

## complaint

Mr P complains a car Close Brothers Limited supplied to him under a conditional sale agreement wasn't of satisfactory quality.

## background

In early April 2018 Close Brothers supplied a car to Mr P under a conditional sale agreement. It was about 10 years old, had covered 81,000 miles and cost about £17,000.

Within about a month Mr P informed the dealership there was a knocking noise coming from the engine. The dealership wouldn't do anything about it so Mr P contacted Close Brothers.

Close Brothers considered the matter and concluded there was a problem with the car, but that it had developed while the car had been in Mr P's possession. So it didn't accept it needed to repair the car, or agree for it to be returned.

Mr P didn't think this was fair so he complained to our service. An investigator looked into the matter. She concluded, in summary, that there was most likely a problem with the car when it had been supplied to Mr P, so she thought Close Brothers needed to put things right.

Close Brothers didn't agree. It said an engineer had concluded the problem wasn't present or developing when the car had been supplied to Mr P. It thought the problem was a result of Mr P running the car on low engine oil. So it didn't think it needed to do anything.

As an agreement couldn't be reached the complaint was passed to me to decide. I issued a provisional decision saying I thought the complaint should be upheld. I said:

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

The Consumer Rights Act 2015 ("CRA") implies a term into the conditional sale agreement that the car must be of satisfactory quality. As the supplier and finance provider, Close Brothers is responsible for the quality of the car it's provided under the agreement. Satisfactory quality is what a 'reasonable person' would expect, taking into account all of the relevant circumstances, such as the age, mileage and cash price of the car.

There's no dispute that there is a problem with the car. The issue is whether it was present or developing at the time of sale, and whether it made the car of unsatisfactory quality when it was supplied.

Close Brothers had two independent engineers inspect the car.

The first concluded the engine displayed a severe knocking noise, which required further investigation. It suggested the engine required stripping. Based on what the engineer had access to he thought on the balance of probabilities the engine would have been in a "*compromised state at finance inception*".

Following this the engine was stripped. The second engineer then inspected the car. He said there was damage to the crank and bearing shells, which was the result of oil starvation. He concluded, in summary, that the noise would have been noticeable

immediately when Mr P test drove the car, and as it wasn't noticed, the damage had developed since the car was in his possession.

Close Brothers thinks the problem was caused by Mr P. It says Mr P covered a lot of miles in a short amount of time (about 3,000 miles in the space of a month) and may not have responded as he should have to a warning light or a knocking noise. I'm not persuaded this is the case.

The second engineer said he thinks the noise would have been apparent immediately when Mr P test drove the car, and as it wasn't noticed, the damage has developed since. I see his point. But I don't think there's a suggestion that at the time of the sale the crank and bearing shells were damaged to the extent they were when Mr P reported the problem. If they had been, I think it's likely Mr P (or indeed the salesman) would have raised a concern about it, as the engineer has suggested.

Mr P isn't an engineer. Nor was he familiar with the make and model of this car. So I don't think it can fairly be said that he ought to have identified a noise as a problem unless it was significant to the point of concern. When the noise reached this point Mr P took the car to the dealership. So he didn't, for example, continue to drive the car to breaking point. And he's explained that when a low oil warning light came on he topped up the oil. Neither engineer had concerns about the oil level when they inspected the car, which supports Mr P's explanation.

As I understand it, a main cause of oil starvation is a poorly maintained, damaged, blocked or low quality oil filter. The second engineer commented on the filter, saying it was a genuine part but didn't appear to have been renewed recently and was heavily contaminated with debris from the failed bearing shells. A car service usually involves an oil and oil filter change/renewal. The last service completed on the car was in January 2016, meaning a service was due in January 2018. A service was therefore overdue by the time the car was supplied to Mr P in April 2018. I think it's likely that the absence of a service and change of oil and oil filter meant the quality and efficiency of the oil and filter had deteriorated significantly. Poor oil and oil filter quality will impact on the lubrication and therefore performance of the engine and could cause damage to the engine.

