

The complaint

Mr M complains Close Brothers Limited (Close Brothers) failed to support him during his time of financial difficulty as a result of the Covid-19 pandemic.

What happened

In December 2018, Mr M entered into a 36 month conditional sale agreement for a used car. The cash price was £4,845 and he was required to pay £172 per month.

In May 2020, Mr M told Close Brothers that he was experiencing financial difficulty as he had been furloughed due to the pandemic. Close Brothers agreed to 90 days 'breathing space'. This meant they wouldn't collect payment and there would be no impact on his credit file. In September 2020, at Mr M's request this was extended by a further 90 days, meaning he wasn't required to pay anything towards the agreement for six months between June and November 2020.

In October 2020, Mr M asked for further breathing space but Close Brothers said this wouldn't be possible as they had already deferred payments for six months. They agreed to a three month arrangement in which Mr M was required to pay the contractual amount only. Mr M also told them that the missed payments during the breathing space period were reporting adversely on his credit file. He was told this would be removed but despite his repeated calls to Close Brothers to rectify it, the markers remained in January 2021.

In January 2021, Close Brothers contacted Mr M about setting up a payment plan. He was told that he was required to pay back the missed payments during the term of the agreement meaning the monthly instalments would increase to £258. However Mr M said during the call in May 2020 he was told the missed payments would be added to the end of the agreement.

In February 2021, Close Brothers issued their final response, they accepted adverse information had incorrectly reported on Mr M's credit file between June 2020 to January 2021. They agreed to remove it and advised it could take up to 60 days to do so. However they disagreed incorrect information was given to him about the breathing space, they said he was told once it ended, a 3 to 12 month repayment plan would be set up.

Unhappy with their response, Mr M referred the complaint to our service. While waiting for the complaint to be investigated, he said he stopped making payments towards the agreement. He explained the reasons for this were because Close Brothers had yet to rectify his credit file and he couldn't afford the increased instalments.

In October 2021, Close Brothers identified adverse markers were reporting incorrectly on Mr M's credit file between January and May 2021, they said this was due to the previous missed payments during the breathing space. They confirmed they would update it and they offered £50 compensation by way of an apology.

Although the issue of Mr M's ability to pay the increased instalments weren't subject to the complaint when it was initially brought to our service, the investigator decided to consider all complaint points under this reference.

They recommended the case was upheld as they didn't believe Close Brothers had acted fairly during Mr M's period of financial difficulty. They said Close Brothers should:

- Remove any negative markers from Mr Ms credit file;
- Discuss Mr Ms financial situation and agree a suitable repayment plan;
- Pay Mr M an additional £150 compensation for the trouble and upset caused.

Broadly speaking, Close Brothers accepted the investigator's opinion however they said he hadn't told them he couldn't afford the increased instalments. They also said when the breathing space ended they allowed him to continue to pay the normal contractual amount for three months in order to assist him (November to January). Thereafter, he was required to pay £258 per month which he agreed to.

Although Mr M agreed in principle to the above, he didn't feel £150 compensation was enough. He said Close Brothers should pay £1,000 compensation given the trouble and upset caused.

In February 2022, I issued my provisional decision partially upholding the complaint. I said:

"Financial difficulty

Having reviewed the file, it's clear Mr M suffered financial difficulty as a result of the pandemic. I'm sorry to hear this, I can appreciate this would've been a difficult time for him.

Overall, I agree with the findings of the investigator so I won't repeat them again in full here. I recognise Close Brothers' efforts to support Mr M during his time of financial difficulty by deferring the payments for six months. I'm satisfied they followed the Financial Conduct Authority's guidance on Covid-19 for car finance firms as mentioned in the investigator's opinion. They've already accepted during that time, the missed payments shouldn't have reported adversely on his credit file and they've agreed to update this for June to January 2021. I consider this a fair remedy given the circumstances and based on the evidence I've seen, it looks like this was successfully updated.

However by his own admission, Mr M said he stopped making payments out of frustration of Close Brothers failing to rectify his credit file despite him chasing them. I can understand his frustration with this because it's clear there was a significant delay to when he first reported it in October 2020 to when it was eventually updated around February 2021. However, if a consumer is able to afford to pay the contractual instalments, it isn't advisable for them to stop making contractual payments in order to resolve a dispute as this is likely to make the situation worse.

That said, Mr M has also told our service that the other reason why he stopped making the payments was because he couldn't afford the increased instalments. I note Close Brothers' comments that they were unaware of this and based on their contact notes I can understand why. During a call in January 2021, they discussed a repayment plan and they said he would be required to pay £258 and based on the contact notes I've seen, the advisor noted Mr M was happy with this plan. Had this amount not been affordable to Mr M, I believe it would've been reasonable for him to have said so but there is no evidence he did. However I appreciate he may not have realised other support may have been available or perhaps given the issues with his credit file and communication with Close Brothers, he lost confidence in them.

