

The complaint

Ms G and Mr O complain that a car supplied to them under a conditional sale agreement by Close Brothers Limited trading as Close Brothers Motor Finance (“Close Brothers”) was of an unsatisfactory quality.

What happened

It appears that Mr O was the primary purchaser and user of the car. But both Mr O and Ms G were party to the conditional sale agreement. So the complaint must be made by them both. In this decision, for ease, although most of the communication has been with, and from, Mr O I will refer to matters as having been conducted by both parties.

I issued a provisional decision on this complaint in May 2024. In that decision I explained why I thought the complaint should be upheld and what Close Brothers needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

In March 2022 Ms G and Mr O were supplied with a used car through a conditional sale agreement with Close Brothers. The agreement was for £9,950 over 60 months, with monthly repayments of £214.58. Ms G and Mr O also paid a deposit of £6,500 made up of cash and a trade in allowance for another vehicle. At the time it was sold, the car was just over eight years old and had done 60,780 miles.

In March 2023 the engine on the car failed. A main dealer of the vehicle manufacturer confirmed that its records indicated a remapping of the car’s engine had taken place some time prior to 2019. And, when Ms G and Mr O had the engine replaced, the diagnostic information suggested the engine failure had been due to pressure caused by the fitting of a non-standard heavy duty clutch alongside the engine remap. A new engine and standard clutch were fitted and the electronic control unit returned to its standard specification.

Ms G and Mr O failed to get a satisfactory response to their concerns from the dealer that sold them the car. So they complained to Close Brothers who provided the finance for their vehicle purchase. Close Brothers told Ms G and Mr O that there was no evidence the dealer had been aware of the modification that had been made to the car. Nor was it satisfied that the information Ms G and Mr O had provided about the repairs definitively showed the reason for the engine failure. And it warned Ms G and Mr O that since they had sourced the repairs themselves, they wouldn’t be considered to be authorised, and so qualify for reimbursement. Unhappy with that response Ms G and Mr O brought the complaint to us.

Ms G and Mr O were supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we’re able to look into complaints about it. The relevant law – 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 finance used to purchase the car, Close Brothers is responsible. What’s satisfactory is determined by 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.

The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. But, if the fault is identified after the first six months, then it's for Ms G and Mr O to prove the fault was present when the car was supplied. So, if I thought the car was faulty when Ms G and Mr O took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to expect Close Brothers to put this right.

I appreciate that Close Brothers do not have its own assessment of the damage to the car engine. But I can see that there was an extended period of time, between Ms G and Mr O first making Close Brothers aware of the problem in April 2023 and the repairs being completed in June 2023, during which it could have asked to independently inspect the car. Close Brothers failed to make that request.

So I think it is reasonable to base my assessment of this complaint on the information provided by the main dealership, and the repair invoice provided by the garage that Ms G and Mr O chose for the repairs. I haven't seen anything to make me think those two firms would provide anything other than an honest and independent assessment of the problems with Ms G and Mr O's car.

The independent records of the main dealer of the make of car Ms G and Mr O purchased show that the vehicle had been modified before 2019. And the repair invoice reported that those modifications appear to have involved changes to the clutch system of the car, and alterations to the electronic control unit ("ECU"). The changes to the ECU – often known as remapping – are performed in an attempt to increase the performance of the engine. But, as the car manufacturer points out, they are not endorsed by the manufacturer and can result in the car engine being overpowered leading to its failure. That is what appears to have happened here.

I am satisfied, based on the above reports, that the alterations to the vehicle had been performed before it was sold to Ms G and Mr O. And I am also persuaded that those alterations are the most likely cause of the engine failure that Ms G and Mr O experienced. So I don't think that the car supplied to Ms G and Mr O was of satisfactory quality and so Close Brothers needs to put things right.

I accept that Close Brothers, or the selling car dealer, might not have been aware of the modifications at the time the car was supplied. But I don't think it reasonable to expect Ms G and Mr O to have discovered those changes themselves. They should reasonably have expected that the car they were being sold would be of a satisfactory quality, and not have defects, or alterations, present that might unreasonably shorten the life of key components such as the engine.

Given the time that had passed since the car had been supplied I think it was reasonable that Ms G and Mr O asked Close Brothers to make the necessary repairs rather than seek to reject the car. Ms G and Mr O say the car had broken down in March 2023, and they were without its use whilst Close Brothers was taking an extended period to decide how to proceed. I don't think it was unreasonable, when Close Brothers failed to offer a repair, for Ms G and Mr O to instruct their own garage to make the repairs. By doing so they reduced the already extended period that they were without use of the car.

