

The complaint

Miss S complains about the quality of a car she has been financing through an agreement with Close Brothers Limited, trading as Close Brothers Motor Finance, who I'll call "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 opinion. I'll 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.

Miss S acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says 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 Miss S. The car here was about twelve years old and had completed about 41,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when Close Brothers were responsible for its quality, unless they can demonstrate otherwise. The VANOS unit was replaced on the car

only about a month after Miss S took receipt of the vehicle. I've not seen any evidence to suggest that unit wasn't failing when the car was supplied, and I think it's more likely than not that that was the case.

The relevant legislation gives the business one opportunity to repair a fault that was developing at the point of supply, and I think Close Brothers therefore had that opportunity in November 2022. But the car failed again in December 2022; the breakdown service report explained that the VANOS unit was at fault.

I think that suggests it's likely the November repair failed and in those circumstances, Miss S should have been allowed to reject the car.

The independent engineer's report of March 2023 doesn't persuade me that the fault had been rectified or that the fault didn't exist. The engineer wasn't able to replicate the fault during his three mile test drive, but I think it would have been a surprise if he had been able to, as the fault was always an intermittent one, the test was over only three miles, and it was clear Miss S was able to complete some mileage ahead of each failure. I note the engineer explained *"We do consider that there may be an intermittent fault although this was not evident at the time of inspection."* His report also explains that there were no fault codes stored at the time of his inspection, but I note that the vehicle health check completed later, in mid-April 2023, did identify a VANOS fault code and I think that suggests a further fault occurred after the independent inspection and before the health check. That supports my view that the VANOS problem hasn't been resolved and is intermittent.

On balance, I'm persuaded this car has, therefore; been of unsatisfactory quality and that Close Brothers should allow Miss S to reject it.

Putting things right

Close Brothers should collect the car at no cost to Miss S and they should end the finance agreement.

They'll need to refund any deposit Miss S has paid and, as she's been deprived of that money, they will need to add interest to that refund.

I think Miss S's use of the car has been impaired. She's completed about 1,300 miles but I think she expected to complete more as her insurance was taken out on the basis of 8,000 annual miles. In those circumstances, I think it would be fair for Close Brothers to retain two monthly finance instalments, but they should refund any others that have been paid, with interest as Miss S has been deprived of that money.

Miss S has been inconvenienced by these issues. She's had to call recovery services on a couple of occasions, and she's also had to escalate her complaint to this service when I think it could have been resolved earlier. She's also been placed in potentially dangerous situations when the car cut out. In those circumstances Close Brothers should pay her £200 compensation for the distress and inconvenience she's experienced.

My final decision

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

- Allow Miss S to reject the car and end the finance agreement.
- Collect the car at no cost to Miss S.

- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Retain two monthly finance instalments but return any others that have been paid in respect of the loss of use Miss S has experienced. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Pay Miss S £200 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Miss S's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 23 November 2023.

Phillip McMahon
Ombudsman