

The complaint

Mr C is unhappy that Close Brothers Limited terminated the conditional sale agreement he had with them.

What happened

In October 2019 Mr C was supplied with a used van through a conditional sale agreement with Close Brothers. He paid a deposit of £2,039.80, and the agreement was for £11,194, with 48 monthly payments of £316.50.

Mr C, a self-employed builder, maintained payments on the agreement until July 2020. But the payments for August and September 2020 were missed. Close Brothers were unable to contact Mr C and, on 28 September 2020, they sent him a Notice of Default of Sums in Arrears. And, on 13 October 2020, they terminated the agreement.

Mr C contacted Close Brothers on 19 October 2020. He explained he'd been working away and hadn't received their letters. He offered to repay the missing payments and continue with the agreement. But Close Brothers refused and said the only way Mr C could now keep the van was to clear the outstanding balance if full. And, if he didn't do this, the van would be repossessed.

Mr C complained to Close Brothers, but they said they'd followed their process correctly. And they wouldn't change their view on the termination and repossession. Mr C was unhappy with this response, and he brought his complaint to us for investigation.

Close Brothers allowed Mr C to make a payment of £5,000 on 2 November 2021, to bring the account up to date. And, as I understand it, Mr C is still in possession of the van.

Our investigator said that, even though he hadn't told Close Brothers about this, Mr C's income had been affected by the coronavirus (Covid-19) pandemic. And he thought that Close Brothers should take into consideration the temporary guidance issued by the Financial Conduct Authority (FCA) about people in Mr C's position.

The investigator thought that, while Mr C wouldn't have received the letters Close Brothers sent him, because he was working away, he would've received the voicemails, and most probably the emails. So, he thought that Close Brothers had made reasonable attempts to contact Mr C. But, once Mr C had contacted them, the investigator thought Close Brothers should've followed the FCA guidance and only taken repossession action as a last resort.

The investigator said that, under the guidelines from the Information Commissioners Office, a default should generally be registered when an account is between three and six months in arrears. And Close Brothers registered a default when Mr C was only two payments behind. So, he thought that, when Mr C called Close Brothers on 19 October 2020, they should've treated him more sympathetically, accepted the payments he was trying to make to clear the arrears, and allowed the agreement to continue as normal.

However, by not doing this, and starting repossession proceedings, Close Brothers caused Mr C a great deal of distress. So, the investigator said that Close Brothers should remove all the adverse information from Mr C's file; reinstate the agreement, allowing Mr C to keep the van and return to making the agreed monthly payments; and pay Mr C £250 for the distress and inconvenience he'd been caused.

Mr C agreed with the investigator but said that the charges that'd been added relating to the repossession proceedings should also be removed from his account.

Close Brothers didn't agree with the investigator. They said they'd made reasonable attempts to contact Mr C and, when he didn't respond, they thought they'd acted reasonably by terminating the agreement. But they didn't think the FCA guidelines applied, as Mr C hadn't told them his income had been affected by Covid-19 and because he was able to clear the arrears in full in October 2019.

And Close Brothers didn't agree that the termination should be reversed because *"it is quite common for customer's to contact us after termination and offer to pay [but] this doesn't necessarily mean that the customer is able to make ongoing payments or that keeping the vehicle is the best option financially and we have to take these factors into account ... the repossession of the vehicle is often the best option for the customer financially and prevents further debt being incurred."*

Because neither party agreed with the investigator, this matter has been passed to me to make a final 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.

Having done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time. Mr C was supplied with a van under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The basic facts of this case aren't in dispute. Mr C missed the payments for August and September 2020 and didn't respond to the emails and voicemails he'd received from Close Brothers. As a result, Close Brothers registered a default and terminated the agreement. And it wasn't until after the termination had happened that Mr C contacted them to discuss the situation.

Mr C was a self-employed builder and, during the Government imposed lockdown in early 2020, he wasn't legally able to attend people's homes to work. And building sites were also shut down. In addition, the lockdown also affected manufacturing, which led to a shortage of building materials. So, I think it's fair to say that Mr C's income was affected by Covid-19.

However, Mr C didn't tell Close Brothers about this. If he had done, under the FCA guidance in place, he would've been able to ask for a payment deferral. And, where a payment deferral was in place, then Close Brothers wouldn't have registered any arrears with the credit reference agencies. But, as he didn't do this, I'm satisfied that Close Brothers acted reasonably by reporting the missed payments for August and September 2020 to the credit reference agencies – they have an obligation to ensure that the conduct of Mr C's account was accurately reported and they did this.

Close Brothers have said that, when Mr C contacted them in October 2020, he was able to repay the missed payments, and maintain payments going forward. And this meant his income wasn't being affected by Covid-19, so the FCA guidance didn't apply. I'm in agreement that, as this was the case, Mr C's income was no longer being affected by Covid-19. So, the guidance relating to payment deferrals certainly didn't apply.

