

The complaint

Mr D complains about a conditional sale agreement, which he says was fraudulently taken out in his name with Close Brothers Limited trading as Close Brothers.

Throughout Mr D's complaint with us, he has been represented by a family member. But for ease, I'll just refer to Mr D.

What happened

In November 2015, a conditional sale agreement was taken out with Close Brothers in Mr D's name. The loan under the agreement was used to pay a dealer for a used vehicle.

Mr D has explained that the dealer was a friend of his and he discovered the agreement was in his name, shortly after it was taken out. He says the dealer contacted him around the time the first repayment was due and told him that he was in trouble with another party. Mr D says he agreed to make the repayments, so long as the dealer made payments to his account, to cover the monthly amount due under the agreement.

Around fourteen months later, Close Brothers made contact with Mr D, because the loan account had entered into arrears. Close Brothers's records show that Mr D told them what had happened with the dealer and that he had reported everything to the police. Close Brothers told Mr D they would wait to hear from the police, but in the meantime, he was still responsible for the repayments.

In April 2018, Mr D received a letter from the Criminal Justice System (CJS) to say the dealer had pleaded guilty to fraud by false representation, in relation to Mr D's agreement with Close Brothers. Several other agreements, taken out using other identities by the dealer are also listed within the letter.

After speaking to the police, Close Brothers terminated the agreement, but have been unable to locate the vehicle. Mr D says he hasn't ever had possession of the vehicle and that it was with the dealer. But, Close Brothers continued to hold Mr D responsible for the repayment of the outstanding balance.

In April 2021, Mr D complained to Close Brothers and said he shouldn't be responsible for any further repayments. He also said another lender had agreed he was a victim of fraud by the dealer and had removed information about that loan. So, Mr D asked Close Brothers to do the same.

In their response, Close Brothers said the agreement wasn't taken out fraudulently by the dealer in Mr D's name and that Mr D had previously confirmed he had possession of the vehicle. Close Brothers explained that Mr D was still responsible for the outstanding debt and that any information about the loan would remain on Mr D's credit file.

Mr D didn't accept this and brought his complaint to us. One of our investigators looked into Mr D's case and found that Close Brothers hadn't treated Mr D fairly. She concluded it was likely the dealer did take the agreement out in Mr D's name without his authorisation, and

Mr D only made payments out of fear of what might happen. She also found it unlikely the vehicle was ever in Mr D's possession.

The investigator asked Close Brothers to remove Mr D from any responsibility towards the repayments, remove any adverse information from Mr D's credit file and to refund the repayments Mr D had made since June 2016. The investigator also said Close Brothers should pay interest on those repayments and pay Mr D £500 for the distress and inconvenience they had caused.

Mr D accepted the investigator's conclusions, but Close Brothers didn't. Although they asked for more details about the investigator's findings, Close Brothers didn't reply to say if they were prepared to agree with them. So, Mr D's case has now been passed to me to make a decision.

I sent Mr D and Close Brothers my provisional decision on this case, on 9 December 2022. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

The start of the conditional sale agreement

This case is about a conditional sale agreement in Mr D's name taken out with Close Brothers, which is a regulated financial product. As such, we are able to consider complaints about it.

I've looked at what happened when the agreement started to help decide if I think Mr D gave the dealer his authority to take out borrowing in his name. Close Brothers have provided a copy of the conditional sale agreement, which they say was electronically signed by Mr D.

Page 12 of the agreement is a declaration by the supplying dealer and asks for an identity check to be carried out. I cannot see any details completed in the identity check section of the agreement form. So, on balance, I think Close Brothers allowed the dealer to submit the conditional sale agreement, without showing if they took any identification information from Mr D.

Furthermore, Close Brothers' records don't show what email address, telephone number or employment details they asked for during the application. This may explain how the dealer was able to submit the documents to Close Brothers and electronically sign the agreement form in Mr D's name.

The conditional sale agreement form also shows that a deposit of £7,000 was used to get the vehicle. I've looked at Mr D's bank account statements from November 2015 and I cannot see this payment, or an equivalent cash withdrawal. As such, I don't think the deposit was paid by Mr D from the bank account he used at the time the agreement started.

