

The complaint

Ms R complains that Close Brothers Limited ("Close Brothers") supplied her with a car that she wasn't happy with.

What happened

Ms R referred a complaint to us along with a representative. As the complainant is Ms R, for ease, I have addressed my decision to Ms R only throughout, when referring to what they have both told us.

Ms R acquired a used car in May 2020 from a supplying dealership. The car was acquired using a conditional sale agreement with Close Brothers and it was first registered around five and a half years earlier. The total cash price of the car was £58,000 and the duration of the agreement was 60 months. The mileage recorded on the agreement said the car had travelled 16,000 miles at the point of supply. An online advert for the car at the time said it had travelled 15,900 miles.

Ms R said shortly after acquiring the car, it developed faults. I won't comment further on these faults as our service has already responded and made findings on them in a previous complaint referred to us.

Ms R had also highlighted what she believed to be an intermittent engine misfire. This was initially investigated in April 2021 but a fault couldn't be identified. So, she said she would look to have it investigated further as she felt the issue persisted.

Ms R believed a possible engine misfire hadn't been fully investigated by Close Brothers and complained again to them.

Ms R then also complained to Close Brothers about a possible mileage discrepancy with the car. Ms R said she found evidence the mileage of the car had been altered significantly before being acquired by a possible 15,000 miles. Ms R said that she noticed the discrepancy through a third-party tracking application installed to the car.

In April 2023, Close Brothers provided Ms R with their final response. They explained that as Ms R had raised this complaint to them outside of six months since she acquired the car, she would need to provide evidence that the mileage of the car was incorrect and that it had been 'clocked'. Close Brothers also went on to say that they checked the MOT history and didn't see any concerns with the mileage.

In a final response Ms R received from Close Brothers in June 2022, it said Ms R previously raised a complaint about the engine misfire, but they were unable to detect a misfire at the time of their inspection. So, Ms R had repairs completed herself to the coils and spark plugs to attempt to resolve the issue. Close Brothers appointed an independent inspection company in April 2022 and they concluded that they do not believe the fault would have been present or developing from the point of sale. Close Brothers offered Ms R £150 as compensation for any delays or inconvenience she may have suffered throughout the complaint. Ms R has received £150 as compensation into her account.

Ms R, unhappy with Close Brother's response, referred the complaint to our service.

Our investigator didn't uphold the complaint. In summary, she didn't think the fault of the engine misfire was present or developing at the point of sale. And she concluded that the mileage of the car was likely around 16,000 miles at the point of supply after reviewing the MOT history.

Ms R disagreed with the investigator's outcome. Ms R said, among other things, that the independent report showed a fault did exist and as it was intermittent in nature, Ms R believed it was present when the car was acquired. Ms R went on to say that the manufacturer's dealership suggested the car had a non-standard performance upgrade, which likely increased the wear and tear and chances of faults arising. Ms R said the original advertisement clearly stated the mileage as 15,900, not 16,000 miles. Ms R also said that she felt the third-party tracking application installed to the car was reliable in considering the miles the car had likely travelled.

As Ms R disagreed with the investigator's findings, the complaint was passed to me to decide.

I issued a provisional decision on 16 November 2023 where I explained why I didn't intend to uphold Ms R's complaint. In that decision I said:

"Ms R complains about the quality of a car supplied under a conditional sale agreement. Entering into regulated consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can consider Ms R's complaint against Close Brothers.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Close Brothers here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. It's important to note that Ms R's car was used. So, I don't think a reasonable person would expect it to be in the same condition as a new one. But, that being said, Ms R's car was around five and a half years old, cost £58,000 and I think it's fair to say, from its advertised mileage, it was below the average of a car this age. Ms R has complained that the mileage of the car was altered before the point of supply, so I've made comments about it later in my findings. But, considering all the relevant factors above, I think a reasonable person would've expected the car to be in good condition, free from anything other than very minor issues and would expect trouble free motoring for some time.

The CRA also explains that goods must be as described. So, the car should've been advertised and sold to Ms R with an accurate mileage.

What I need to decide in this case is whether the car was of satisfactory quality or not, and whether it was as described. The first thing to consider is whether the car developed a fault.

Ms R provided a copy of the report conducted by an independent third-party in April 2022. The report said,

"In our opinion based on the visible evidence we would conclude that the vehicle did display evidence of misfire."

The report concluded the car did display evidence of an engine misfire and this is consistent with what Ms R has said. So, I'm satisfied that there was a fault with the car.

The report went on to say,

"The faults would not have been present or developing at policy inception... We note the vehicle covered 12,325 miles since hire to the date of our inspection..."

I appreciate Ms R believes the fault with the engine was likely present when the car was acquired. However, the evidence supplied doesn't suggest so. The report conducted on the car is clear in explaining that the fault would not have been present or developing at the point of supply.

I've noted that Ms R did have the car inspected in April 2021, but they also didn't find a fault with an engine misfire at the time.

Ms R also provided a copy of an email received from the manufacturers dealership where it gave a brief summary of the diagnostics and works carried out on the car on behalf of Ms R. It said the first works carried out to the car in relation to an issue with the engine was in February 2022 – almost two years after the point of supply. I think it is likely that if an issue with the engine was present or developing at the point of supply, it would have been apparent much sooner.

So, considering everything here, I haven't seen enough to persuade me that the conclusions of the report aren't valid and I'm more persuaded by what has been stated in the independent report. It follows that I'm satisfied the engine misfire fault wasn't present or developing at the point of supply.

