to go out for only one day before returning. It seems likely that the fact that the EML had gone out for only one day was as a result of it being reset when the glow plugs were replaced. I therefore need to decide whether the EML was an indication of an ongoing fault that caused the oil leak, which ultimately caused Miss M's car to fail.

The credit agreement signed electronically by Miss M on 9 September 2023 states that the mileage of the vehicle was 95,000 miles however I note that at the time the vehicle passed its MOT in June 2023, the mileage was stated to be 98,084. Miss M states that she bought the car with "98,361 plus miles". I therefore believe that the credit agreement was inaccurate, and that the car had travelled at least 98,361 miles at the time Miss M took possession of it, which is consistent with the MOT mileage of 98,084 shortly before she bought it. In her submissions to this service, Miss M states that at the time of her response on 23 December 2024, the car had travelled 98,521 miles. This is not consistent with the MOT history which shows that at 11 June 2024 the mileage was 103,512 and the independent inspection carried out on 22 July 2024 at which point the odometer was stated to be showing 103,521 miles.

Using the mileage that Miss M states the car had travelled at the time she took possession of it, this means that the car had travelled 5,151 miles by the time of the MOT in June (and inspection on behalf of Close Brothers in July).

It is noted that Miss M did not raise her complaint with Close Brothers until 18 June 2024. However, Miss M has provided evidence of her raising issues with the car from 11 September 2023 onwards in the form of WhatsApp correspondence with the supplying dealership. This evidence includes contact and attempted contact with the dealership throughout September and October 2023, recommencing in January 2024.

Miss M states that she took the car for investigation at a local motor company on 9 February 2024, which provides evidence that the oil leak existed at that time. I have seen a copy of their findings which states "To investigate EML light staying on, after investigation found low engine oil level. Topped to correct level. Checked turbo and found movement and traces of oil in turbo. Advised to recondition DPF. After removal of undertray we discovered large quantity of engine oil on the tray and in engine. Further investigation found timing chain tensioner to be leaking". At this point, the car had travelled 101,228 miles.

These comments relating to the EML light staying on indicates a continuous issue, which had been ongoing since at the latest January 2024. Based on the submissions to this service, it seems to me that the issues causing the EML to go on were present throughout the time Miss M had possession of the vehicle. It is unclear exactly when the issue with the glow plugs had been rectified, however on 12 October, an email sent to the dealership by Miss M referring to the cost of the glow plugs states "On back order no ETA". There was a subsequent WhatsApp on 25 October 2023, therefore it is possible that the glow plugs were replaced around that time. Miss M states that although this resulted in the EML going out, it came back on the following day. I am therefore satisfied that the glow plugs were unlikely to have been the sole cause of the EML.

The report following the inspection in February 2024 states that their advice was to "take the car on a motorway as these cars do not function well when only driven on low gears". Miss M states that she therefore took the vehicle on the motorway on 27 April 2024. During this journey, Miss M states that the car showed a red warning light so she drove to the nearest service station where she called a recovery company. They recovered the car back to her home. Miss M states that she attempted to contact the dealership to rectify the issue however when she did not receive a response from them she submitted her complaint to Close Brothers in June 2024.

I've seen a copy of the independent engineer's report, dated 22 July 2024, with an addendum commentary being provided dated 2 August 2024. In these reports, the engineer identified that the engine started satisfactorily however the engine management light remained illuminated on the diagnostic testing which produced multiple fault codes. The engineer also noted an excessive oil leak contaminating the underside of the vehicle extending to the gearbox area. His opinion within this report was that he considered the faults were not likely to have been present since purchase nor considered to be related to an unsuccessful repair in the vehicle's history. In the initial report, he stated that there was no specific evidence that the faults could be said to be wear related at this stage. He concluded that "based on the sale date and elapsed mileage since sale, there was no evidence to suggest from an engineering perspective that the faults could be said to be present or developing at sale"

On 2 August 2024, the engineer provided a supplementary report having reviewed the matter further. In this he provided a number of potential issues that may have caused the fault. He stated that the most common cause for oil leaks was seals and/or gasket issues, most often deterioration related although damage is always a possible cause. He stated that seal deterioration is often the result of wear which can cause leaks or lead to the material splitting. He stated that gasket leaks can be the result of several different causes and outlined these. I will not detail them all here – the relevant fact is that he stated that the overriding most common cause for these types of conditions is deterioration related. He stated that when oil leaks are identified, often the results of deterioration premature or otherwise, there is always a potential for consequential damage developing to internal components protected by the lubrication which is being depleted due to the oil seal condition or internal conditions and may be causing the oil leak which is not immediately apparent.

The engineer's report concluded that it was more likely than not that the issues being experienced by Miss M were caused by wear and tear, and he concluded that based on the mileage that had been travelled and the amount of time that had elapsed since Miss M took possession of the vehicle. This conclusion is based on Miss M taking possession of the vehicle on 9 September 2023, and states that the engineer noted that the vehicle had covered 8,521 miles during the time of the "hire".

