

The complaint

Mr W has complained that Close Brothers Limited trading as Close Brothers Motor Finance treated him unfairly after he'd taken out a payment deferral.

What happened

Mr W acquired a used car under a conditional sale agreement with Close Brothers in November 2019. The car cost around £7,000 and was to be paid back over four years with payments of around £160 per month.

In 2020, Mr W contacted Close Brothers to ask for support because his finances were adversely impacted by Covid-19. Over the next few months, Close Brothers and Mr W contacted each other on and off, and Close Brothers allowed him to take a payment deferral for a few months.

It looks like Mr W told Close Brothers in August 2020 that he'd be going back to work the following month. So, they came to an agreement for Mr W to recommence making his payments again. And Close Brothers agreed Mr W could pay his original payment amount, but it wanted to set up an arrangement to clear the payments that had been deferred. Mr W wasn't happy with this and said he couldn't afford to increase his payments. And this is where the dispute has arisen.

Over the next few months, Close Brothers sought an income and expenditure form from Mr W, so that it could establish what he could afford to pay, and whether he could contribute more than his normal monthly payment. While the conversations were ongoing Close Brothers allowed Mr W to continue his normal payment. Mr W wanted the option to extend his agreement.

The notes aren't totally clear, but Close Brothers has explained the income and expenditure form Mr W completed in February 2021 said he had a surplus of £545. But Mr W explained he had two young children and was left with very little at the end of each month. It looks like Mr W called back to say the expenses hadn't been completed properly because not all his wife's bills were included.

Close Brothers allowed Mr W to continue his normal payment for a few months. But another income and expenditure form was completed in June 2021 that indicated he had a surplus of around £120.

I think Close Brothers thought this was important because it indicated Mr W could pay more than his normal monthly payment. And Close Brothers also seems to have told Mr W that payments he was making to a loan and a credit card were non-priority debts. Again, indicating there could be means for Mr W to increase his payment.

Mr W on the other hand said the figures on the income and expenditure form didn't cover all his household expenses. He said his wife's income and expenditure wasn't properly considered. And he was unhappy with the support he was given. He said other creditors had allowed him to extend his agreements.

Unhappy with how things were going, Mr W brought his complaint to our service. One of our investigators looked into things and thought the initial support Close Brothers offered was fair, but he thought it didn't handle the payment plan requests reasonably. He thought this had caused unnecessary upset. To resolve the complaint, he recommended Close Brothers pay Mr W £100 compensation, and he thought Mr W should speak to it to come up with a sustainable plan.

Mr W agreed with the assessment. But Close Brothers didn't. Close Brothers said it had acted with forbearance and that it determined, from looking at Mr W's income and expenditure, that there were non-priority debts which he would be able to pay a lower amount towards. Close Brothers said its agreement was a priority debt. It didn't think it would be fair to simply go by what Mr W said about not being able to pay extra towards the debt. It ultimately didn't think it had caused distress. But it did offer to discuss with its operations manager to see if Mr W's payments could be spread over longer than 12 months, but that this would be as a courtesy.

As things couldn't be resolved the complaint has been passed to me to make a 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 first want to say I'm sorry to hear Covid-19 has negatively impacted Mr W. It can't have been easy, and I thank him for taking the time and effort to bring the complaint to our service.

Mr W acquired the car under a regulated conditional sale agreement, and our service is able to consider complaints relating to those sorts of agreements.

Like our investigator pointed out, I think Close Brothers did initially provide the support that was required when Mr W asked for help when he fell into financial difficulties as a result of Covid-19. I think it broadly gave the sort of forbearance the regulator had set out in its guidance that car finance firms should offer customers impacted by Covid-19. So, I don't think I need to go over that again here.

I think the key question I need to decide is whether Close Brothers acted fairly in its dealings with Mr W when discussing repayment of the deferred payments. And if it didn't, what does it need to do to put things right.

Close Brothers has been clear that it wanted Mr W to clear the deferred payments within 12 months. And it indicated it wanted the debt cleared before the end of the agreement in 2023. It looks like there's a concern from Close Brothers that there's a depreciating asset involved and extending the agreement for Mr W to clear the deferred payments may not be the right thing to do. And indeed, it looks like Mr W might've been told that was not an option.

Mr W however has been clear that his finances have been negatively impacted by Covid-19. He felt he was rushed into completing the income and expenditure forms. He's unhappy because other financial service providers have given him the breathing space he thinks he needs. He highlighted his wife's income had dropped. And that he has two children and is left with very little at the end of the month.

So, I've thought about what's happened. On the one hand, after the payment deferral period, despite Close Brothers wanting Mr W to increase his payment, it did give him space to continue paying the original amount. It put in arrangements for three-month periods before

seeking to review the matter. I think this was fair. But on the other hand, there was still a great deal of the unknown for many people, like Mr W, during that period. And it looks like his family's finances were to some extent rather uncertain. So, I can understand why Mr W was hesitant to commit to paying extra.

