

The complaint

Mr O complains about the quality of a car he has been financing through an agreement with Close Brothers Limited ("Close Brothers").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

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 know it will disappoint Close Brothers, but I agree with the investigator's view of this complaint. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr O acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The quality of the car.

The Consumer Rights Act (2015) is the relevant legislation. It says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then Close Brothers, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr O. The car here was about seven years old and had already completed 106,548 miles. So, I think a reasonable person

would expect quite a bit of wear and tear and they may expect an engine that had completed that amount of mileage to be nearing the end of its life too.

But here, it's important to note that the engine had been replaced on this car in September 2019. The advert said that the car had a *"new engine fitted at 82,500 miles"* and a comment at the end of the advert said, *"attention grabber 1 owner, FSH (full-service history), new engine"*. Close Brothers have suggested that would have been a reconditioned engine of equivalent mileage but that's not what the advert said, and I've not been provided with evidence to suggest the engine wasn't *"new"*.

The relevant legislation says that when we consider whether goods are of satisfactory quality we should also consider whether they've been durable. The independent engineer didn't consider that when he provided his report and neither did he consider that the replacement engine had been reported as *"new"*. I don't think a new engine should have failed after less than 30,000 miles. I think it's widely accepted that engines should last much more than that as long as they are serviced in accordance with the manufacturer's recommendations. This engine had been, and I don't therefore think it had been durable or was of satisfactory quality.

The relevant legislation says that a business should be given one opportunity to repair a car in those circumstances. So, I'm asking Close Brothers to do that.

Close Brothers may argue that the engine was actually a reconditioned one of a similar mileage. I don't think that's currently been demonstrated but, even if it could be shown to be true, I think there would likely be a case of misrepresentation here. The advert clearly stated a *"new engine"* had been fitted and that would have been an important feature Mr O would have been relying on when agreeing to the deal.

Putting things right

Close Brothers should collect the car at no cost to Mr O and repair it. I note the garage's email to Mr O sent in March 2022 suggests that will mean the engine unit will need replacing.

It's not fair that Mr O has been paying for a car he's had no use of since it broke down on 3 December 2021. So, Close Brother should refund any finance instalments Mr O has paid since then and they should add 8% interest as Mr O has been deprived of that money.

Mr O has also been inconvenienced by these issues. He's had to arrange alternative transport and has had to escalate his complaint to this service when I think it could have been resolved earlier. In those circumstances I'm asking Close Brothers to pay him £100 compensation.

My final decision

For the reasons I've given above I uphold this complaint and tell Close Brothers Limited to:

- Collect and repair the car at no cost to Mr O.
- Refund any finance instalments Mr O has paid since the car broke down on 3 December 2021. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.
- Pay Mr O £100 to compensate him for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 7 July 2022.

Phillip McMahon
Ombudsman