

## **The complaint**

Mr O complains that his agreement with Close Brothers Limited was terminated and the vehicle seized and sold at auction.

## **What happened**

In March 2017 Mr O was supplied with a car and entered into a conditional sale agreement with Close Brothers.

In January 2019 the agreement was terminated by Close Brothers due to non-payment. The debt was transferred to a third party for collection.

In February 2021 the car was seized and sold at auction.

Mr O wasn't aware that the car had been seized. He reported it to the police as stolen.

When he discovered what had happened, Mr D complained to Close Brothers. He was unhappy that the car had been sold and said he didn't think he should have to pay the amount remaining under the agreement because he was no longer able to use the car.

In response, Close Brothers said it had transferred Mr O's account to a third party and that it no longer had any interest in the car.

Mr O remained unhappy and complained to this service.

Our investigator didn't uphold the complaint. He said he didn't think Close Brothers could be held responsible for a third party repossessing the car.

After the investigator had issued his view, Close Brothers provided some further information. It said it had terminated the agreement in January 2019 and transferred the debt to a third party on the understanding that Mr O would retain the car and enter into a payment agreement with the third party. Close Brothers said that in these circumstances, it was necessary for it to register its interest in the car but that for a period after March 2021 it omitted to do this and it was during this period that the car was seized by the police or the highways agency and sold. Close Brothers said it hadn't received any funds from the sale of the car.

Our investigator issued a second view in which he said that he didn't think Close Brothers had acted fairly. He said that Close Brothers had failed to manually register its interest in the car when it should've done, and that had it done so, this would've been checked before the car was sold and the car would've been returned to Close Brothers or the sale proceeds paid to Close Brothers and applied towards the outstanding balance under the agreement. The investigator said the market value of the car at the time it was sold at auction was £11,564, which was more than the amount outstanding under the agreement. He said that Close Brothers should deduct the outstanding balance from the market value, settle the agreement and pay the balance to Mr O.

Close Brothers didn't agree so I've been asked 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.

I've looked at Mr O's account. I can see that the agreement was terminated in January 2019 due to non-payment. Creation sent notice of sums in arrears letters and a default notice to Mr O, so I'm satisfied that he was aware that his payments had fallen into arrears.

Close Brothers has explained that notwithstanding termination of the agreement, it allowed Mr O to retain the car and transferred the debt to a third party to set up a payment plan. Close Brothers said that Mr O had initially made payments to the third party and later made intermittent standing order payments to it directly. Close Brothers said that at the date of termination the amount outstanding under the agreement was £6198.40.

Close Brothers has acknowledged that there was a period of time after March 2021 when it failed to register its interest in the car. This appears to have coincided with the time when the car was seized and sold.

I haven't seen any information about the identity of the person or authority who seized the car and/or why the car was seized. Close Brothers has said that the car was seized because it wasn't taxed. But I haven't seen any evidence to confirm this.

I can't be certain why the car was seized. However, if Close Brothers had done what it should have done and registered its interest in the car, then the party who seized the car and/or the auction house would've contacted Close Brothers and the car would either have been returned to Close brothers, or the net sale proceeds would've been paid over to Close Brothers. Because of Close Brothers failure to register its interest in the car, Mr O has been financially disadvantaged, because the car was sold and the net sale proceeds haven't been applied to reduce his outstanding balance.

Based on what I've seen, the car was worth more than the outstanding balance at the time it was sold. I think Close Brothers need to put things right here by putting Mr O back in the position he would've been in had Close Brothers done what it should've done and registered its interest in the car.

## **Putting things right**

To put things right, Close Brothers Limited must write off the outstanding balance under the agreement and pay the difference between the current outstanding balance and the value of the car at the time it was sold (£11,564) to Mr O.

Close Brothers Limited must also pay 8% simple interest on the amount paid to Mr O from the date of sale of the car to the date of settlement.

## **My final decision**

My final decision is that I uphold the complaint. Close Brothers Limited must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 9 October 2022.

Emma Davy

**Ombudsman**