Where the dispute has arisen is after Close Brothers went through income and expenditure forms with Mr W. In February 2021, it looked like Mr W had around £500 disposable income. So, I can understand why Close Brothers thought he should increase his payment. But from Mr W's point of view, he thought he'd been rushed into completing the form, his family's finances hadn't been considered properly, and he felt like he was left with little money at the end of the month. But, again, Close Brothers allowed Mr W a further three months at his normal payment, which seems fair.

Close Brothers completed another income and expenditure in June 2021, which indicated Mr W had around £120 of disposable income. Close Brothers again wanted Mr W to increase his payment. And it highlighted Mr W could reduce payments to other debts so he could clear the deferred payments towards its priority debt. By this point the relationship had deteriorated, which is why Mr W brought his complaint to our service.

Completing an income and expenditure form is a useful tool to determine broadly what committed expenditure a customer has. But it's not an exact science. And it doesn't always account for unexpected expenses. Which is often the case for customers with children. The income and expenditure that was completed, amongst other things, said Mr W required £40 for childcare; £300 for groceries; and £10 for hairdressing. But there's nothing else inputted for living and family costs. I accept it looks like Mr W agreed with this. And I don't think it was wrong for Close Brothers to take things at face value. But what about when a new pair of shoes is required, or a school trip to pay for? Mr W said he had very little at the end of each month. When he spoke to the advisor, he was indicating the £120 disposable figure was what he had left to live on. So, would it have been fairer to have scrutinised the income and expenditure form a bit more to help understand if it was a fair reflection of his finances, after listening to what he was saying? To my mind, I think that would've been the right thing to do. It seems more likely than not the form wasn't completed properly in the first place.

I'm also mindful of what the regulator set out in its Covid-19 guidance for car finance firms. It said:

4.10 Where a customer can resume full repayments after a payment deferral, but is unable to pay the deferred amounts immediately and in full, the firm should allow them to repay the deferred amounts over the remaining term of the agreement or allow a longer period for repayment. The firm should consider what is most in the customer's interests.

4.11 For example, where appropriate, the firm could lengthen the time during which the customer is allowed to make repayments by:

- the length of the payment deferrals given to the customer; or*
- a period of time that enables the customer to keep the same contractual payments they had prior to the payment deferrals.*

So, while I appreciate Close Brothers didn't want to give a payment arrangement for longer than 12 months, or extend Mr W's agreement, I think it should have been something that was, at least, a possibility for him.

I can understand Close Brothers' point that Mr W could look to reduce outgoings to non-priority debts. And under certain circumstances that might be fair. Mr W on the other hand was worried the debts would be passed to debt collectors if they weren't paid. Which I can

also understand. I'm mindful Mr W deferred payments to Close Brothers as a result of Covid-19. Had it not been for Covid-19, in all likelihood, Mr W would have carried on paying his agreement as normal. But the situation was unprecedented. For many customers, I think clearing the deferred payments during the term of the agreement would work well and be a sensible thing to do. But I don't find the regulator said this is what would work for everyone. I think it's important to note that Mr W continued to agree, and be able to make his original contractual repayment after the deferral. This isn't a situation where he's paying less than what he agreed he could afford at the outset.

In Mr W's particular circumstances, I think Close Brothers has done lots of things I would have expected. But I also think it's made it seem to Mr W his only option was to increase his payments, unless it were to get a special arrangement from its operations manager. Ultimately, I think it was putting a bit too much pressure on him to agree to something that it looks like he would have struggled to afford. Which I don't think would have been sustainable.

Putting things right

I think Close Brothers and Mr W should continue to communicate with each other to see if Mr W is able to afford to increase his payments. I'm not going to set out how often that needs to happen. But if Mr W's financial situation doesn't improve and he's unable to increase his payments, Close Brothers should consider allowing him to clear the deferred payments after the agreement has ended. For the avoidance of doubt, I'm not saying Close Brothers shouldn't take steps to complete an income and expenditure form with Mr W. But I think it should look carefully at what is provided and make sure it considers his situation fairly.

And while I agree with a lot of what Close Brothers has done, and that it can't be held responsible for Mr W's financial difficulties, I also think it has contributed to some of his distress, at what was already a difficult time. So, I agree with our investigator, a payment of £100 in recognition of that is fair. Mr W may wish to consider asking Close Brothers to put this towards the deferred amount.

My final decision

My final decision is that I uphold this complaint and direct Close Brothers Limited trading as Close Brothers Motor Finance to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 June 2022.

Simon Wingfield
Ombudsman