Ms R believes the car had a non-standard performance upgrade, which might have increased the chances of faults arising. I'm mindful no further evidence has been provided to show modifications to the engine, such as full diagnostics or an independent report. I've noted that the manufacturer's dealership suggested the car to be tested on a dynamometer, but no test has been conducted nor a report of its findings provided. I'm also mindful that the independent report provided doesn't state that the car had a performance enhancement to the engine. So, from what I have seen, I don't think it is likely the car has had a performance upgrade.

Ms R has said the advertisement for the car stated the mileage at 15,900, and not 16,000 miles as stated in the agreement. I appreciate Ms R's point here that this is different. But, I need to consider what's fair and reasonable. It might not be possible for a dealer to advertise a perfectly accurate mileage – for instance if the car was taken for a test drive, this would change.

Given that the two mileages are, broadly, around the same, I'm satisfied the car was advertised with the mileage being around what was stated on the agreement.

Ms R feels strongly about the veracity of the third-party tracking application installed to the car in showing what the true mileage of the car to be. However, the information provided doesn't explain how the tracker concluded the mileage of the car is higher than that displayed on its odometer. And no further expert evidence has been provided to support what the tracker shows. I'm also mindful of the MOT history of the car, which shows in September 2019, the car's mileage was 14,865, and in October 2020, the car's mileage was 19,624.

I've also had in mind that no evidence has been provided from any physical inspection of the car. For instance, I've been provided with no evidence to show, for example, that parts of the car have suffered a higher level of wear and tear than should be expected.

I want to reassure Ms R that I've very carefully considered all of the evidence here, including reviewing all of the information from the app she's supplied. But, I haven't seen enough to persuade me the mileage of the car has been 'clocked' and tampered with and I think it is likely the car's mileage at the point of supply was around the mileage stated in the finance agreement.

In September 2023, Ms R has said that the car is awaiting further tests for which reports can be provided, and that she aims for the tests to be booked in for November 2023. I'm mindful that we are already part-way through November 2023 and this complaint has been with our service for some time already. So, to draw a close to this complaint, I will allow both parties until the end of this month to make any further submissions."

Responses to the provisional decision

Ms R responded and made several further comments to my provisional decision. Among other things, Ms R provided further insight into her interactions with Close Brothers and with the manufacturer's dealership. She said she didn't think a comprehensive investigation was carried out by Close Brothers when she raised her concerns to them.

Ms R also said that the independent report completed in April 2022 was very presumptuous with no technical explanation.

Ms R also went on to explain that the third-party tracking application is a well-established and reputable tracking organisation. Ms R also said that she believed the mileage of the car was adjusted before a MOT was completed, to show a smooth paper trail of mileage.

Ms R also believed the information supplied from the manufacturer's dealership showed there was a high chance the car had a third-party performance upgrade completed on it.

Close Brothers didn't respond to my provisional decision, before the deadline I set.

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'm aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here. Namely, did Close Brothers supply Ms R with a car that wasn't of satisfactory quality at the point of supply.

I can see Ms R feels strongly about her complaint. If there's something I've not mentioned, I haven't ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Ms R has suggested in her response that I haven't considered or reviewed her previous complaint made to Close Brothers, which was also referred to our service. To be clear, I have considered it. But as I said in my provisional decision, I won't make further comments on the findings made in that complaint as our service has already provided an answer to it. However, as our service didn't previously make a finding on the engine misfire, mileage

discrepancy, or to the performance of the engine, I'm satisfied I can consider those aspects in this decision.

Having considered the additional comments made by Ms R, I'm not persuaded to change my opinion from the provisional decision made. Ultimately, on balance, from the evidence I have available to me, I don't think an engine misfire was present or developing at the point of supply. Having reviewed the April 2022 independent report, I accept the car has an engine misfire issue. I also think it is likely the engine misfire issue appears intermittently, from what Ms R has told our service. But I need to be satisfied that the engine misfire was present or developing at the point of supply. Two independent reports; one from August 2020 and the other from April 2022 didn't say that an engine misfire was present or developing at the point of supply. So, I'm not satisfied that an engine misfire was present or developing at policy inception.

Turning my attention now to the mileage discrepancy. As I explained in my provisional decision, I carefully considered all the information from the app which Ms R supplied. However, the information provided doesn't explain how the tracker concluded the mileage of the car is higher than that displayed on its odometer. And no further expert evidence has been provided to support what the tracker shows. So, I'm not persuaded to change my opinion from the conclusion I reached in my provisional decision.

Turning my attention now to the performance of the engine. I accept the manufacturer's dealership said that a road test of the car found it didn't lack power and it feels quicker than a standard car. But in the same email, the manufacturer's dealership went on to say that they advise for the car to be tested on a dynamometer to determine the actual power output. So, I don't think I can rely on these comments as further investigation was required to be certain that the engine had been tampered with or remapped.

Ms R previously said she was awaiting further tests for which reports could be provided. So, in my provisional decision, I allowed both parties further time to provide submissions; but no reports had been submitted by the deadline I set. I appreciate Ms R's comments and her concern that tests completed could cause further damage to the car. But, without clear evidence or reports to the contrary, I'm not persuaded to depart from the findings I initially made.

I'm also mindful that I have given enough time for further submissions to be made, and I don't think it is fair to prolong my findings any further.

So, in summary, I don't think Close Brothers need to do anything to put things right.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 29 December 2023.

Ronesh Amin
Ombudsman