When a payment deferral (breathing space) comes to an end and the consumer is unable to resume payments, the FCA's guidance, published in July 2020, says:

“Firms should take reasonable steps to contact their customers in good time before the end of an initial payment deferral period about resuming payments and to engage with them about their options when it expires”

It also says:

“Where a customer can resume full repayments after the initial 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.

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

- the length of the initial payment deferral or*
- a period of time that enables the customer to keep the same contractual payments they had prior to the payment deferral”.*

There are other parts of the guidance which may be relevant but I specifically wanted to highlight the above. This is because I think it’s fair to say the FCA’s intention was where a payment deferral had been granted and it’s due to come to an end, it was expected businesses like Close Brothers to work with consumers about how best to pay the missing sums. In this case, it appears they’ve done so as they set up a repayment plan in January 2021 based on what they believed Mr M could afford so I believe they acted fairly.

Mr M was of the impression the missed payments would be added to the end of the agreement. Close Brothers said he was told a repayment plan of 3 to 12 months would be set up. I can understand why they wouldn’t automatically add deferred payments to the end of the agreement as this is likely to increase the total amount payable which wouldn’t always be in the interest of their consumers.

In this case, in order to pay back the missed payments, Close Brothers increased the monthly instalments during the term of the agreement. I don’t have an issue with this as it’s a reasonable course of action which for many consumers may be agreeable as it’s the most cost effective option. However the problem arises where such an increase is unaffordable. Where this happens, I would expect alternative and sustainable support to be offered. However this can only happen if it’s made clear to them that the increased payment is unaffordable and as explained above, I don’t believe Mr M told Close Brothers this wouldn’t be affordable.

In any event, he has made it clear to our service that he can’t afford the increased instalments. Similar to the investigator, in order to move matters forward, I believe Close Brothers should talk to Mr M to discuss a suitable repayment plan based on what he can afford, he has told our service he can at least afford the original contractual amount. I believe this is a fair solution and Close Brothers have already agreed they will do so. This may mean there is still money owed when the agreement comes to an end and I encourage Close Brothers to work with Mr M if this is likely to impact his ownership of the car. It’s likely Mr M won’t be able to take ownership until the balance is paid in full and in the circumstances, I believe this is fair.

Mr M has provided our service with a recent copy of his credit report which shows missed payment markers for February, March, October, November, December 2021 and January 2022. I believe a fair remedy would be to remove all adverse information from his credit file from June 2020 up to the present day.

I wish to remind Close Brothers, if Mr M is still experiencing financial difficulty, I expect them to treat him with forbearance and due consideration. I must also make it clear, when discussing the repayment plan if Mr M is unable to at least meet the contractual amount of £172 this is likely to impact his credit file moving forward as Close Brothers are obliged to correctly record the status of the agreement. Equally, they may decide to take other action such as recovery proceedings.

Lastly, I've carefully considered Mr M's comments concerning the impact this situation has had on him. He said he intended to move house, buy another one and make use of the Government's temporary initiative regarding stamp duty on properties. Due to the issues with his credit file, he said he was unable to do so. He also said during that time his mortgage rate was due to expire and he wasn't able to get a favourable rate due to the adverse information on his credit file.

In order to award financial losses, I must be satisfied that it was a direct result of the business' failing. In this case, that would mean I would need to be satisfied had it not been for Close Brothers failing to remove the adverse information from the credit file, Mr M wouldn't have incurred the financial losses he's reported. Currently, there isn't enough evidence for me to reasonably say that's what happened. While I accept Mr M's credit score is most likely to have been impacted, I can't say with any certainty this was the only reason for him not being able to move or get a favourable mortgage rate on his existing property.

The decision to lend is a commercial one made by a financial business and while an individual's credit score will undoubtedly be a consideration, there are many other factors that are taken into account. It's also worth noting that throughout the period of the Covid-19 pandemic, especially at its peak, many financial businesses were being more cautious about lending due to the economic uncertainty so I must bear this in mind. Having done so, I don't believe I have sufficient evidence to safely conclude Mr M's reported losses were a direct result of Close Brothers failing to remove the adverse information so I won't be asking them to compensate him for such losses.

That said, I recognise the impact and the level of trouble and upset upon Mr M and this can be seen in his level of communication with Close Brothers. Adverse information was incorrectly recorded against him over an extended amount of time despite him being told it would be removed. This would've all taken place during what was already a stressful and uncertain time for Mr M and it's clear this situation caused further worry and upset. Given these circumstances, I believe Close Brothers should pay an additional £150 compensation".

Response to the provisional decision

Both parties were invited to respond to the provisional decision. Close Brothers accepted the findings and recommendations. Mr M didn't provide any further comments.

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.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr M's complaint.

To put things right, Close Brothers Limited should:

- Set up a suitable arrangement to pay based on what Mr M can afford (providing this is a minimum of the original contractual payment of £172);
- Remove any adverse information about this agreement from Mr M's credit file from June 2020 up to the time an arrangement to pay is agreed;
- Pay an additional £150 compensation to Mr M for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 April 2022.

Simona Charles
Ombudsman