I think the most significant document provided to us, is the letter from the CJS, which shows where the dealer pleaded guilty to fraud by false representation. I think considerable weight can be placed on this evidence as it shows where the dealer says he carried out this fraud specifically using Mr D's personal details in the application with Close Brothers.

I can see from Close Brothers' records that they say the CJS didn't specify that the agreement in Mr D's name was part of the charges brought against the dealer. However, I disagree and I think it's clear from that letter that the agreement in Mr D's name is included. The letter from the CJS also outlines where the dealer had carried out multiple other fraudulent applications, using several other people's personal details.

Mr D says that in addition to the agreement with Close Brothers, the dealer fraudulently opened a second agreement in his name with another lender. Within his complaint to Close Brothers, Mr D provided evidence to show where the other lender had agreed to remove information about the other loan, from the information held with credit reference agencies.

I acknowledge that the other lender operates separately from Close Brothers. And I understand the circumstances, although similar, may have differences. But, I think this adds weight to Mr D's argument that the dealer had fraudulently sort to take out borrowing in Mr D's name without his authority to do so.

Having considered everything, I think the letter from the CJS and the absence of any identification or personal details from the application, shows that Mr D didn't authorise the opening of the conditional sale agreement with Close Brothers. And I think Mr D has been consistent and credible in what he's told us about how he came to find out about what the dealer had done. So, I think Close Brothers should now take further steps to help Mr D.

In all the circumstances, I think it's fair that Close Brothers should allow Mr D to exit the conditional sale agreement, at no further cost to him. I also think Close Brothers should remove any details about the conditional sale agreement from the information held about Mr D, with credit reference agencies.

The repayments made under the agreement

Mr D says he feared for the safety of the dealer, when he was told what had happened. I agree that the more straight forward step Mr D could have taken, was to report the matter to Close Brothers and the police in 2015. However, Mr D says the dealer was a close friend of his and he wanted to help, alongside the police investigation that followed.

In the meantime, repayments due under the agreement continued to be made to Close Brothers over the next two years. It seems that the repayments stopped in 2018, when the CJS letter was sent to Mr D.

I've looked at Mr D's bank account statements from November 2015 to April 2018. Having done so, I can see that the dealer paid more into Mr D's account, than what was paid to Close Brothers and the other lender involved in the court case against the dealer.

Overall, while I accept the repayments for the conditional sale agreement were made from Mr D's account, I don't think he has lost out financially here. I think Mr D has received more funds from the dealer, than was needed to satisfy the repayments to Close Brothers. So, I think it's fair for Close Brothers to retain the payments they took from Mr D's account. This means I don't think Close Brothers should refund any of the repayments to Mr D.

The whereabouts of the vehicle

Throughout his complaint with Close Brothers, Mr D has consistently said that he didn't take possession of the vehicle financed under the conditional sale agreement. But, Close Brothers say Mr D had told them the opposite, shortly after the agreement was taken out. So, I've thought about the call Close Brothers made to Mr D in December 2015.

We don't have a copy of the call, but Close Brothers' records say that Mr D confirmed he had possession of the vehicle. Mr D says possession wasn't mentioned during the call, but that he agreed to make a repayment to help the dealer.

In hindsight, had Mr D told Close Brothers what the dealer had done, during that telephone call, it may have avoided what followed. But, I'm not persuaded this shows Mr D had the

vehicle, only that the dealer had convinced Mr D to accept payments from him to satisfy the repayments due to Close Brothers.

Close Brothers' records also show that they sent agents to Mr D's home on several occasions to try and locate and take back the vehicle. The records suggest that the vehicle wasn't ever with Mr D, only that it may have been stored in his garage. I've considered Mr D's home and the size of the vehicle financed under the agreement. Having done so, I'm not persuaded that it was possible to store the vehicle in Mr D's garage.

The records from Close Brothers also show that the police were unable to recover the vehicle, when they were involved in investigating the dealer. And after looking at the letter from the CJS, on balance, I think it's likely the dealer was the party here that knew the whereabouts of the vehicle.

