

The complaint

Mr D complains that a used car he acquired via a conditional sale agreement with Close Brothers Limited wasn't of satisfactory quality.

What happened

In September 2022 Mr D acquired a used car via a four-year conditional sale agreement with Close Brothers. The car was around 10 years old and had a mileage in excess of 116,000.

Mr D says he had no issues driving the car until January 2023 when he found that the four-wheel drive wasn't working, and then around two weeks later, the car broke down needing to be collected and taken to a garage.

Mr D says that the car was investigated by more than one garage and a fault with the fuel system was identified. He says he was told that due to the cost of potential repairs, the garages declined to do further investigations or attempt repairs. Mr D says he was advised to contact the manufacturer.

Mr D says he contacted the dealer who provided the car, but they said that it was now outside of the three-month warranty that they had been supplied. Mr D contacted Close Brothers.

Close Brothers arranged for the car to be inspected by an independent engineer. They reported that they had found fault codes which indicated fuelling issues and said this was supported by the car's engine cutting out after a short period of idling. The independent engineer said that further investigations were required under workshop conditions. However, the independent engineer concluded that this fault wouldn't have been present at the point of supply of the car to Mr D.

In light of the independent engineer's report Close Brothers didn't uphold Mr D's complaint.

Mr D complained to this service. He said the car wasn't of satisfactory quality having broken down four months after he acquired it. Mr D also said that the car's mileage had been recorded incorrectly and been far higher than the 116,321 noted as the mileage at the point of supply.

Mr D further complained about the poor service he'd received from Close Brothers as he said it had failed to communicate with him about the fault. He said he only received contact about his complaint when he had stopped paying his direct debits under the agreement.

Our investigator didn't recommend that Mr D's complaint should be upheld. He said that looking at the mileage recorded at the car's last MOT in July 2022 which was 116,453 and the mileage at the point of supply in September 2022 of 116,321, that there was a discrepancy. But, he said, he thought this was more likely than not due to a clerical error and it hadn't made a material difference to his view. Our investigator said he thought it was reasonable to consider the car's mileage had been over 116,000 and that before it had broken down in January 2023 Mr D had been able to drive around 6,000 miles in it.

Our investigator said that although the exact issue with the car was unknown, the independent engineer had found that it hadn't been present at the car's point of supply to Mr D. He said this was a reasonable conclusion to reach looking at the length of time Mr D had the car and the distance he'd driven. Our investigator said he thought the car had been of satisfactory condition at the point of supply given its age and previous use.

In regard to Mr D stopping his direct debits and Close Brothers taking action, our investigator said he didn't think Close Brothers had acted unfairly. While he appreciated why Mr D had stopped paying under the agreement, he had no right to do so and Close Brothers was entitled to take the action about the arrears under the agreement that it had.

Mr D disagreed with our investigator's view. He said he believed the car's mileage had been much higher than 116,321 when he'd acquired it and to consider that the discrepancy in the mileage was only a clerical error was unfair.

Mr D said the fault with car had not been properly diagnosed by the independent engineer and that problems with the fuel delivery system can have many causes which wouldn't be due to fair wear and tear. He said he'd bought the car understanding that it had been serviced but it had developed major engine issues within four months of his taking possession.

Mr D raised concerns that Close Brothers had failed to contact him and discuss his complaint about the faulty car and had only got in touch when he stopped paying the monthly payments under the agreement. He said the car had now been repossessed.

As the parties were unable to reach an agreement about this complaint it has been passed to me.

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.

When looking at this complaint, I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the conditional sale agreement entered into by Mr D is a regulated consumer credit agreement this service is able to consider complaints relating to it. Close Brothers is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here the car was around ten years old and, although the exact mileage is uncertain it was in excess of 116,000. So, some issues of maintenance and repair would be expected over time. Mr D says he didn't experience any problems using the car until January 2023,

around four months after acquiring it.