It seems to me that, due to the breakdown of the car, Ms G and Mr O were without

the use of the vehicle for a period of around three months. So I don't think it fair they should be expected to make the repayments on their agreement during that time. And, given that Ms G and Mr O needed to pay for the repairs themselves, they have also been without the use of the money they paid for the repairs since June 2023. Close Brothers should pay them interest, on both the repayments that have been made during the three months, and the cost of the repairs.

There is no doubt that the breakdown and loss of use of the car will have caused some distress and inconvenience to Ms G and Mr O. So I intend to further direct that Ms G and Mr O are paid £250 for the inconvenience they have been caused.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Ms G and Mr O haven't provided us with any further comments or evidence. Close Brothers has said that it doesn't agree with my provisional findings. Although I am only summarising here what Close Brothers has said, I want to reassure the firm that I have read, and carefully considered, its entire response.

Close Brothers says that the information Ms G and Mr O were given by the main dealer did not conclude that the engine remapping was the cause of the fault they experienced. And it says that the repair invoice only says that the engine remapping was suspected to be the cause of the problem. It says that, since the fault arose more than six months after the car was supplied to Ms G and Mr O, it shouldn't be liable to cover the full cost of the repairs.

Close Brothers points out that it didn't complete the repairs. So it is likely that the costs would be higher than if they had been arranged by the firm. And given what it has said about when the fault arose, Close Brothers thinks it would be fair to only ask it to pay for the cost of the replacement engine, rather than the whole invoice.

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 I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Ms G and Mr O and by Close Brothers. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I have thought carefully about what Close Brothers has said in response to my provisional decision. The comments that have been made do not persuade me that I should change my provisional findings. But I would like to comment further on some of the matters that have been raised.

I set out in my provisional decision why I thought the underlying cause of the engine failure was present at the time the car was supplied. That is clearly shown by the independent

evidence provided by the main dealer stating that the engine remapping had been carried out as early as 2019. In my experience, engine remapping might not cause an immediate failure of the engine. But it does increase the rate of wear, and can cause an engine failure to occur far earlier than might normally be expected. That is what appears to have happened here. So I am satisfied that the evidence suggests the fault was present at the time the car was supplied, and so it is reasonable that Close Brothers meet the costs of any repair.

As I explained in my provisional decision, Close Brothers was first told of the problems in April 2023. So it had from that time to accept its potential responsibility for the faults and arrange either an inspection or repair of the car. It seems that, during an extended period of time whilst Ms G and Mr O were without use of the car, it failed to take either action. So I don't think it reasonable for Close Brothers to now express disappointment that it might have been able to arrange for the repairs to be completed at a lower cost. It had that opportunity, and failed to take it.

So I remain of the opinion that the car supplied to Ms G and Mr O was not of a satisfactory quality and so Close Brothers need to put things right. Given the time that passed I think it was reasonable for Ms G and Mr O to arrange their own repairs. And I think that Close Brothers should also pay compensation to Ms G and Mr O to reflect the period of time that they were without use of the car.

Putting things right

Ms G and Mr O's car was off the road and not drivable between late March and late June 2023. During this period, they weren't supplied with a courtesy car. So during that time Ms G and Mr O were paying for goods they were unable to use. For the reasons given above, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and therefore Close Brothers failed to keep Ms G and Mr O mobile. So I'm satisfied it should refund the repayments they made during this three-month period.

Ms G and Mr O have provided evidence of the costs they've incurred in repairing the car. And, again given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Close Brothers reimburse these costs in full. The invoice shows those costs were £4,000 and paid on 23 June 2023.

Close Brothers should pay Ms G and Mr O simple interest at a rate of 8% per annum on each of the monthly repayments I am directing should be refunded, and the repair costs, from the date they were paid to the date of settlement. HM Revenue & Customs requires Close Brothers to take off tax from this interest. Close Brothers must give Ms G and Mr O a certificate showing how much tax it's taken off if they ask for one.

Close Brothers should pay Ms G and Mr O £250 for the distress and inconvenience they have been caused.

My final decision

My final decision is that I uphold Ms G and Mr O's complaint and direct Close Brothers Limited trading as Close Brothers Motor Finance to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G and Mr O to accept or reject my decision before 13 August 2024.

Paul Reilly
Ombudsman