

The complaint

Mr I complains about how Close Brothers Limited (“Close Brothers”) behaved when a car it supplied to him was seized by the police.

What happened

In August 2021 Mr I entered into a conditional sale agreement with Close Brothers for the supply of a used car and finance to pay for the car.

Mr I initially told us his complaint was all about the fact that he did not have a UK driving licence. He said he had been in the process of getting a UK driving licence but due to delays, which were not down to him, this was taking some time. However, because of these delays, which Close Brothers unfairly blamed him for, Close Brothers told him it intended to terminate the agreement and would not give him possession of the car. Close Brothers took this approach even though Mr I fully explained the situation to it, and despite Mr I continuing to make all his repayments towards the finance agreement. Mr I believed this would have an adverse impact on his credit rating which concerned him as he was about to apply for a mortgage.

Close Brothers’ initial position was that the car was seized by the police in or around April 2022 when it found the car was being driven by a third party, without insurance and without road tax. It is a condition of the conditional sale agreement that Mr I has to keep the car insured. As far as Close Brothers is aware the third party who was driving the car was known to Mr I.

Mr I did not have a UK driving licence. The police would not release the car to Mr I since he did not have a UK driving licence. Therefore Close Brothers arranged to collect the car from the police. It paid £530 in release and recovery fees.

Mr I told Close Brothers he was arranging to get a UK driving licence. Close Brothers agreed it would release the car to Mr I once he sent it proof he had a UK driving licence. The police had told Close Brothers that Mr I had not been driving using a valid driving licence which was why Close Brothers had kept the car in its possession until Mr I sent it proof of having a UK driving licence.

Dissatisfied with Close Brothers’ response Mr I complained to this service.

Once Mr I’s complaint was with us Mr I gave us some further information. He told us that the third party who had been driving the car when it was seized by the police was a friend who he had asked to drive the car. Mr I had been unaware that the friend had been driving without insurance, therefore he does not agree that he breached his agreement with Close Brothers.

Close Brothers also provided further information. It reiterated it had been willing to return the car to Mr I once he sent it evidence of having obtained a UK driving licence. But there were such long delays in Mr I obtaining the licence that Close Brothers came to the conclusion it would need to terminate the agreement. Therefore Close Brothers stopped the direct debits in anticipation of ending the agreement. As a result Mr I missed two repayments and Close Brothers asked the credit reference agencies to register this on Mr I’s credit file.

Ultimately however the agreement was not terminated, and Close Brothers agreed to return the car to Mr I. But before the car could be returned to Mr I, Close Brothers’ agent sold the

car by mistake. To make up for this Close Brothers' agent replaced the car's gearbox with a new one and had the car resprayed and returned the car to him with a full tank of fuel. Close Brothers also paid Mr I £50 for the distress and inconvenience this may have caused him and waived the £530. Close Brothers also agreed to ask the credit reference agencies to remove the information it had asked them to register about the missed payments.

The car was returned to Mr I. However, Mr I said a number of personal items were missing from the car which had been in it when the car was seized Mr I listed out the items and asked for compensation. It appears that Mr I did not have receipts for any of the items. However, Close Brothers obtained photos that were taken of the inside of the car at the time it was seized. The only item of value that the photos showed was a pair of sunglasses. Close Brothers independently valued the sunglasses and based on that valuation it paid Mr I £170 for the sunglasses.

Close Brothers also told us the police told it that the car had not been insured in Mr I's name at the time it was seized or insured at all.

Mr I responded that the mileage of the car had increased between the time it was seized and the time it was returned to him he wanted compensation for this. Further while the car was being held by the police he'd had no access to it during this time (two months), but he still made his repayments. He wanted that money back. He also told us the sunglasses cost more than the £170 and he wanted the balance. Mr I told us he had applied for a mortgage and a phone contract and had been refused for both, he was told this was due to the information Close Brothers had asked to be registered on his credit file.

One of our investigators looked into Mr I's complaint. Our investigator recommended that Close Brothers need do nothing further as Mr I had already had an appropriate remedy from it.

As far as I am aware this service has received no response from Close Brothers to our investigator's recommendation, but Mr I rejected it. In summary, Mr I responded to say the car was insured by him but then the policy was "lost" because the tracker could not be fitted to the car because the car could not be found. Mr I also told us he had lost £600 because of what had happened. Further, he added a new point: he told us he felt if he was British he would have been treated differently/better by Close Brothers.

Mr I asked that an ombudsman review his complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr I has now raised an issue of bias, he has said he feels he is being treated less favourably by Close Brothers due to his nationality. This appears to be a new matter and has not been considered by Close Brothers in its final response to Mr I or investigated within this complaint. It follows that I am unable to look at this matter in this decision.

