

## The complaint

Mr P complains that Close Brothers Limited, trading as Close Brothers Motor Finance ("Close Brothers") have made an unreasonable offer to resolve a complaint he made to them.

## What happened

I issued my provisional decision on this complaint in January of this year. An extract from that provisional decision is set out below.

*Mr P took receipt of a used car in April 2017. He financed the deal through a conditional sale agreement with Close Brothers. Mr P paid a £1,000 deposit and under the terms of the agreement he was to make 48 monthly payments of £223.46 after which, for a £10 fee, the title of the vehicle would be passed to him.*

*Mr P didn't collect the car, his brother did, and Mr P says he was unaware his brother had registered the car in his father's name. He contacted Close Brothers and they located the car at his brother's house. Mr P's brother wouldn't hand over the keys and Close Brothers contact notes say that it was agreed that a window would therefore need to be broken so the car could be loaded onto a recovery vehicle. Mr P says he didn't agree to a window being broken and that it wasn't broken when the car was towed away.*

*Mr P thought the car would be returned to him and he was upset to find that Close Brothers took the car into safe keeping instead. Close Brothers told him he had defaulted on his finance agreement with them because he needed to ensure the car was in his possession. They agreed to give the car back to Mr P if he could provide them with the vehicle registration documents and insurance in his name. There was a delay whilst Mr P applied for these documents but by mid November 2017 Mr P had provided the registration documents and Close Brothers system notes show they were in discussions with Mr P to have him collect the car.*

*There were delays whilst a new key was sourced but in December 2018, when Mr P sent transport to collect the car, he was disappointed to find the car was damaged. The window was broken, the ignition barrel was missing and there was damage to the dashboard and the bonnet. Close Brothers contact notes say:*

*"looked into and someone who used to work in (the storage company) damaged it but now works in key account..." and "Customer to collect car - get 3 quotes on repairs and invoice (the storage company) for repairs".*

*Mr P took some time to get those quotes but in May 2020 Close Brothers retracted their offer to have the repairs paid for as they said an inspection by the company storing the car had suggested the damage was related to fair wear and tear.*

*The car has not been collected and Mr P tells us he's now paid all of the instalments due under the agreement.*

*Close Brothers offered to settle the dispute by allowing Mr P to voluntarily terminate the agreement. In those circumstances they said anything he'd paid over half would be refunded back to him. They also said they'd pay for the £475 repossession charge to reflect the delay in providing an inspection report from the storage company.*

*Our investigator thought Close Brothers offer was fair, but Mr P didn't. He therefore asked for a final decision by an ombudsman and the case has therefore been passed to me.*

### **What I've provisionally 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 know it will disappoint Close Brothers, but I don't currently agree with the investigator's opinion and I'm expecting to uphold this complaint, at least in part. Please let me explain why.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*Mr P acquired his car under a conditional sale agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*Mr P doesn't think he should have to pay for a car he has been unable to use and he thinks Close Brothers should be responsible for any damage that's happened whilst the car has been in storage.*

*The period from inception of the agreement to November 2017*

*I think the car was initially taken into storage because Mr P was been in breach of his contract with Close Brothers. Clause 5 of the agreement said the goods should be kept in Mr P's control and at his address. That was clearly not the case and in those circumstances I can understand Close Brothers repossessing the car and not releasing it back to Mr P until they had sight of the vehicle registration documents in his name. Close Brothers system notes show that Mr P provided the vehicle registration documents on 13 November 2017. I think Mr P should therefore be held accountable for making payments towards his agreement during this period as it was his failure to comply with clause 5 of the agreement that led to possession being withheld.*

*The period from November 2017 to the failed collection in December 2018*

*Despite the registration documents being supplied there was a further delay before collection of the car was arranged. Close Brothers system notes show that Mr P made promises to collect the car in January 2018 and on a couple of occasions in March 2018, but he failed to do so. He then tried to arrange a replacement key but couldn't get one until much later in the year. All told, that meant that collection of the car wasn't arranged until December 2018. Whilst I can see that Close Brothers did offer to arrange a replacement key for Mr P in August 2018, and that arrangement subsequently failed, I can see that in July 2018 Mr P told them he'd already ordered a key and was waiting for delivery. I'm not therefore persuaded that Close Brothers failed attempts to obtain a key delayed its eventual delivery.*

*The key wasn't available because Mr P's brother had it. Whilst I understand Mr P's difficulties in getting it back I don't think it would be fair to hold Close Brothers responsible for that. Neither Mr P nor Close Brothers were aware of the damage to the ignition barrel until the attempt to collect the car. So, I don't think it would be fair to suggest the delays waiting for a replacement key were Close Brothers responsibility and I think it would therefore be fair to suggest Mr P was responsible for paying for the car up until December 2018, as the delays were out of Close Brothers control.*

*The period after the failed collection in December 2018*

*Close Brothers notes explain that the damage to the car was caused by "someone who used to work in (the storage company)" so I don't think it would be fair to hold Mr P responsible for rectifying those problems.*

*Whilst Close Brothers were initially prepared to fund those repairs (through the storage company) they later retracted the offer and I don't think that was fair of them.*