But, the general FCA guidance, in place before Covid-19, said that firms should consider customers in arrears, or with defaults, with forbearance and due consideration. The temporary guidance relating to Covid-19 said, *"Where the customer has the right to use the vehicle, firms should not take steps to terminate the agreement or seek to repossess the vehicle (whether by way of any requisite legal proceedings or otherwise) where the customer is experiencing temporary payment difficulties as a result of circumstances relating to coronavirus and needs use of the vehicle."*

The FCA issued further guidance which explained that *"before 31 January 2021, a firm should not, absent exceptional circumstances, terminate a regulated agreement or repossess goods or vehicles under the agreement that the customer needs."* It also explained that *"firms are not prevented from taking action to repossess as a last resort where the customer has failed to engage with the firm despite the firm having made all reasonable attempts to engage with the customer."*

Based on this guidance, I'm satisfied that Close Brothers acted reasonably by terminating the agreement when they did, as Mr C hadn't responded to any of their attempts to contact him. However, once Mr C spoke to Close Brothers, they were aware of his situation. And, under the guidance in place, I don't think they should've continued with the repossession.

What's more, Close Brothers have said *"it is quite common for customer's to contact us after termination and offer to pay [but] this doesn't necessarily mean that the customer is able to make ongoing payments or that keeping the vehicle is the best option financially and we have to take these factors into account."* And, by accepting that Mr C was able to clear the arrears and maintain ongoing payments (meaning that his income was no longer affected by Covid-19), this also means that he was in a position where continuing to keep and pay for the van wasn't putting him in a worse financial position, or one where his debt would increase.

So, based on what Close Brothers have said, I'm satisfied that this was a situation where it would be reasonable to overturn the termination, and reinstate the agreement. And Close Brothers haven't shown me any evidence of any reasonable checks they did at this stage which indicated that this wasn't the case. As such, I'm satisfied that Close Brothers acted unreasonably in October 2020 by not accepting the payment Mr C offered, by not reinstating the agreement, and by continuing with the repossession. And I think they should do something to put things right.

Putting things right

Close Brothers have recorded missed payments on Mr C's credit file (even though he offered to make payments and they refused to accept them) as well as a default. As explained by the investigator, the guidelines issued by the Information Commissioners Office say that a customer should usually be between three and six months in arrears when a default is registered. But Close Brothers issued the default after just two months arrears.

Given this, I think that Close Brothers should remove the default from Mr C's credit file. They should also remove any arrears registered after October 2020, as this is when Mr C offered to clear the arrears and recommence payments. However, Mr C missed the payments for August and September 2020, through no fault of Close Brothers. So, these should still be recorded as arrears.

In addition to this, Close Brothers should remove any fees or charges applied to Mr C's account on or after 19 October 2020. Because, had Close Brothers acted reasonably when Mr C called them, the arrears would've been cleared, and no charges applied. However, any fees or charges applied for the missed payments in August and September 2020 are valid and should remain.

I've also looked at what happened after October 2020, specifically with the repossession process. Close Brothers instructed an agent to act for them in this. And, as the agent was acting for Close Brothers, I'm holding them responsible for the actions of the agent.

I've listed to calls Mr C (and his wife) had with the agent, the voicemails the agent left, and the messages the agent sent Mr C through a messaging app. Close Brothers had agreed to put the matter on hold while the complaint was being dealt with, but the agent seemingly didn't agree with this course of action.

On at least two occasions the agent sent Mr C threatening messages, one saying that Mr C was committing fraud, and another saying, "*the police are desperate to arrest you.*" Whilst the agent followed these up with a message saying that the original message was sent to Mr C in error, Mr C was still impacted by those threats. And I'd expect the collections agent to be able to send messages to the right client, and not send multiple threats 'in error'.

In calls to Mr C the agent also said that he was going to report the van as being stolen, that Mr C continuing to keep using this was theft (even though he was prepared to clear the arrears and continue to make payments), and that once terminated, an agreement can never be reinstated.

In other calls the agent told Mr C that we don't have the knowledge to understand the issue, so we won't be able to help him. And that, by contacting other people to help him with his complaint has only meant that the agent had sped things up and would be dealing with getting the van back as a matter of urgency.

I consider the actions of the agent to be completely unacceptable. By telling Mr C that other people can't help him, and that by asking for assistance with his complaint will only mean that the repossession will happen faster, is essentially trying to stop Mr C from exercising his right to have his complaint looked at independently.

Given this, the fact that Mr C regularly had visits from bailiffs, and that what was recorded on his credit file stopped him getting other Covid-19 assistance i.e. bounce back loans, I'm satisfied that Close Brothers should also pay Mr C compensation for the impact of their actions.

Because I didn't agree with the investigator about either removing all the missed payments, or about not removing any fees, I've put these points to both parties. And asked for their comments. Neither Mr C nor Close Brothers commented on these changes.

So, Close Brothers should:

- reinstate the agreement, and allow Mr C to recommence payments;
- remove all adverse entries from Mr C's credit file from October 2020 to the date of reinstatement;
- remove all fees and charges applied to Mr C's account after 19 October 2020; and
- pay Mr C an additional £250 for the distress and inconvenience he's been caused.

My final decision

For the reasons explained, I uphold Mr C's complaint and Close Brothers Limited must follow my directions above.

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

Andrew Burford
Ombudsman