In all the circumstances, I don't think the evidence shows that Mr D had use of the vehicle or was aware of its location. So, I think it's fair and reasonable for Close Brothers to end their pursuit of Mr D for further repayments and the outstanding balance due under the agreement.

While I know my conclusions may leave Close Brothers without full payment for their asset, I can see the vehicle passed a Ministry of Transport test in April 2022. I think it follows, that Close Brothers may have since recovered the vehicle, or are now aware of its location.

The distress and inconvenience experienced by Mr D

Mr D's records show that he sent proof to Close Brothers that the agreement was taken out without his authority in April 2021. The main evidence Mr D relied upon was the letter from the CJS and the outcome of the fraud investigation by the other lender. By this time Close Brothers had already terminated the agreement, but still held Mr D responsible for the outstanding debt.

Having considered everything, I think Close Brothers had enough information in April 2021 to look further into Mr D's previous concerns about the dealer's actions. I've concluded that Close Brothers' initial findings to Mr D's concerns relied heavily on what they say they were told by a police officer. But, I think the new evidence provided by Mr D, meant that further investigation was needed.

I've also thought carefully about Mr D's concerns that the adverse information on his credit file, meant a lending application was declined. Although I empathise that it was a troubling time for Mr D and his family, I'm not persuaded that Close Brothers' actions alone, led to an unsuccessful application for further borrowing. That said, I can see how the worry about the adverse information added to Mr D's concerns.

In all the circumstances, I think Close Brothers should have engaged with Mr D sooner, drawing on what the CJS had told them about the dealer's actions and how they were directly related to Mr D. I think Close Brothers caused Mr D worry when they asked him to repay the outstanding debt and when they asked him to return a vehicle that he didn't have. Overall, I think it's fair for Close Brothers to pay Mr D £500 for the distress and inconvenience caused.

Mr D responded to the provisional decision and accepted it. In summary, he said:

- The funds paid into his account by the dealer were meant to cover two car finance agreements and this leaves him with a loss.

- The information recorded with credit reference agencies about the agreement meant he was unable to apply for a mortgage.
- Close Brothers haven't engaged with him or his representatives throughout the complaint.
- The payment for distress and inconvenience doesn't cover the loss he's suffered.

Close Brothers responded to the provisional decision and said they had nothing further to add.

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 acknowledge where Mr D says he has experienced a financial loss. I've looked at Mr D's bank account statements from the period where payments were made from his account. I can see where payments were made to the conditional sale agreement with Close Brothers and to a second lender.

But, I think the funds transferred into Mr D's account from the dealer, covered both of the regular commitments to each lender. So, I still don't think that it would be fair to ask Close Brothers to refund any repayments to Mr D.

However, I agree that Mr D has suffered distress and inconvenience caused by the lack of engagement by Close Brothers. And while I don't think Close Brothers should refund the repayments due under the contract, I do think the distress and inconvenience he suffered means they should make a payment to him to reflect that.

Mr D says he was unable to secure a mortgage, due to the problems created by the dealer and how Close Brothers reported the situation on his credit file. I empathise with what Mr D says, as it seems he needed to rely on help from his family. But, I'm not persuaded that the information recorded by Close Brothers alone, was the sole reason why a mortgage application may not have succeeded.

In all the circumstances I still think it's fair for Close Brothers to pay Mr D £500 for the distress and inconvenience he experienced.

Although Mr D raised some points in response to the provisional decision, he has accepted those findings. And Close Brothers didn't have any further points to add. So, I see no reason to come to any different conclusions to those set out in my provisional decision.

Putting things right

Close Brothers Limited trading as Close Brothers should:

1. allow Mr D to exit the conditional sale agreement at no additional cost to him;
2. end the pursuit of Mr D for the repayments due under the conditional sale agreement;
3. pay £500 to Mr D for the distress and inconvenience caused; and
4. remove any information about the conditional sale agreement from the details recorded with credit reference agencies about Mr D.

My final decision

My final decision is that I uphold this complaint and require Close Brothers Limited trading as Close Brothers to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 February 2023.

Sam Wedderburn
Ombudsman