*I don't think the inspection report from the storage company could fairly be considered independent. They are, after all, the business who Close Brothers said had caused the damage.*

*I also don't think it was fair of Close Brothers to ask Mr P to get quotations for the work. That was surely for them to do as it was their agents who had damaged the car. It was also very difficult for Mr P to obtain those quotes as he lived several hours from the storage location and was unable to visit the site because of work commitments abroad.*

*So, I think it was unreasonable for Close Brothers to expect Mr P to pay for a car that wasn't in his possession because damage had been created by their agents and that damage meant it was undriveable and couldn't be collected.*

*I think Close Brothers will therefore need to refund any payments made towards the finance agreement from, and including, December 2018.*

*The deposit*

*I think the fairest resolution would be for Close Brothers to retain a portion of the deposit to reflect the amount of time I think Mr P should have been paying for the vehicle. I think Mr P should have paid for the car between April 2017 and December 2018 and I'm therefore asking Close Brothers to retain twenty four eighths of the deposit and to return the rest with interest as Mr P has been deprived of the money.*

*Distress and inconvenience*

*Whilst this service would often award a compensation payment in respect of any distress and inconvenience the consumer has experienced, I'm not minded to make any award in this complaint.*

*That's because I think it's only fair to reflect the fact that these issues wouldn't have happened if Mr P had kept to his side of the agreement and kept the car in his possession and at his address. I'm not persuaded there is enough information to suggest the car was in Mr P's brother's possession because of a mistake that Close Brothers may have made and, whilst I understand he has been inconvenienced by, for instance, having to escalate his complaint and get quotations for work, I think Close Brothers have also been inconvenienced by having to chase Mr P to collect the car and supporting his request to have it returned to*

him.

*What to do with the car?*

*Mr P says he's now paid for the car in full but, as I'm asking Close Brothers to refund quite a lot of the payments Mr P has made towards his agreement it wouldn't be fair to also return the car to him.*

*The car should be repaired and sold by Close Brothers who should refund twenty forty eighths of the sales revenue to Mr P.*

*The repossession charge*

*I can see that Close Brothers offered to pay the £475 repossession charge because they accepted the condition report they supplied had been provided late. I'd agree with that conclusion and think that offer is a fair one.*

### **My provisional decision**

*For the reasons I've given above I'm expecting to uphold this complaint and to tell Close Brothers Limited to:*

- *Refund twenty eight monthly instalments in respect of the loss of use Mr P has had from the car. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.*
- *Provide a refund of the deposit, retaining twenty forty eighths of it and adding 8% simple interest per year to the refund from the date the deposit was paid to the date of settlement.*
- *Waive the repossession charge or refund it if Mr P has paid it.*
- *Repair the car and refund twenty forty eighths of the sales revenue to Mr P, once auction costs have been deducted.*
- *Remove any adverse reports they may have made to Mr P's credit file in relation to this agreement.*

Close Brothers didn't provide any more information for me to consider but Mr P did.

He said that the car was damaged in August/September 2017 when it was first moved. So, any attempt by Mr P to retrieve the car between then and December 2018 would have been wasted. He suggested it would be fairer for him to take responsibility for the payments before August 2017.

He explained that he was also asked to insure the car before removing it and had therefore wasted a year's payment, from December 2017. He stressed that he was the one who had informed Close Brothers of the car's location and insisted that the window wasn't broken when it was loaded onto the tow truck in his presence.

Mr P queried the standard to which the car would be repaired and whether the business would therefore be able, or willing, to obtain a fair value for it.

### **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.

Mr P's new submissions haven't led me to change my view.

I don't think it would be fair to hold Close Brothers responsible for delays that were the result of Mr P's failure to comply with clause 5 of the agreement, or provide keys, or collect the car. I can't be sure when the car was damaged and irrespective of when that damage occurred the delay attributable to Close Brothers can, in my opinion, only fairly have commenced from the point at which Mr P tried to collect the car.

### **Putting things right**

I've not been provided with any additional information that has led me to change my provisional decision. So, my provisional decision now becomes my final decision on this complaint.

Mr P has queried whether it would be in Close Brother's interests to repair the car to a satisfactory standard so that the car would have a chance of realising a respectable price at auction. I understand his concerns and for clarity I would explain that I'd expect the damage identified in December 2018, that I've detailed in the background to this complaint, should be rectified to a standard that a reasonable person would consider satisfactory on a car of this age and mileage. I don't think it's possible to be more prescriptive.

### **My final decision**

For the reasons I've given above I uphold this complaint and to tell Close Brothers Limited to:

- Refund twenty eight monthly instalments in respect of the loss of use Mr P has had from the car. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.
- Provide a refund of the deposit, retaining twenty forty eighths of it and adding 8% simple interest per year to the refund from the date the deposit was paid to the date of settlement.
- Waive the repossession charge or refund it if Mr P has paid it.
- Repair the car and refund twenty forty eighths of the sales revenue to Mr P, once auction costs have been deducted.
- Remove any adverse reports they may have made to Mr P's credit file in relation to this agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 March 2022.

Phillip McMahon  
**Ombudsman**