

The complaint

Mr T has complained about the support offered by Close Brothers Limited trading as Close Brothers Motor Finance when he was in financial difficulties. He's also complained that Close Brothers didn't collect a vehicle when he wanted to end the conditional sale agreement he had with it.

What happened

Mr T acquired a used vehicle under a two-year conditional sale agreement with Close Brothers in June 2019. The vehicle cost around £5,700 and he paid a deposit of around £2,000. He contacted Close Brothers in March 2020 to find out what options he had because he was concerned he may not be able to pay his agreement.

Payments from March 2020 weren't made, and Close Brothers wrote to Mr T about the arrears. It also made various attempts to contact him by telephone. I think the vehicle had been declared off road at this point and Mr T says he tried to end the agreement around July 2020. It's not clear if he asked to voluntarily surrender the vehicle or voluntarily terminate the agreement. Around this time, our service was considering a separate complaint from Mr T against Close Brothers. Mr T also says he was given an offer from a dealer for the vehicle which would have cleared the finance, but he didn't accept it because he'd already asked to hand it back.

Further arrears notices were sent and, from what I can see Close Brothers and Mr T next spoke in March 2021. Mr T complained about the support he'd received. It looks like Close Brothers highlighted options Mr T had to end the agreement. And its internal notes say it could offer an extension of the agreement by 6 months. It's not clear it communicated that to Mr T. But, in any event, things weren't resolved.

Mr T contacted our service in July 2021 to complain the vehicle hadn't been collected; he'd not received assistance during Covid-19; and that Close Brothers hadn't communicated with him properly.

One of our investigators looked into things and said she thought Close Brothers had acted fairly when Mr T contacted it in March 2020. She noted the Financial Conduct Authority's (FCA) Covid-19 guidance for car finance firms hadn't been released at that point. But she didn't think the options Close Brothers had provided were unfair. She said Close Brothers had made attempts to contact Mr T without success. She also said she couldn't see any evidence Mr T had attempted to end the agreement around the time he said he had. So she didn't think Close Brothers had acted unreasonably in that regard.

Our investigator did, however, think that, as the supplier of the goods under the agreement, Close Brothers should offer to collect the vehicle from Mr T. She'd noted it had said its arrears team thought it wasn't economically viable for it to collect the vehicle. Close Brothers responded to say it didn't think it had a responsibility to collect the vehicle, but it said it would allow Mr T to either:

- Scrap the vehicle as long as the proceeds were put towards his liability.

- Accept a payment of book value instead of the full amount owing.
- Arrange for a collections company to consider recovering the vehicle and putting the proceeds towards the liability.

Mr T wasn't happy with the offer. He said if Close Brothers had taken this action in 2020 the vehicle would have been worth more. So he asked our investigator to reconsider compensation. He also asked her to instruct Close Brothers to collect the vehicle. Close Brothers asked an agent to do that but was unsuccessful. Close Brothers says Mr T told its agents he'd made other arrangements, which is something he also told our service.

As things couldn't be resolved, the complaint has been passed to me to make a 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.

Mr T acquired the vehicle under a regulated conditional sale agreement, and our service is able to consider complaints relating to those sorts of agreements.

Mr T has raised various complaints with Close Brothers. So I first want to set out, for the avoidance of doubt, that the only complaints I'm considering here are in relation to the support Close Brothers offered Mr T when he was in financial difficulties; whether it acted fairly in relation to a request from him to end the agreement; and its communication in relation to those points.

Support received

I can see Mr T contacted Close Brothers in March 2020 to speak about his employment situation. There's limited evidence available. But the contact notes say Mr T spoke to Close Brothers because he'd had a month off for retraining in his job, and that there might be less work available going forward. The notes also indicate Mr T says he fell into a vulnerable category and so might struggle to go for interviews. The notes don't explicitly set it out, but I expect this was in relation to Covid-19.

It looks like Mr T indicated he would be able to make the next payment, but he was unsure about the following months. Close Brothers' contact notes say it advised Mr T to make the next payment and that it could revisit the situation once he knew a bit more about his work. So no arrangement was put in place at that time because Close Brothers and Mr T weren't sure how things were going to pan out.

