

The complaint

Mr T complains that Close Brothers Limited trading as Close Brothers Motor Finance ("Close Brothers") was wrong to invoice him for damages after he returned a car that he had been supplied with under a conditional sale agreement ("agreement").

What happened

In April 2021 Mr T entered into an agreement for a used car costing £2,295. The car was approximately 16 years old and had covered approximately 119,000 miles.

Everything else being equal Mr T undertook to pay a deposit of £400 followed by 12 monthly payments of £197.37 – making a total repayable of £2,768.44 at an APR of 53%.

In December 2021 Mr T took the decision to voluntarily terminate the agreement and return the car to Close Brothers – as was his right. At this point in time the car had covered 120,771 miles.

The car was inspected by an agent of Close Brothers and the following damages noted in an inspection report:

1. front bumper – scratch/paint defect over 125mm £97.30
 2. N/A
 3. front door – dent 16mm – 100mm (with paint damage) £114.80
 4. rear bumper – scratch/paint defect over 125mm £97.30
 5. N/A
 6. lights – cracked/broken/missing £35.00
 7. o/s front wheel – damage 100mm+ (standard alloy) £40.95
 8. quarter panel/rear window – scratch/paint defect over 125mm £114.80
 9. door mirror – scratch/paint defect 26 – 125mm (thru paint) £30.80
 10. N/A
 11. N/A
 12. boot/tailgate/door – scratch/paint defect 26 – 125mm (thru paint) £145.60
 13. n/s front wheel – damage 100mm+ (standard alloy) £40.95
 14. n/s rear wheel – damage 100mm+ (standard alloy) £40.95
 15. rear door – dent 16mm – 100mm (no paint damage) £67.50
- total £825.95

On receipt of the above inspection report Close Brothers invoiced Mr T £825.95.

Mr T complained to Close Brothers that he shouldn't have to pay the sum of £825.95 it was seeking from him. Close Brothers responded to say it stood by its decision to seek recovery of £825.95, but as a gesture of goodwill it was prepared to reduce this sum by 25% to £619.46.

In March 2022 Close Brothers issued Mr T with a default notice for £619.11. In the same month, solicitors acting for Close Brothers, sent Mr T a letter seeking recovery of £619.46.

In April 2022 Close Brothers sent Mr T a sum in arrears notice for £700.35. In the same month, solicitors acting for Close Brothers sent Mr T a letter seeking recovery of £619.46.

In May 2022 Close Brothers confirmed to our service that it had removed from the sum it was seeking from Mr T items 1, 4 and 15 on the inspection report.

In May 2022 solicitors acting for Close Brothers sent Mr T a letter threatening court action.

In June 2022 Mr T confirmed to our service that Close Brothers had recorded (in his view) incorrect and inaccurate information about his agreement with credit reference agencies.

In June 2022 an investigator at our service sent Mr T and Close Brothers his view on Mr T's complaint. In summary he said that Close Brothers should:

- remove all damage charges
- remove any adverse information it had recorded with credit reference agencies
- pay Mr T £150 compensation

In July 2022 Close Brothers sent Mr T a sum in arrears notice for £413.36.

In August 2022 Close Brothers sent Mr T a liability notice for £413.71.

Close Brothers didn't respond, at least in a meaningful manner, to the investigators view. Therefore, Mr T's complaint was passed to me for review and decision.

In September 2022 I issued a provisional decision. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I would like to point out I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Under the terms of the agreement, Mr T is liable for certain 'other charges'. This includes charges for damage beyond fair wear and tear.

So, in this instance, I've to decide if the damage charges Close Brothers initially sought payment of, or subsequently sought payment of, is within or outside fair wear and tear.

In deciding whether the damage charges were outside fair wear and tear Close Brothers appears to have had regard to the British Vehicle Renting and Leasing Association guidelines ("BVRLA").

Now had Mr T took possession of a new car or say a used car that was a year old and had travelled 10,000 miles, I might have agreed that having regard to the BVRLA guidelines in determining what was or wasn't fair wear and tear on the car's return would have been entirely appropriate.

But in this case what Mr T acquired was a car that was approximately 16 years old and which had covered approximately 119,000 miles.

So, in the particular circumstances of this case, I think that what Close Brothers should have done was taken a more pragmatic and holistic approach to the damage on return of the car when deciding what was, or wasn't, fair wear and tear, rather than applying the BVRLA guidelines.

Now I've looked at the photographs of the car provided by Close Brothers' agent when the car was collected from Mr T. And having done so I don't think it's appropriate for it to charge Mr T for any of the damage noted. I say this because all the damage could be viewed as commensurate with the cars' age and mileage on its return. Furthermore, I find Mr T's submission that all the damage noted by Close Brothers' agent was there when he acquired the car to be both plausible and persuasive, particularly given the very small amount of time the car was in Mr T's possession, the relatively few miles (less than 2,000) he added to the odometer, the price he paid for the car and the car's age and mileage when he first acquired it.

So, in summary, I find that Close Brothers should waive the damage charges it's seeking the recovery of from Mr T in their entirety.

Now I don't know what information Close Brothers has recorded with credit reference agencies in respect of Mr T's agreement. But given that I think Mr T acted both fairly and reasonably in disputing the damage charges and not paying them, it's my view that Mr T's agreement should be recorded with credit reference agencies as being voluntary terminated in December 2021 with a nil balance and with no arrears or other 'adverse' information noted.

I also think that Close Brothers handling of this whole matter has been poor, and for that Mr T should also be compensated.

Now given Close Brothers continued insistence that the damage charges (in full or in part) remained payable by Mr T (over a period of several months), for what I feel has been very aggressive collection action on Close Brothers' part and for what information I understand Close Brothers' might have recorded with credit reference agencies I find that Close Brothers should pay Mr T £300.

Mr T and Close Brothers responded to my provisional findings to say they accepted them.

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.

Given both parties have responded to say that they accept my provisional findings, I see no good reason to depart from them and I now confirm them as final.

My final decision

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

- Write off all damage charges it's seeking the recovery of from Mr T.
- Amend what is recorded with credit reference agencies to show the agreement as being voluntary terminated in December 2021 with a nil balance and with no arrears or other 'adverse' information noted.
- Pay Mr T £300 for the distress and inconvenience this whole matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 31 October 2022.

Peter Cook
Ombudsman