However, I note that Miss M states that the engine management light illuminated immediately after she took possession of the car, which was only rectified very temporarily by the replacement of the glow plugs.

If the evidence suggested that the replacement of the glow plugs in late October 2023 had resulted in no further issues being experienced by Miss M until mid June 2024, I would agree with the engineers comments when he concluded that the mileage and the amount of time that had elapsed between Miss M taking possession of the vehicle indicates that the issues were likely to be as a result of wear and tear rather than being present at the time Miss M took possession of it. However, the evidence indicates that the mileage covered by Miss M between September 2023 and the investigation in February 2024 was 2,867, significantly less than the mileage upon which the engineer had based his conclusion. Furthermore, the EML suggested these issues were present prior to the vehicle reaching this mileage. Therefore, I am of the opinion that the faults experienced by Miss M were more likely than not to have been present or developing at the point she took possession of the vehicle, and uphold her complaint."

Responses to my provisional decision

Close Brothers have responded to my provisional decision and raised a number of points. I have considered the additional points raised and do not believe there is new evidence, more

a reiteration of the information considered in the provisional decision. As such I have not reached a different conclusion, but will address the points raised.

As stated above, the EML first came on in the days after Miss M took possession of the vehicle. Following the replacement of the glow plugs, Miss M says the EML came back on the following day, although Close Brothers state they have not been provided with evidence of this, and Miss M did not raise the issue further until January 2024.

I have considered whether the exact date that the EML came back on is relevant, and I am not persuaded that it is. Miss M has stated that the EML came back on the day after the glow plugs were replaced, however she has not provided evidence of this. I am satisfied that at the latest, the date that EML came back on was prior to 15 January 2024 – this is the first date that I have evidence that Miss M contacted the dealership since October 2023. The inspection to investigate the EML staying on carried out on 9 February 2024 identified a number of faults with the vehicle. Regardless of whether the EML came back on on the day after the replacement of the glow plugs, or at a later date in the following two months, this was within six months of Miss M taking possession of the vehicle, and within a short period of time following the replacement of the glow plugs.

Close Brothers have stated that they did not receive the report from the assessment carried out in February, and if they had done, this would have been provided to their assessment company for their view. I have considered the scope and purpose of the assessment carried out. The assessment was based on a physical inspection of the vehicle and identified issues consistent with those identified in the report from February 2024, and Miss M's experiences. I am not persuaded that sight of an assessment having been carried out previously would have had an impact on the findings at that time.

In their responses, Close Brothers have also reiterated the possibility that the faults were caused by Miss M's driving style, or her having continued to drive the vehicle with a known fault for a number of miles. Whilst it is not in any dispute that Miss M did continue to use the vehicle after the issues were identified, I am not persuaded that this was the cause of the issues, nor is there evidence to suggest that the faults identified in February 2024 by a third party could have been caused by Miss M's driving style in such a short period of time. I am satisfied that on the balance of probabilities, the faults that Miss M encountered were present at the point of sale and it therefore follows that I uphold Miss M's complaint.
here

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 no new information has been provided by Close Brothers and I have not had a response to my provisional decision from Miss M, I see no reason to change my decision. So I remain of the view I set out in my provisional decision – my findings as set out above should be considered as part of my final decision. It follows that I uphold this complaint.

Putting things right

Although the vehicle experienced a significant breakdown on 27 April 2024 which meant the vehicle should not be driven, the complaint on 18 June 2024 states "*when cmr [customer] was driving on Friday last week there was major smoke and engine lights*" indicating that Miss M was still using the car. I note that the car failed its MOT on 22 June 2024, and the investigation which was carried out on 22 July 2024 states that the car should not be driven in its present state. Miss M wasn't supplied with a courtesy car. The mileage of the vehicle

increased by only nine miles between the MOT and the investigation, suggesting that the car was not used since the MOT. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Close Brothers failed to keep Miss M mobile; I'm satisfied they should refund the payments she made during this period.

Additionally, in her complaint to Close Brothers, Miss M has referenced repairs having been made to the car. If Miss M can provide evidence of these payments for repairs, Close Brothers should refund these costs to Miss M.

It's clear that the issues caused by Miss M being provided with a faulty vehicle have resulted in a high level of distress and inconvenience to her. I therefore direct Close Brothers to make an additional payment of £200 to Miss M.

Therefore, Close Brothers should:

- end the agreement with nothing more to pay;
- refund the payments from 22 June 2024 (the date of the failed MOT) to date
- apply 8% simple yearly interest on the refunds, calculated from the date Miss M made the payment to the date of the refund[†];
- refund any payments made in respect of repairs to the vehicle paid by Miss M;
- apply 8% simple yearly interest on these refunds, calculated from the date Miss M made the payment to the date of the refund[†]; and
- pay Miss M an additional £200 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Close Brothers to take off tax from this interest, Close Brothers must give Miss M a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss M's complaint against Close Brothers Limited and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 25 July 2025.

Joanne Molloy
Ombudsman