I've thought about what happened here. Like our investigator pointed out, I'm mindful the FCA hadn't released any Covid-19 specific guidance for car finance firms to follow at this point. But there were existing rules for customers in financial difficulties that Close Brothers was required to follow. This is set out in the CONC rulebook which can be found in the FCA handbook. Under CONC 7.3.4 it says "*A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.*" CONC 7.3.6 goes on to say "*Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.*"

As I've said above, the information I have is limited. But from what I can see, it looks like Close Brothers was willing to discuss Mr T's situation with him. The notes indicate Close Brothers could offer forbearance arrangements, but it would need to know more about Mr T's situation before doing so. I think that sounds reasonable.

As Mr T didn't make payment in March 2020, over the next few months the contact notes indicate Close Brothers made various attempts by phone and in writing to contact him. But it wasn't able to reach him. I appreciate Mr T has said he had difficulty trying to contact Close Brothers. I accept it was a very busy time for firms given the impact of Covid-19. But I don't find I can say Close Brothers wasn't willing to provide him support. And I don't think its communication attempts were unreasonable either.

Request to end agreement

Mr T says he told Close Brothers he wanted to hand back the vehicle in 2020. Mr T says he thinks this was some time in mid-2020. As I've said above, it's not clear if he asked to surrender the vehicle or voluntarily terminate the agreement. More recently he's specifically referred to voluntary termination. But I've considered both options for completeness. Voluntary surrender isn't something set out in the agreement, but it's often something car finance firms will allow customers to do – particularly if they're in financial difficulties. The agreement does however set out Mr T's rights for voluntary termination. It says:

You have a right to end this agreement. To do so, you should write to the person you make your payments to. They will then be entitled to the return of the goods and to half the total amount payable under this agreement, that is £3,265.24. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more.

However, like our investigator pointed out, I think the main issue here is that, other than what Mr T has told us, I've simply not seen evidence that Mr T did try to voluntarily terminate the agreement or surrender the vehicle in 2020. I've not seen any records of this on the contact notes. And, as per the terms of the agreement, I've not seen evidence Mr T wrote to Close Brothers about that either. So without that evidence, I don't find I can safely conclude that Close Brothers has dealt with the request unfairly.

It looks like by the time Mr T did end up speaking to Close Brothers in March 2021 it reminded him of his right to voluntarily terminate the agreement at this point, which is what I would've expected it to do. But, from what I can see, Mr T wasn't happy he'd have to pay anything. And he complained again about the support he had during Covid-19.

I'm mindful that if Mr T had opted to voluntarily terminate the agreement in March 2021 the payments that hadn't been made for the previous year would have been classed as overdue, and so would've been payable as per what I set out above. The agreement was also nearly at the end of its term meaning most payments had already fallen overdue. I'm also mindful that if the vehicle wasn't in a reasonable condition when it was returned after voluntary termination Mr T may have had a debt in relation to that as well. By Mr T's account the vehicle had been left unused for quite some time.

I can understand why Close Brothers didn't think it would be economical to collect the vehicle. But, again, like our investigator pointed out, the vehicle did belong to Close Brothers. So I think it should've made it clear to Mr T that it was an option to hand back the vehicle earlier than it ultimately did. But I have to bear in mind that when it did send collection agents to pick the vehicle up, it looks like Mr T said he'd made other arrangements.

Taking all this into account, and while reiterating that I've only considered the complaint I've set out above, and that I can only base my decision on the available evidence, I don't think Close Brothers acted unreasonably when Mr T contacted it to ask for help in 2020. I don't find there's sufficient evidence Mr T asked to end the agreement in 2020. I agree Close Brothers should have given Mr T the option to hand the vehicle back sooner than it did. But by that point, most payments had become due under the agreement. Mr T seems to have made other arrangements to dispose of the vehicle. So I'm not going to direct Close Brothers to take any other action.

I'd recommend Mr T speaks to Close Brothers about the outstanding balance and what his options are. If he's unable to clear what's owed straight away I'd remind Close Brothers to treat him with forbearance and due consideration.

Mr T did indicate to our service he'd prefer Close Brothers to take him to court about the matter. That's not something I'm going to direct it to do. But Mr T is of course free to pursue the complaint himself by other means, such as through the courts.

My final decision

My final decision is that Close Brothers Limited trading as Close Brothers Motor Finance has done enough to put things right for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 July 2022.

Simon Wingfield
Ombudsman