I think it is reasonable to assume, as a starting point, that when a person reads and signs an agreement – they understand the terms of the agreement and they are agreeing to be bound

by them. Therefore I've looked to see what the agreement says about Mr I permitting his friend, who is not a party to the agreement, to drive the car and to do so without insurance:

The conditional sale agreement says this, amongst other things about Mr I's responsibility to insure the car:

"You must insure and keep the Goods insured at all times under a fully comprehensive policy at your expense to their full replacement value. The insurance must include cover against the risk of loss or damage by fire, theft, accident and other risks, including third party risks, as are normally insured against in the case of goods of the type to which this Agreement relates".

The agreement also says the following about restrictions on use:

"You may not abandon, sell, gift or transfer the Goods to a third party, and you must keep the Goods in your possession or control".

The agreement says the following about Default:

"The following will each be an Event of Default upon which we will be entitled to terminate the agreement after following the statutory requirements:

if you allow any distraint or seizure of the Goods or part with possession of the Goods".

The agreement says the following about termination:

"On termination of this Agreement:

your right to possession of the Goods immediately terminates, you will no longer have possession of the Goods with our consent, and we may, subject to "Repossession: Your Rights" overleaf, retake possession of the Goods".

Based on the terms of the agreement I find that Mr I breached the agreement by allowing his friend to drive the car without insurance. It does not matter for these purposes that Mr I was unaware of his friend's uninsured status. Neither it is relevant that he says the car was insured at the time it was seized but then he "lost" the policy because the car could not be found to install the tracker. Nothing in law or this contract says that Mr I will not be in breach of this provision if he mistakenly believes the car is insured or if the car is not insured because the insurance is "lost".

I am not sure what Mr I means by lost in this context, in any event, but I find it likely that the police gave Close Brothers accurate information about Mr I not insuring the car at any point before the seizure. And I also find it likely that Close Brothers has accurately reported to us what the police said. And even if Mr I did have a valid insurance policy at the point when the car was seized, which I find unlikely given that the police seized the car for not being insured, nothing I've seen shows that Mr I's friend was covered by this policy, in any event.

I also find Mr I breached the agreement by allowing the car out of his possession and control.

In addition I am satisfied that Close Brothers was entitled to terminate the agreement and retain the car, due to Mr I's breaches of contract. So in offering to return the car and waiving the fees related to the seizure and return of the car Close Brothers went much further than I would have said it had to go, for I would have said it need do none of this.

Moreover I think any losses Mr I experienced as a result of the car being seized including the losses related to the items in the car, and extra mileage on the car are not something that Close Brothers had to compensate him for because it is not fair or reasonable. I say this because the losses arise solely because of his own breach, but for his breach he would have experienced none of these losses.

It therefore follows that if Close Brothers had not already compensated Mr I for the sunglasses I would have said it did not need to do this. It also follows that I don't find that it is

fair or reasonable to require Close Brothers to compensate Mr I for the remaining items that he says were in the car when it was seized, nor need it compensate him for the balance of the cost of the sunglasses, the extra mileage on the car or the repayments he made when the car was in held by the police.

I've thought about whether the cancelling of the direct debits and the registration of the missed payments on Mr I's credit file, fall into a different category as the other losses, and I think they do. I say this because regardless of why the agreement was terminated Close Brothers had to act fairly. Moreover the information on Mr I's credit file ought to accurately reflect Mr I's behaviour. I don't think there was anything wrong in Close Brothers cancelling the direct debits in anticipation of terminating the account. But the point is that the repayments were missed because of its actions not because of Mr I's. However, the information registered on Mr I's credit file, inaccurately suggests this was down to Mr I. So it is fair and reasonable that this information should be removed.

That said, I find that Close Brothers need do no more than it has offered to do and has done. I say this because I think the fair and reasonable remedy for this is for Close Brothers to ask the credit reference agencies to remove this adverse information from Mr I's credit file and this is what Close Brothers has already offered to do.

I recognise Mr I has told us that he was refused credit because of this information on his credit file. Lenders refuse credit for all sorts of reasons, one single entry on a credit file is unlikely to be the cause of the refusal of credit. Mr I has said he was told in conversation by all of his prospective creditors, this was the reason for declining his applications for new credit. But if this is so I would expect Mr I to be able to provide information to support this assertion from at least one of his prospective creditors and he has not done so.

In addition, I cannot discount the possibility that there was other information not related to this complaint on Mr I's credit file that led to his applications being declined.

It follows I'm not satisfied that anything Close Brothers asked to be registered on Mr I's credit file about the two missed payments caused Mr I to be declined for credit.

My final decision

Close Brothers Limited has already made an offer to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Close Brothers Limited should:

1. Pay Mr I £170 for the sun-glasses as it has already done.
2. Pay Mr I £50 for distress and inconvenience as it has already done.
3. Waive the release and recovery fees of £530 as it has already done.
4. Ask the credit reference agencies to remove the adverse information it has asked them to register on Mr I's credit file about the two missed payments.

Point 4 is the only part of the redress that has not already been performed. So, to be clear it only remains for Close Brothers to carry out point 4. The rest of the redress has already been completed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 18 May 2023.

Joyce Gordon
Ombudsman