

The complaint

Miss G has complained about the support she received from Close Brothers Limited (Close Brothers) when she found herself in financial difficulties.

What happened

In February 2019, Miss G entered into a conditional sale agreement with Close Brothers to acquire a used car. The total amount Miss G had to pay was approximately £6,915 including a deposit of £300. The duration of the agreement consisted of 60 monthly payments of around £110.

On 23 March 2020, the UK Government announced the UK would enter a lockdown due to the Covid-19 pandemic. Because of the pandemic Miss G was unable to work. As such, on 6 April 2020 she contacted Close Brothers, seeking assistance. It took some time for Close Brothers to respond and during this time Miss G kept up her monthly payments. When in June 2020, Close Brothers got back to Miss G, they agreed to provide her with 90 days breathing space, which they later told our service was a three-month payment deferral. The breathing space was intended for Miss G's next three payments, which consisted of June, July and August 2020 payment.

Close Brothers' contact notes show that after this 90-day period they tried to contact Miss G, but were unsuccessful, until Miss G contacted them asking for further assistance in October 2020. At that time, Close Brothers applied a further 60-days breathing space. This included her September and October 2020 payments. Miss G said that after this Close Brothers told her that if she needed any further assistance, she would need to complete an income and expenditure form, which they would send her. Miss G said that Close Brothers never sent her this form, and that she didn't hear from them until their agents arrived and repossessed the car, which was later sold at an auction.

As Miss G was unhappy with Close Brothers' actions, she brought her complaint to this service.

Our investigator thought the complaint should be upheld. She believed, Close Brothers should've done things differently and that, most notably, they could've offered Miss G a payment deferral for a total of six months. She was of the opinion, that had a payment deferral been granted, the payments would have been recorded as deferred payments rather than missed payments, so the car wouldn't have been repossessed at the time it was. She thought that to put things right Close Brothers should refund Miss G £300 deposit she paid, and pay her £200 for the distress and inconvenience caused. She also asked Close Brothers to amend Miss G's credit file to reflect that she was in a payment deferral and remove other adverse information from her credit file such as the default recorded.

Close Brothers disagreed with the investigator. In summary, they said that because of the lack of contact from Miss G after the deferral period ended, and considering the arrears at the time, they were within their right to reposes the car. So, the complaint has been passed to me to decide.

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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the events of the complaint. But I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Miss G acquired the car under a conditional sale agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements.

On 13 January 2021, Close Brothers wrote to Miss G. In this correspondence they said that they have sent out notice of default sum letters on 2 July 2020, 2 October 2020 and 2 December 2020. They also said that they have sent letters outlining the notice of arrears on 6 July 2020 and 18 December 2020, followed by a letter on 22 December 2020 outlining that the agreement has been terminated. So, in this correspondence, they said that they followed the correct procedure when they terminated her agreement. They have also told our service that Miss G was provided with a deferral period of 150 days. This would've covered her payments, which were due in June, July, August, September and October of 2020. But they felt that for Miss G to defer her payments further she would need to complete an income and expenditure form, to ensure that payments continued to be affordable. And they feel that Miss G would've been aware that her deferral period came to an end, so she should've contacted them to complete the form when she realised that she had not received one.

In addition, they said that the five monthly missed payments, during and including the months of June 2020 to October 2020, could be both deferred or count as arrears, depending on the situation. They feel that as they were unable to come to an arrangement with Miss G, due to lack of contact from her, the missed payments in this instance must be considered as arrears.

So, I've taken the above into consideration when thinking about whether Close Brothers have done enough to support Miss G, when she told them that she was experiencing financial hardship. When doing so, I've also thought about the relevant rules and guidance at the time. The rules and guidance mentioned below refer to '*customers*' and '*consumers*', and I will be using these words interchangeably, but in this decision the words are to have the same meaning.

The Financial Conduct Authority (FCA) – Consumer Credit Sourcebook (CONC), and in particular CONC 7, titled "Arrears, default and recovery (including repossession)", says that firms should consider consumers in default or in arrears difficulties with forbearance and due consideration. Treating consumers with forbearance would include such things as considering suspending, reducing, waiving or cancelling any further interest or charges, allowing deferment of payment of arrears, and accepting token payments for a reasonable period of time.

On 24 April 2020 the FCA also published additional guidance – “Motor finance agreements and coronavirus: temporary guidance for firms”. This guidance introduced temporary measures for consumers whose finances had been impacted by Covid-19, and it builds on Principle 6: “A firm must pay due regard to the interests of its customers and treat them fairly”.

In relation to the payment deferrals, the guidance states the following: “Where a customer is already experiencing or reasonably expects to experience temporary payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a payment deferral, a firm should grant the customer a payment deferral for 3 months unless the firm determines (acting reasonably) that it is obviously not in the customer’s interests to do so.” And it states that: “In determining whether a 3 month payment deferral is obviously not in customers’ interests, firms should consider both customers’ need for immediate temporary support and the longer-term effects of a payment deferral on the customer’s situation, in particular the customer’s ability to repay any accrued interest once the payment deferral ends, and over what period”.