There is a significant problem with the car. I don't think a reasonable person would expect a car costing nearly £17,000 to have a problem like this so quickly. And I'm not persuaded, for the reasons I've set out above, that Mr P caused the problem. Instead, I think it's most likely there was a problem with the car when it was supplied to him and this got progressively worse while he had it. It follows that I intend to uphold this complaint as I don't think Mr P was supplied with a car of satisfactory quality.

#### *putting things right*

Close Brothers has said if this complaint is upheld it should have the chance to repair the car. I don't think this is appropriate in the circumstances. Mr P's relationship with the dealership has broken down, so I don't think a repair there would be suitable. And it's been about a year since the problem first arose, so I think Mr P would - understandably - prefer to move on, rather than wait for what I think are likely to be significant and time consuming repairs to take place. I think Close Brothers should:

- take the car back at no cost to Mr P; and
- cancel the conditional sale agreement with nothing further owed by Mr P, and remove it from his credit file.

The car needed its engine stripping so it was taken to a third party garage. The car has remained there since then and the third party garage is asking Mr P for storage fees. Close Brothers thinks that Mr P should bear this cost. I don't agree. As I've said, I don't think the car supplied to Mr P was of satisfactory quality. Had it been, the car wouldn't have needed stripping, so it wouldn't have been placed with a third party garage, and no storage fees would be payable. I'm also mindful that it wasn't Mr P's choice to have the car stripped by the third party garage and given the engine had been stripped it would likely have been difficult to move. Overall, I'm not persuaded Close Brothers can fairly say Mr P is responsible for the storage fees, so I think it should:

- pay the third party garage storage fees if Mr P provides an invoice to show he's either paid them, or is being asked to pay them. Close Brothers should not seek to recover this cost from Mr P.

Mr P had use of the car from 3 April 2018 (when he got the car) to 4 May 2018 (when he took it to the dealership). And he had access to a courtesy car from 24 May 2018 to 8 August 2018. So in the roughly 12 months since the agreement was taken out he's had about three months of car use. I think Close Brothers should:

- refund any payments Mr P has made towards the conditional sale agreement from the fourth payment onwards, with simple interest at 8% a year from the date each payment was made until the date each is refunded.

Mr P has been caused distress and inconvenience. In particular he's had the hassle and inconvenience of having to make alternative transport arrangements for several months, and the uncertainty of not knowing whether or not he'd have to pay significant repair and storage fees. I think there should be some recognition of what Mr P has been through. I think Close Brothers should:

- pay Mr P £350 in recognition of the distress and inconvenience he's been caused.

Mr P responded to my provisional decision to say he accepted it, but felt more compensation was appropriate given the stress and hassle he'd endured. Close Brothers didn't respond by the deadline I set.

### **my findings**

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

I've thought about what Mr P has said. I accept he was caused stress and hassle. But I remain of the opinion that £350 fairly reflects this. In all other aspects of this complaint no further evidence or arguments have been put forward, so I see no reason to change my mind.

**my final decision**

I uphold this complaint and require Close Brothers Limited to:

- take the car back at no cost to Mr P;
- cancel the conditional sale agreement with nothing further owed by Mr P, and remove it from his credit file;
- pay the third party garage storage fees if Mr P provides an invoice to show he's either paid them, or is being asked to pay them. Close Brothers should not seek to recover this cost from Mr P;
- refund any payments Mr P has made towards the conditional sale agreement from the fourth payment onwards, with simple interest\* at 8% a year from the date each payment was made until the date each is refunded; and
- pay Mr P £350 in recognition of the distress and inconvenience he's been caused.

Close Brothers Limited must pay the compensation within 28 days of the date on which we tell it Mr P accepts my final decision. If it pays later than this it must also pay interest\* on the compensation from the date of my final decision to the date of payment at 8% a year simple.

\*If Close Brothers Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 June 2019.

James Langford  
**ombudsman**