

## The complaint

Mr H is unhappy that a car supplied to him under a conditional sale agreement with Close Brothers Limited, trading as Close Brothers Motor Finance was of an unsatisfactory quality.

Mr H is being represented in this complaint by Mrs H. However, for ease of reference, I'll refer to any actions taken, or comments made by either Mr H or Mrs H as being made or done by Mr H.

## What happened

In September 2022, Mr H was supplied with a used car through a conditional sale agreement with Close Brothers. He paid an advance payment of £1,000 and the agreement was for £6,690 over 60 months; with 59 monthly payments of £141.77 and a final payment of £151.77. At the time of supply, the car was over 11 years old, and had done 62,000 miles.

Mr H started to experience problems with the car from shortly after it was supplied to him – the engine management light ('EML') kept coming on, the car was losing power, and there was an issue with the clutch. The car was returned to the supplying dealership for repair in December 2022 and has remained with them ever since.

Mr H raised a complaint with Close Brothers but when they didn't respond within the 8-weeks they were allowed to investigate matters, Mr H brought his complaint to the Financial Ombudsman Service for investigation.

In an email dated 12 May 2023, Close Brothers advised our investigator that *"as the dealer had not had the initial right to repair [the clutch] we were originally supporting repairs being completed, however as the vehicle has not been released to the customer for an extended period of time, we are now supporting a rejection."* Following this, Mr H said they'd also agreed to refund all payments (bar the first two), refund the deposit, and refund some of the insurance payments. Close Brothers subsequently confirmed this was the case.

However, a few weeks later, Close Brothers arranged for an independent engineer to inspect the car.

The investigator issued a view saying that Close Brothers had agreed to reject the car, and refund Mr H's payments, deposit, and insurance. And he thought this was a reasonable offer which Close Brothers should now carry out.

Close Brothers responded to say the dealership believed the issues with the clutch were caused by Mr H, and he was therefore liable for the repairs. So, they thought the most reasonable course of action was to have the car inspected by an independent engineer before they agreed to carry out any remedy.

Close Brothers didn't initially provide a copy of the independent engineer's report. So, the investigator issued a second view saying Mr H should be allowed to reject the car, and Close Brothers should refund the deposit and all payments made since December 2022, plus

statutory interest; as well as pay Mr H £250 for the distress and inconvenience he'd been caused.

Close Brothers provided a copy of the independent engineer's report, dated 7 June 2023. This said *"the condition of the dual mass flywheel and clutch components are consistent with heavy abnormal loading riding of the clutch due to driver/operation technique."* The engineer went on to conclude *"we do not consider the faults to be present at purchase."*

In a follow up letter dated 6 July 2023, the engineer confirmed *"that the clutch assembly was burnt out due to customer operation and not due to any defect with the clutch assembly components."*

The investigator didn't think the independent engineer's report changed his view. He said the engineer hadn't been given all the information about the previous repairs to the car, nor did the engineer comment on the other faults i.e., the EML or the loss of power. The investigator said he wasn't persuaded that, had the engineer been provided with relevant and accurate information, that the findings wouldn't change; and he wasn't convinced that the 1,705 miles Mr H completed in the car would be sufficient to burn out the clutch, which could've been caused by the previous owner.

I issued a provisional view on 17 October 2023, where I explained my intention to not uphold the complaint. In that decision I said:

*In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr H was supplied with a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.*

*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 goods, Close Brothers are responsible. What's satisfactory is determined by things such as 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 and its durability. Durability means that the components of the car must last a reasonable amount of time.*

*The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Close Brothers can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr H to show it was present when the car was supplied.*

*So, if I thought the car was faulty when Mr H took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Close Brothers to put this right.*

*In this instance, it's not disputed there is a fault with the car. However, what is in dispute is the nature of the fault, and what caused it. Before I address the issues with the clutch, I want to address the initial problems Mr H said he had with the car.*

*Mr H has provided copies of the emails he's exchanged with the supplying dealership in late 2022. In these emails he said that he'd experienced issues with the EML intermittently coming on, the engine temperature light coming on, and a loss of power when driving. And the car had been back to the dealership several times for a repair. He also said that the car*

went back to the dealership on 8 December 2022, and he'd been told there was an issue with the clutch that would cost around £800 to fix.

I've also seen that Mr H has asked the dealership for "a detailed report of the activity (any returns, any reasons and any faults identified and fixed)" relating to the car between September and December 2022. In response, on 31 December 2022, the dealership confirmed the start/stop battery had been replaced, and a slight water leak was repaired.

So, with the exception of the email referred to above, I haven't seen anything to show me what work was done on the car by the dealership in late 2022. What's more, I haven't seen anything that shows me that any faults fixed by the dealership before the car went in for the clutch issue in December 2022 have reoccurred.

Turning now to the issues with the clutch, the relevant sections of the independent engineer's report have been quoted above. The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

The investigator has concluded this report isn't reasonable to rely upon as the engineer didn't refer to the previous issues with the car. However, I disagree with this conclusion. While it is the case that the engineer didn't refer to the previous issues and work done, as I've stated above, the only evidence of any work done on the car is a replacement battery for the start/stop function, and a repair to a water leak. And neither of these would have any bearing on the clutch. As such, I don't consider that the engineer's lack of knowledge and/or failure to refer to the previous issues with the car makes his opinion on the clutch unsafe.

The investigator also concluded that 1,705 miles isn't enough to burn out a clutch, so this must have been an issue when the car was supplied to Mr H. I also disagree with this conclusion. While 1,705 miles is a relatively small mileage, this was a car that was 11 years old at the point of supply. So, the clutch would've already suffered some wear compared to a brand-new car. What's more, had the clutch already been burnt out when the car was supplied to Mr H, or had it been so badly damaged that it was almost at the end of its life, then I would've expected the issues with the clutch to have occurred sooner than they did.

In addition to this, Mr H hasn't provided any evidence, for example a report from a different engineer, which contradicts the independent engineer's conclusion that the clutch failure was as a direct result of his driving style, and not due to an issue present when the car was supplied to him. And the supplying dealership didn't say there was an issue with the clutch when the car went in for the battery replacement and water leak repair. And, had the clutch issue been present at those points, as it would affect the normal operation of the car, I would've expected the dealership to have commented on this.

As a result, I'm satisfied that, on the balance of probabilities, the issues with the clutch were down to Mr H's driving style accelerating the demise of an already road worn clutch, and that it wasn't something that was present or developing at the point of sale. And I don't intend to ask Close Brothers to take any further action.

## **Responses**

Mr H did not respond to my provisional view.

Close Brothers responded to say they had nothing further to add. However, they said that, in September 2023, they did support Mr H with the rejection of the car, which was "largely agreed due to delays with our investigation."

### **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 neither Mr H nor Close Brothers have said anything to the contrary, I'm taking their comments, or lack thereof, to mean they don't object to my provisional view. And, while Close Brothers comments about supporting the rejection have been noted, they don't change my view that they don't need to do anything more. Given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

### **My final decision**

For the reasons explained, I don't intend to uphold Mr H's complaint about Close Brothers Limited, trading as Close Brothers Motor Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 December 2023.

Andrew Burford  
**Ombudsman**