This guidance was further updated by the FCA in July 2020. This update was published a short period after Miss G first contacted Close Brothers, but I think it is relevant to this case, as it builds on the previous guidance. The guidance states that: “There is no expectation under this guidance that the firm makes enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, or whether this is not in the customer’s interests. Firms can, however, choose to make the enquiries they consider necessary in order to satisfy themselves that the customer is eligible for support and to identify whether the customer would benefit from any additional support, provided that this does not delay the provision of timely support.”.

Taking the above guidance into consideration, I think it was fair that Close Brothers offered Miss G the first 90-day deferral period bearing in mind her circumstances, and the Covid-19 pandemic. So, I’ve gone on to think about what happened after this initial three-month period ended. In October 2020, Miss G asked Close Brothers for a second deferral period, but they only granted this for 60 days. So, in total Miss G was only given a deferral for five months including the initial first three months. The FCA guidance mentioned above, allows for a maximum deferral period to be six months, and I think that considering Miss G was still impacted by the Covid-19 pandemic, it would’ve been fair for Close Brothers to provide this deferral for a further three months instead of two. This would’ve covered her payments for September, October and November of 2020.

While I understand that Close Brothers wanted Miss G to provide them with an income and expenditure assessment, so they could further assess her situation, I don’t think it was fair to provide Miss G with the deferral for 60 days, instead of 90, considering the specific circumstances of her case. I think the intention of the FCA guidance was for firms to provide quick, immediate short-term assistance to consumers in difficulty without the need for prolonged discussions or detailed additional checks before agreeing a payment deferral. And I think it would be difficult for consumers to predict, with any degree of certainty, in the early days of the Covid-19 pandemic how significantly they would be affected by Covid-19 and/or the lockdowns. So, I think that it would’ve been fairer for Close Brothers to have given Miss G the deferral for another 90 days instead of 60, and without asking her for an income and expenditure assessment at that time.

Had Close Brothers given Miss G a deferral period of full six months instead of five, I think her situation would’ve unfolded much differently. Her extended payment deferral would’ve ended in November 2020, so her next payment on her agreement would’ve been due in December 2020. The payments that Miss G missed in the months of June to November

2020 wouldn't have been treated as arrears as they would've been covered by the six-month deferral period. I agree with Close Brothers that Miss G could've contacted them earlier than she did to discuss her situation, but at the time the finance agreement was terminated, and then later when the car was repossessed, Miss G would've only been one or two months in arrears with her payments. This is in contrast to the Information Commissioner's Office notes that state that a default may be registered when a consumer is at least three months behind with their payments. So, bearing all the above in mind, I don't think it was fair to terminate Miss G's agreement and repossess the car at the time Close Brothers chose to do so.

In addition, I've considered that the FCA guidance provides that firms shouldn't take steps to terminate the agreement or seek repossession of the car where an individual is experiencing temporary payment difficulties as a result of the Covid-19 pandemic, and consumer's circumstances should be taken into consideration. So repossessions were to be considered as a last resort, and I can see from the contact notes provided by Close Brothers that early on in January 2021, Miss G called when the car was getting repossessed and wanted to sort out the missed payments. She has also told our service that her father was willing to help her make up all the missed payments. So, I've taken into consideration that she did want to come to a solution with Close Brothers. I know that she should've contacted them sooner than she did, but, once again, at the time of repossession her agreement would've been two months in arrears at most, had Close Brothers given her a deferral period for six instead of five months, which, like mentioned above, I think would've been the fair thing to do considering her circumstances.

To summarise, I think the fairer option was for Close Brothers to have given Miss G a payment deferral for six instead of five months. So, I don't think that the missed payments in the months of June to November 2020 should be recorded as adverse information on Miss G's credit file. I think during these months, her credit file can reflect that she had a payment deferral, but not that these payments were missed. Which also means that Miss G should not be charged any fees relating to missed payments during that period. The default should also be removed from her credit file.

Miss G had access to the car while it was in her possession, so it is fair and reasonable that she is responsible only for the contractual payments up to the time when the car was repossessed. But had Close Brothers granted her a payment deferral for the full six months and/or worked with her, I think most likely, she would've continued to use the car and would've retained possession of it, so I think it is fair and reasonable that Close Brothers refunds the £300 deposit Miss G paid at the beginning of the finance agreement.

Also, I think by Close Brothers not granting her a full six months deferral, and then prematurely repossessing the car has caused Miss G distress and inconvenience. So, I think it is fair and reasonable the Close Brothers pay her £200 compensation to reflect the impact the situation had on her.

My final decision

My final decision is that I uphold this complaint, and direct Close Brothers Limited to:

1. Refund the £300 deposit Miss G paid plus 8% simple interest per year from the date of payment to the date of settlement;
2. Remove any adverse information from Miss G's credit file in relation to the June, July, August, September, October and November 2020 missed payments, and this period of time can be recorded on her credit file as a payment deferral;
3. Pay Miss G £200 compensation for the distress and inconvenience caused.

If Close Brothers Limited considers tax should be deducted from the interest element of my award, they should provide Miss G with a certificate showing how much they have taken off, so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 2 June 2022.

Mike Kozbial
Ombudsman