

## **complaint**

Miss G complains that a used car she acquired via a conditional sale agreement with Close Brothers Limited wasn't of satisfactory quality. She also complains that she was sold an extended warranty which is now worthless as the garage has ceased trading.

## **background**

In April 2018 Miss G entered into a four year conditional sale agreement for a used car with Close Brothers. The car was 10 years old and had a mileage of around 110,000.

Miss G says she had problems with the car within a few days. The car's stop/start system didn't work and the engine management light was illuminated. She says she took the car back to the garage that had supplied it but they were unable to repair it.

Miss G says she raised several complaints with the garage over the next few months. And in October 2018, when the engine started to make a noise and smoke, she took the car back to the dealer's garage. The dealer's garage arranged for the car to be seen by a third party garage who told Miss G it needed a new engine. Miss G was provided with a courtesy car while hers was in for repair.

The car was kept by the third party garage for several weeks. In January 2019 Miss G collected the car but says it developed a problem with an oil leak a short time afterwards. She took the car back to the third party garage.

Miss G complained to Close Brothers about the condition of the car. Close Brothers didn't uphold her complaint. It said that the car was in the process of being repaired under the warranty which Miss G had accepted. It also said that as six months had passed from the inception of the agreement it was for Miss G to supply evidence that the car had been faulty from the point of sale and she hadn't done so.

Miss G disagreed with the decision of Close Brothers and complained to this service. Our investigator didn't recommend that her complaint should be upheld. She said under the Consumer Rights Act 2015 the car had to be of "*satisfactory quality*" when supplied. Satisfactory quality took into account durability, safety, finish and appearance of the car as well as whether it was fit for purpose. So if faults were identified it was important that these could be shown not to be due to wear and tear of the car.

Our investigator said she had tried to get copies of job sheets from the dealer's garage but had been unable to do so. She said she didn't dispute Miss G may have had issues with the car but there was no evidence as to what the problems were and what repairs, if any, had been carried out.

Our investigator said there was no evidence that Miss G had contacted either the dealer's garage or Close Brothers before six months had passed from taking the car. And in these circumstances under the Consumer Rights Act 2015 evidence was required to show that the fault with the car had been present or developing at the point of sale. Unfortunately no such evidence had been produced.

Miss G disagreed with the view of our investigator. She said that she had asked for the job sheets but these hadn't been provided and she said she thought the lack of contact from the dealer's garage with this service was suspicious.

Miss G also said she was aware that the dealer's garage had now closed down and believed it was due to the actions of Trading Standards Officers. She said that the dealer had required her to take out an extended warranty on the car which was for the life of the agreement. The warranty was for repairs to be undertaken at the dealer's garage. Miss G said this warranty had been included in the conditional sale agreement and cost around £30 per month. She said that as this was now worthless she wanted a refund of the cost of the warranty.

Miss G said the issues with the car weren't from wear and tear and that she should be able to reject it as not being of satisfactory condition.

As the parties couldn't agree the complaint was passed to me and I issued a provisional decision along the following lines.

Under the Consumer Rights Act 2015 ("The Act") the car must be of "satisfactory quality" at the point of sale. And satisfactory quality is what a reasonable person would expect taking into account all the relevant circumstances such as age, condition, mileage and price paid for the car.

The type of finance agreement supplied by Close Brothers to Miss G for the car meant that it also holds the position of supplier of the car. This meant it was responsible for ensuring the car met the Act's requirements for satisfactory quality.

I'd seen that Miss G said she'd raised faults with the car a very short time after she acquired it. In particular there was a problem with the stop/start system and the car wouldn't start again when stopped at traffic lights or when pulling up. However Miss G said that the dealer's garage said it wasn't able to fix the issue and she took the car back.

There were no job sheets available as to whether inspections were or weren't carried out and as the dealer's garage was no longer in existence there wasn't any more information that could be obtained. Miss G said that the dealer's garage was possibly closed due to the actions of Trading Standards. I'd seen that shortly before Miss G took the car it successfully passed its MOT without any advisories.

Miss G disputed the car's mileage and said she thought it had been altered; firstly when she'd acquired the car and later after the car had another engine fitted. I'd seen that on the agreement the car was recorded as having a mileage of around 109,000 but from the MOT undertaken shortly before Miss G collected the car the mileage was recorded as 110,000. However, the invoice for the car shows a mileage of 110,000 and as Miss G had signed this document I'm satisfied she knew the correct mileage at the point she acquired it and there was an error on the conditional sale agreement.

Close Brothers said when the car received its MOT in April 2019 Miss G had driven it for an additional 16,000 miles. It said this shows that the car was fully working. Miss G said that she hadn't driven that far and the mileage was incorrect. She said the car's mileage was higher after the other engine had been fitted and so must have been interfered with.

Although I appreciated the car had the repair in December/January I didn't have any evidence that this caused the milometer to read inaccurately. So I didn't think I could reasonably say that the recorded mileage for the car wasn't correct. But even if Miss G hadn't driven the car as much as the mileage would suggest I thought based on what she

had told us it was reasonable to say she'd been able to use the car both before and after the repair.

Miss G said that when the car went in for repairs in October 2018 she was without it for the next three months though courtesy cars were provided. Miss G said these courtesy cars were of poor quality and had issues of their own.

I'd seen that Miss G raised her complaint with Close Brothers in December 2018. Miss G told Close Brothers that at that time the car was having repairs to the engine and that these had been delayed while an engine was sourced. So I accepted that it was more likely than not that the car had engine repairs started in or around October.

