

The complaint

Miss M complains that Close Brothers Limited, trading as Close Brothers Motor Finance (CB) unfairly terminated her agreement and collected her car.

What happened

On 15 December 2021 Miss M acquired a used car through a conditional sale agreement with CB. The agreement was due to run for five years. The cash price of the car was £24,000. Miss M paid a £5,000 deposit, and the total charge for credit was £6,050.20, meaning the total amount payable over the term of the agreement was £30,050.20.

On 20 December 2021 CB received an email from a third party, informing them that Miss M hadn't resided at the address on the agreement since June 2021. CB checked the status of Miss M's vehicle and said that it wasn't taxed or insured. They tried to call Miss M but were unable to reach her. So, they decided to appoint a third party to recover Miss M's vehicle. They said they wanted to protect it whilst they completed further investigations.

On 22 December 2021 Miss M called CB as someone had attempted to collect the car. CB told Miss M they were undertaking investigations. Miss M told CB that the car was now insured she said she'd been using her old car whilst this one was being serviced so she hadn't insured it immediately. Miss M said she'd recently moved from the address on the application.

A third party collected the car on behalf of CB on 30 December 2021.

On 5 January 2022 Miss M's car was sold at auction for £19,418. Miss M later asked if she could pay to settle the agreement and retain the car. The car was returned to the auction house in mid-January 2022.

Miss M ultimately decided not to settle the agreement and complained to CB at the end of January 2022. Miss M said she gave all forms of ID requested to the dealership and did as she was asked. Miss M said she'd been told to use her old address as that's where her bank account was registered. Miss M said the agreement shouldn't have been terminated and CB shouldn't have repossessed the car.

CB sent Miss M their final response to her complaint in February 2022. They said their decision to terminate the agreement was correct. CB said their investigation had shown that Miss M hadn't been registered at the address she gave on the application since June 2021, the vehicle hadn't been taxed or insured, and the employment details Miss M had given weren't correct. CB said Miss M had breached the agreement by providing incorrect information. They didn't uphold Miss M's complaint.

Unhappy with this, Miss M brought her complaint to this service for investigation. She said the agreement was unfairly terminated, she'd lost her £5,000 deposit, CB had profited when the car sold at auction, and they were asking her to pay a £5,632 shortfall.

Our investigator gave her view that CB were able to terminate the agreement but, as Miss M had the car for such a short period of time, it'd be fair for CB to unwind it with nothing further for Miss M to pay, to return Miss M's £5,000 deposit and to remove the agreement from Miss M's credit file.

CB didn't agree. They said Miss M provided false information on her application, they'd sold the car for £14,750 at auction, and so Miss M still owed money under the agreement. CB said they'd asked the dealership to take the car back instead of selling it at auction, but they'd refused, and so they were unable to get Miss M's deposit back from the dealership. CB said it'd be unfair for them to refund this to Miss M, as they'd be out of pocket as a result.

Our investigator said that CB should've completed checks prior to accepting Miss M's application and, if they'd done so, she didn't think they'd have offered Miss M the agreement. So, Miss M's deposit should be refunded, and CB would need to take this up with the dealership. She said it wasn't reasonable for Miss M to be liable for the shortfall if the car was sold for less at auction.

As an agreement can't be reached, the case has been passed to me for 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.

Miss M's complaint relates to the supply of a car under a conditional sale agreement. This is a regulated consumer credit agreement, which means we're able to look into complaints about it.

In considering what I believe to be fair and reasonable in all the circumstances, I'm required to take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

CB say that Miss M provided false information on her application for the agreement, and so their decision to terminate the agreement was correct.

It's not in dispute that Miss M provided an old address on her application. She says that she was given advice to do this by the dealership as the old address matched her bank account. Miss M said she'd only recently moved out of the old address.

I've considered the agreement between CB and Miss M. It says that by signing the agreement, Miss M is confirming that all relevant information she's provided about herself and recorded in the agreement is correct.

The agreement goes on to set out that if any information Miss M gave in connection with the making of the application is false or misleading, it will be considered an "*event of default*" which gives CB the right to terminate the agreement.

So, I'm satisfied that CB were entitled to terminate the agreement as Miss M had provided false information when making her application.

I've also considered whether CB acted fairly following recovery of the car.

The car was recovered by agents on behalf of CB around two weeks after it was supplied to Miss M. So, she was in possession of the vehicle for a very short period of the original five year agreement term.

CB say that Miss M wasn't registered at the address she provided for six months prior to entering the agreement. Miss M says she'd only recently moved out. I haven't seen the full investigation CB completed into Miss M's address information. But I think they could've completed these checks, or similar checks on the information Miss M provided, prior to entering the agreement. And, had they done so, I think it's likely they wouldn't have offered the agreement to Miss M.

CB collected the car from Miss M whilst they completed their investigations in order to protect it. I've seen evidence that they then sold the car at auction around six days later. I'm aware that Miss M disagrees with some of CB's investigation, such as her employment information. I haven't seen any evidence that CB discussed their investigation or the outcome with Miss M, or that they considered Miss M's correct information and whether this would've been acceptable to them. There's a possibility that had her information been corrected on the agreement; it could've continued rather than being terminated altogether. I think it would've been reasonable for CB to have considered Miss M's correct information and whether they could've amended and continued with the agreement.

CB continued to charge Miss M for the monthly rentals under the agreement once the car had been collected, and after it'd been sold at auction. Miss M was in possession of the car for only two weeks before it was collected, and it was never returned to her for her to use.

All things considered; whilst I think that CB were entitled to terminate the agreement, I think it would be fair and reasonable in all the circumstances for the agreement to be unwound with nothing further for Miss M to pay. Miss M was in possession of the vehicle for very little of the original five-year agreement term, and CB could've done more in terms of initial checks or in a possible amendment to the agreement to avoid the need for it to be terminated.

Miss M paid a £5,000 deposit for the car. CB have said they terminated the agreement, so they won't refund this. They've also said that the dealership wouldn't take the car back, so they'd be out of pocket if they were to refund the deposit to Miss M.

As Miss M had the car for a very short period of time, and I think CB could've done more in terms of checking Miss M's details prior to entering the agreement, or to amend the agreement once the correct details were known, I don't think it's fair for the deposit to be retained in the circumstances, and so CB should refund the £5,000 deposit to Miss M. Whether or not CB can recoup this from the dealership is between them.

CB have incurred some costs in recovering the vehicle. CB say they recovered the vehicle in order to protect their asset whilst they investigated, and I don't think this was unreasonable. So, I think it's fair for them to deduct the cost of recovery from the refund to Miss M.

My final decision

My final decision is that I uphold this complaint, and Close Brothers Limited, trading as Close Brothers Motor Finance must.

- Unwind the agreement with nothing further for Miss M to pay.
- Remove the agreement from Miss M's credit file.
- Return Miss M's £5,000 deposit, less a deduction for costs incurred in recovering the vehicle

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 July 2023.

Zoe Merriman
Ombudsman