

The complaint

Mrs J, who is represented by her son, Mr J, complains that Close Brothers Limited mis-sold her a conditional loan agreement to acquire a car.

What happened

Mr J wished to acquire a car to use as a minicab. He says that when he applied for finance this was declined and the dealer suggested he ask a family member to help. His mother applied for finance and this was successful. Mr J says that the dealer knew the car was for his use and that he was intending to use it for private hire. The sale took place in October 2019.

He says they were told they could transfer the log book into Mr J's name which he duly did. Close Brothers was notified of this change and it contacted Mrs J. It explained that the terms of the loan required her to be the registered keeper. Mr J agreed to transfer it back, but his mother was abroad and this caused a delay. In early December the business also explained to Mr J that the loan did not allow the car to be used as a taxicab. It was for social use only. It asked Mr J to transfer the log book back to his mother.

A default letter was issued due to the failure of a direct debit which was paid by alternative means. I have read the contact notes from the business file and I see that it made numerous attempts to contact Mr J by phone, but with little success. The business took the decision to terminate the agreement as it had been taken out fraudulently.

Mrs J was still abroad in March, but Mr J said he would seek alternative finance to settle the loan. He asked that Close Brothers defer any further action while he arranged finance. Mr J said he had £10,000 available and was awaiting a loan for the balance, but this was delayed due to the lockdown.

The account fell into arrears and the car was repossessed in mid-June. Mr J complained that he and his mother had been misled by the dealer which was fully aware of the use to which the car would be put. This was rejected by Close Brothers and so Mrs J brought her complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld.

He noted that the agreement stated that the car was not to be "*used for the carriage of passengers for reward or hire or as a taxi*". It also allowed for the car to be repossessed if the terms of the agreement were broken. As such he didn't believe the business had done anything wrong.

He also considered if there had been any evidence of misrepresentation by the dealer acting on behalf of Close Brothers. However, he could not see anything to show that a false statement had been made which had persuaded Mrs J to acquire the car.

Mr J didn't agree and said his mother couldn't read English and didn't know what she had signed. She was elderly and didn't drive and wasn't told the log book could not be transferred. He added that the dealer was fully aware of the intended use and had set up the

loan. He had made the payments from his account and he had trusted the dealer to ensure everything was ok.

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.

The crux of this complaint is what was said by the dealer to Mrs J and her son and subsequently what happened after Close Brothers told Mr J that the car had to be transferred back into his mother's name.

Mr J has said that the dealer was aware the car was for him and that it was to be used for private hire. He has said that he had explained the situation and chose this car, in part at least, because it was already registered for private hire with the local authority. He has said his original application for finance was declined and the dealer suggested he ask a family member for help.

Mr J was hiring a car for use in his private hire business and he was seeking to buy one to replace the one he was hiring. He says he was told that he could transfer the logbook to his name after about three or four weeks.

I find his testimony both consistent and credible. I have not heard from the dealer about the conversation. However, set against that is the documentation which states that the car is to be registered in the name of Mrs J and is for her use. I appreciate Mrs J may not have read this but given what Mr J has said about the car being for him I would expect him to be satisfied that the agreement met his needs.

I have some sympathy with Mrs and Mr J and the situation in which they find themselves. However, I have to consider the second element which is what happened after Close Brothers told them the car should be returned to his Mrs J's name. I consider it relevant that the business brought the issue to their attention and explained what was required to address it.

Mr J says he stopped using the car but forgot to return the registration to his mother's name. He has said his mother was abroad, but I consider he was given a reasonable opportunity to rectify the problem. I see he asked for early settlement details in March 2020. I can also see that payments were missed and the account fell into arrears. Overall, it seems that the business gave Mrs J and her son the chance to rectify the problem.

I have concluded that even if there were grounds for concern over the agreement, Mr J, acting on behalf of his mother, had the opportunity to address the matter but failed to do so and Close Brothers was entitled to repossess the car.

I appreciate Mrs J is left with an outstanding balance to pay and I recognise the hardship this may cause her. The agreement was made by her and not her son and I can only ask Close Brothers to treat Mrs J positively and sympathetically in helping her resolve her financial difficulties, not least due to her age.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 23 July 2021.

Ivor Graham
Ombudsman