Miss G's timeline indicated that the faults with the car were apparent within a short time of her taking delivery. By the time the need for a new engine was diagnosed she'd had the car for about five to six months. It didn't appear to be disputed that the car had had a new engine fitted and this would clearly be a major repair. I was satisfied that the timeline and description of the problems Miss G said she'd experienced with the car were consistent with a fault that was present at the point of supply and that continued to develop over time.

The car was by then ten and half years old, having covered over 110,000 miles. Over that time, even a well-maintained car can develop issues requiring repair or replacement of key components, due to natural wear and tear or as they reach the end of their recommended lifespan. But the need for a replacement engine was rather more than natural wear and tear. And such a failure, within only a few months of taking delivery, combined with the issues leading up to that point that Miss G has described, led me towards the conclusion that the car wasn't of satisfactory quality when it was supplied.

That said, the Act would allow the supplier an opportunity to fix the problems. I didn't think that there was enough evidence for me to say that the garage had already had that opportunity and failed. I didn't know what faults Miss G had raised or what investigations had been undertaken.

The dealer's garage arranged for a third party garage to undertake the work. Miss G was not charged for the work as it was covered by the warranty. The car was returned to Miss G in January 2019 repaired.

Miss G said that the car had developed an oil leak a few days after she'd collected it. She raised this with Close Brothers who said that it would need evidence this leak was linked to the previous work as it could be a new issue. However, Miss G said that further repairs were carried out for the oil leak and to the stop/start system though she hadn't had to cover these costs. So I was satisfied that the car was now successfully repaired although this had taken a little while to sort out and in light of this I didn't think it would be reasonable for Miss G to now reject the car.

Miss G also said she had to replace the tyres but, as I've said above, I thought a car of this age and mileage would be expected to have some maintenance issues over time. As tyres were wear and tear items and weren't raised as being defective at the point of sale I wouldn't ask Close Brothers to reimburse this cost.

I'd seen that the engine repair took some weeks and I appreciated that would've caused Miss G inconvenience. However I'd seen that the garage provided courtesy cars, one was returned due to faults but it was replaced though this one later had to have repairs. However

I'd seen that Miss G confirmed that the courtesy car was working "fine" three days after her initial complaint. So although there were so problems I was satisfied Miss G was, for the majority of the time, kept mobile. But I thought compensation for the loss of the use of the car and the inconvenience caused by having to take the car to the garage repeatedly was fair. I thought £150 was a reasonable amount in these circumstances.

Miss G had raised the warranty she'd bought when she took out the agreement for the car. As the dealer's garage was now closed I accepted that any time left on that warranty was now of no use to Miss G. Close Brothers said there wasn't any evidence the warranty had been added to the conditional sale and that this may have been a direct sale between the garage and Miss G in which case it wasn't liable.

Miss G wasn't clear about the cost of the warranty as she'd said she thought it was £770 but also said it was £1050. I appreciated Miss G hadn't found the figures on the conditional sale agreement clear but I thought they set out what the car cost, the deposit and the total credit amount.

On the agreement the cost of the car was shown as £3495 and that Miss G had paid a deposit of £1050. However Miss G had provided an invoice for the car which showed its cost as £2995. This meant that £500 was added to the cost of the car on the conditional sale agreement. It was accepted that Miss G had a warranty as the car was repaired under it. So I thought it was more likely than not that Miss G had paid £500 for a warranty and that this cost was added to the amount borrowed under the conditional sale agreement.

Although Miss G had in theory benefitted from the warranty by having the car repaired at no cost to her, I thought these were repairs that Close Brothers would have had to cover in any event as they were either present or developing at the point of sale. These repairs were required because the car wasn't of satisfactory condition. As the warranty could no longer be used by Miss G (due to the garage ceasing to operate) I thought it would be fair for Close Brothers to reduce the outstanding balance of Miss G's agreement by £500.

So for the reasons given above I intended to partially uphold Miss G's complaint. I'm asked for Close Brothers to pay her £150 compensation for the distress and inconvenience caused by the car having to undergo repairs and for it to reduce the outstanding balance by deducting the cost of the warranty.

As she was provided with a courtesy car and had been able to use the car when it wasn't in for repairs I wasn't going to ask Close Brothers to reimburse any of her monthly payments under the agreement.

Miss G has agreed with my provisional view. Close Brothers said it agreed with the reimbursement of the warranty but felt that compensation wasn't warranted as Miss G hadn't been inconvenienced.

### **my findings**

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

I disagree with Close Brothers view that Miss G hasn't been inconvenienced and distressed dealing with the car's faults. I've set out the history above and this shows there were multiple visits to the garage in an effort to get the faults fixed. Miss G was also without the car for a

lengthy period of time while the engine was replaced and while I appreciate she was kept mobile she wasn't able to use the car she'd chosen.

So I still think compensation of £150 in these circumstances is fair and reasonable and I'm partially upholding Miss G's complaint.

**my final decision**

For the reasons given above I'm partially upholding Miss G's complaint. To resolve this matter I'm asking Close Brothers Limited to do the following:

- Pay Miss G £150 compensation for the distress and inconvenience of having to take the car for multiple repairs
- Reduce the outstanding balance of the agreement by £500 (being the cost of the warranty).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 11 March 2020.

Jocelyn Griffith  
**ombudsman**