Mr D says he believes the car's mileage was around 118,000 when he acquired it. I've seen the mileage recorded on the MOT in July was around 120 miles more than the mileage recorded at the point of supply to Mr D. Mr D says that our investigator's view that this was due to a clerical error was unfair, but I disagree with that. For instance I haven't seen any evidence that would suggest that the difference in the mileages was due to the supplying dealer deliberately trying to misrepresent the mileage of the car in September 2022. And where evidence is missing or contradictory then I have to decide what I think is the most likely thing to have happened. Here, I think it's fair to consider the error in the mileage was due to an admin error when it was being recorded.

I also don't think it's likely the mileage would have differed to the margin suggested by Mr D. I think it's likely the car's mileage would have still been around 116,500 or so. I'm satisfied Mr D was able to make reasonable use of the car before it broke down and had driven around 6,000 miles in that time.

I appreciate Mr D doesn't feel that Close Brothers responded appropriately or fairly to his complaint about the car. It didn't discuss repairs or costs with him. But although I think that Close Brothers could have possibly done more about keeping in touch with Mr D, I wouldn't have expected it to make offers about repairs or costs unless it agreed it was responsible for the car's faults. Close Brothers also isn't responsible for providing a courtesy car to be Mr D when he couldn't use this one. I think Close Brothers acted fairly by arranging for the car to be independently inspected.

Mr D isn't happy at the quality of that inspection as the independent engineer didn't reach any conclusion as to the actual fault with the car. But given the number of potential causes for a fuel system fault I'm not surprised they recommended further investigation. However, given the independent engineer's conclusion that this fault wouldn't have been present at the point of supply then I am also not surprised that Close Brothers didn't seek those further investigations. It didn't consider that it would be liable any repairs identified.

I think, looking at the amount of time that had passed since the inception of the financial agreement and the amount of use Mr D was able to make of the car, that there wasn't either present or developing, a fault with the car's fuel system in September 2022. I think this issue has arisen while Mr D was using the car. So, I need to consider the durability of the car.

Durability is what a reasonable person would reasonably expect from this car. As set out above, it wasn't a new car and so wouldn't be expected to be fault free. And given the age and mileage at its point of supply I think it's fair to say that various components of the car would have suffered wear and tear. This means maintenance and repairs would reasonably be expected over time due to further use. Mr D says that faults with the fuel system wouldn't have arisen from wear and tear but I'm afraid I disagree with his view. As Mr D acknowledges the problem with the fuel system can have a number of causes and those causes do involve parts, such as the fuel injectors, fuel pump or a clog or leak in the fuel line. And these are parts which would be impacted by wear and tear.

While I appreciate the evidence provided by the independent engineer is limited, I think it's reasonable to conclude that the fault with the car wasn't present or developing at the point of supply and that it's more likely than not due to wear and tear of the car's components through Mr D's use. I think a reasonable person would consider this car had been reasonably durable when supplied to Mr D.

So, while I appreciate this will be of disappointment to Mr D, I don't think Close Brothers is

responsible for repairing the fault with the car.

I've seen Mr D is unhappy at Close Brothers handling of his complaint. Looking at its contact notes for Mr D's account, I think Close brothers was clear he shouldn't stop making payments under the agreement. I can appreciate Mr D has found it a struggle paying for a car that he couldn't use and still having to find a way of travelling but he remained liable under the agreement's terms and conditions to make the monthly payments.

I can't reasonably say, on the evidence I've seen, that Close Brothers wasn't entitled to take the action that it has in dealing with the arrears on the agreement. However, if Mr D feels that Close Brothers hasn't followed the arrears process correctly or has acted unfairly in its repossession of the car then he will need to make a complaint to Close Brothers first so that it can investigate that. I don't have the remit to look at complaints that businesses hasn't first had an opportunity to consider. Here Mr D's complaint to Close Brothers was about the quality of the car and I can't see Mr D has complained to it about the handling of his account once it was in arrears.

So for the reasons set out above I'm not upholding Mr D's complaint.

My final decision

As set out above, I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 February 2024.

Jocelyn Griffith
Ombudsman