

The complaint

Mrs B complains that Close Brothers Limited, trading as Close Brothers Motor Finance (“Close Brothers”) irresponsibly granted her a loan she couldn’t afford to repay.

What happened

I issued my provisional decision on this complaint in February 2022. An extract from that provisional decision is set out below.

In February 2020, Mrs B took receipt of a used car that she financed through a conditional sale agreement with Close Brothers. Mrs B was required to make 60 monthly repayments of £330.29. She paid a deposit of £300 and the total repayable under the agreement was £20,117.40.

Mrs B says she took the loan out to finance the car for her close friend who was always going to be the keeper of the car. Shortly after the finance started she cancelled her direct debit so that her friend could pay the instalments through a standing order. Her friend sadly passed away and Close Brothers repossessed the car but are asking Mrs B to pay the balance due on the account.

Mrs B says that Close Brothers didn’t complete adequate affordability checks and if it had, it would have seen the agreement wasn’t affordable. Close Brothers didn’t agree. They said they had carried out a thorough assessment which included reviewing Mrs B’s credit file. Our investigator didn’t recommend the complaint be upheld. She thought Close Brothers hadn’t acted unfairly or unreasonably when approving the finance agreement.

Mrs B didn’t agree and said the business had recorded inaccurate details. She wasn’t a senior nurse as their records suggested and they’d got her income wrong. She said she clearly couldn’t afford the agreement.

The case has been passed to me for a decision.

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.

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I know it will disappoint Close Brothers but I’m expecting to uphold this complaint. Please let me explain why.

Close Brothers will be familiar with all the rules, regulations, and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don’t consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Were proportionate checks completed?

I've not seen that Close Brothers verified Mrs B's income before approving the finance. The information their underwriters used suggested Mrs B was earning £2,300 per month but that wasn't the case. Given the overall size of the borrowing, the monthly repayments, and the term of the agreement, I think it would have been proportionate for them to have done so to ensure it was affordable.

I can't see that Close Brothers asked Mrs B about her expenditure either. Although it did complete a credit check, this won't have indicated what Mrs B's regular living expenses were. Without knowing what Mrs B's regular committed expenditure was, Close Brothers wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

What would the business have likely found had they performed proportionate checks?

I can't be certain what Mrs B would have told Close Brothers had it asked about her regular expenditure. I don't think Close Brothers needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Mrs B's statements as an indication of what would most likely have been disclosed.

I've reviewed three months of bank statements prior to the application. These show that Mrs B's regular committed monthly expenditure at the time was around £1000. In calculating this figure, I've included payments for mortgage, petrol, insurance, council tax, communications, utilities, TV, a hire purchase agreement, and a loan.

At the time Mrs B was receiving an income of about £706 per month. She wasn't a senior nurse although she did work in the health service. I don't think the position she had was important and it's feasible that the business recording Mrs B's employment status didn't have the option to record the exact position she held. It was Mrs B's income that should have been verified. Mrs B was also in receipt of child tax credits which over the year averaged out at about £766 per month ($£176.84 \times 52/12$), she received child benefits of £137. Her total monthly income was therefore in the region of £1,609.

Mrs B was a single parent and she's explained that payments for food came to about £400 per month and were not listed on the bank statements she provided as they were paid for from savings. I've not seen that savings account information as I don't think it would be reasonable for Close Brothers to take savings into account when considering affordability. That's because they needed to consider whether Mrs B could sustainably repay the agreement. They would, however, have needed to consider regular expenditure and I think there would need to be a consideration of how much Mrs B spent on food to feed herself and her family.

Deducting Mrs B's expenditure from her income leaves about £600 and from that payment she would need to afford food and the £330 monthly instalments on this new agreement. That leaves £270 for food and other emergency expenses. I think that means Mrs B couldn't afford to sustainably repay the new agreement as well as her existing commitments. I think Close Brothers would likely have found this out too if it had completed proportionate checks, it therefore didn't act fairly by approving the finance.

Putting things right

As I don't think Close Brothers ought to have approved the lending, it should therefore

refund all the payments Mrs B has made, including any deposit. However, I can't see Mrs B actually paid anything other than the deposit as she cancelled her direct debit and her friend started to make payments through a standing order. So, the refund of payments will be limited to the deposit and Close Brothers will need to add interest to that refund as Mrs B has been deprived of the money.

The account statement shows that Close Brothers continued to receive payments towards the agreement from Mrs B's friend until at least the point the car was repossessed and sold in August 2020. I think they've therefore received payment for the use of the car that Mrs B's friend had.

But they should now end the agreement with nothing further to pay and they should remove any adverse information they may have reported to Mrs B's credit file in relation to it.

My provisional decision

To settle Mrs B's complaint, I'm expecting to tell Close Brothers limited to:

- *End the agreement with nothing further to pay.*
- *Refund the deposit and add 8% simple interest per year* from the date of payment to the date of settlement.*
- *Remove any adverse information they may have reported to Mrs B's credit file in relation to this agreement.*

**If HM Revenue & Customs requires Close Brothers to take off tax from this interest. Close Brothers must give Mrs B a certificate showing how much tax it's taken off if Mrs B asks for one.*

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.

Close Brothers didn't respond to my provisional decision and Mrs B had nothing else to add.

So, I've not been provided with any evidence to persuade me to change my provisional decision.

Putting things right

My provisional decision now becomes my final decision on this complaint.

My final decision

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

- End the agreement with nothing further to pay.
- Refund the deposit and add 8% simple interest per year* from the date of payment to the date of settlement.
- Remove any adverse information they may have reported to Mrs B's credit file in relation to this agreement.

**If HM Revenue & Customs requires Close Brothers to take off tax from this interest. Close Brothers must give Mrs B a certificate showing how much tax it's taken off if Mrs B asks for one.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 18 April 2022.

Phillip McMahon
Ombudsman