

The complaint

Miss S complains that she was entered into the incorrect finance agreement in relation to a car that was supplied to her by Close Brothers Limited trading as Close Brothers Motor Finance (CBL).

What happened

In June 2022, Miss S entered into a hire purchase agreement with CBL for a used car. The car was registered in September 2018, which means it was around four years old and had travelled 49,800 miles when it was supplied to Miss S. The cash price of the car was £9,495. No deposit was paid, so the total amount financed on this agreement was £9,495 over 47 monthly repayments of £207.24 with a final optional repayment of £3,532.

Miss S complained to CBL about the type of agreement that she'd been given. Miss S said the mileage had been recorded incorrectly on the initial agreement, and in August 2022 she'd been given a new proposal with a lower monthly repayment of £187.90 each month, on a conditional sale agreement. However, Miss S said she noticed her monthly repayment and her agreement type remained unchanged.

In October 2022 CBL issued their final response to Miss S. They explained they'd need to set up another finance agreement. However, CBL issued a further final response to Miss S in January 2023 where they advised the agreement would not be changed, but that she wouldn't be charged for any excess mileage while she had the vehicle.

Unhappy with their decision, Miss S brought her complaint to our service for investigation. Having reviewed all the information on file our investigator recommended that Miss S' complaint should not be upheld. Our investigator concluded that CBL were not responsible for the conditional sale agreement not going ahead, and that there were no grounds for Miss S to reject the car. Our investigator said Miss S should observe the terms of the original agreement.

Miss S disagreed with our investigator's view and explained that she shouldn't have to pay a higher amount because of CBL's inaction. Miss S also pointed out the car wasn't as described as the mileage was incorrect and so believed she should be allowed to reject it.

Following Miss S' response, our investigator changed their view to recommend the complaint is upheld on the basis that Miss S and CBL both signed the new agreement. Our investigator felt it was fair that CBL honour the revised costs.

CBL didn't accept this recommendation. They said as the dealership were party to the contract, but didn't agree to it, then the new agreement wouldn't be binding, and so they didn't think Miss S was losing out. So as CBL didn't agree to our investigator's view the case has been passed to me for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

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.

The agreement in this case is a regulated personal contract purchase agreement. As such, this service is able to consider complaints relating to it.

Miss S is unhappy because she believes she's having to pay more each month for an agreement which she believed had been cancelled and repropose to a new agreement with a lower monthly repayment.

Both parties are in agreement that the issue which brought rise to the complaint was the incorrect mileage that was recorded on the PCP agreement. Both parties recognise that the correct mileage at the point of supply was 56,700 (as detailed on the advert and sales invoice) however on the PCP agreement it was recorded as 49,800. CBL system notes suggest the reason for the incorrect mileage was related to some confusion with quotations. However, as neither party is in dispute of this, I've not focused on the reasons why.

CBL have provided a copy of the original PCP agreement which was signed in June 2022 and is still active. Both parties are in agreement on this point. CBL have also provided us with a copy of the conditional sale agreement (CSA) that was signed by them and Miss S in August 2022.

Having reviewed the CSA, I can see that it's signed by CBL on 18 August 2022. In CBL's response to our investigator's view they pointed out that the agreement was 'tripartite', meaning it was an agreement between themselves, Miss S and the dealership which they said must be agreed by all parties to make it binding. I acknowledge this may be the case from an administration point of view, however, in section 1.1 of the terms and conditions of the CSA, it says the CSA is an agreement made between CBL and Miss S and that the funds will be paid to the supplier (dealership) when both parties have signed the agreement.

A copy of the signed agreement was also provided to Miss S, so I think it's reasonable that Miss S believed the agreement became active and was in place. I've seen nothing on file which suggests that Miss S was made aware that the CSA didn't become active until her original monthly repayment amount continued to be taken.

In an email to our investigator in May 2023, CBL said Miss S hadn't been financially disadvantaged because they continued to pay according to the terms which they previously agreed and weren't charged more as a result of things. However, I don't think it's fair to dismiss the difference in amounts on each agreement on the basis that there was already an active agreement in place which Miss S had agreed to.

Both agreements were over a period of 48 months and for the cash price of the car which was £9,495. However, the CSA had monthly repayments that were £19.44 less than the

PCP agreement. It had a total amount repayable that was around £1,166.87 less than the PCP agreement. Had CBL honoured the signed contract, Miss S would have been paying less.

What I find particularly compelling in this case, is that Miss S and CBL, both signed and therefore effectively entered into a new contract which wasn't made live because of what appears to be an administration issue between the dealership and CBL.

In their final response of January 2023, CBL attempted to resolve the complaint by waiving any excess mileage charges. Although I think this action addresses any excess mileage costs as a result of the incorrect mileage being recorded, I think focussing on the mileage element dismisses the evolution of the concern which is that Miss S was assured through a signed contract, that she'd benefit from paying around £1,166 less than her original agreement. So, all things considered, I'm satisfied that in the circumstances of this complaint, CBL haven't acted fairly and needs to put things right for Miss S.

Putting things right

I acknowledge that Miss S has previously requested to reject the car. However, as I've seen no evidence that suggests the car wasn't of satisfactory quality when it was supplied to Miss S, I won't be instructing CBL to facilitate a rejection. CBL have already advised in their final response, that Miss S wouldn't be charged for any excess mileage. So, in addition to this, I'm persuaded it's fairer in the circumstances to have the total amount payable on the agreement reduced to reflect what it would have been had the CSA gone ahead.

I'm in agreement with our investigator that Miss S should be refunded the additional amounts of £19.44 that she's been paying on her agreement each month up to the date of settlement. However, unlike our investigator, as the total amount payable on the new agreement would have been £1,166 less than the PCP, CBL should deduct the refund from this amount and reduce the outstanding balance with the remaining amount accordingly.

This differs from our investigator's view, as their calculation didn't consider the final optional payment to purchase the car. I don't think it'd be reasonable for Miss S to have to pay this full amount if she decided to purchase the car, so I think it's fair that the total amount payable on the CSA is taken into consideration and deducted from the total amount payable on the PCP.

Given my redress differs to what was recommended by our investigator, I wrote to both parties explaining why, and I gave each party an opportunity to comment, however, neither party has responded. As both sides have had an opportunity to comment, I can go ahead with my final decision.

The total amount payable on the PCP agreement is £13,272.52 (**A**). And the total amount payable on the CSA is £12,105.65 (**B**). The difference between the two is £1,166.87 (**C**).

However, Miss S has already been paying the additional amount of £19.44 each month from when the agreement started, to the present date, I'll refer to this amount as **D**.

So, CBL should refund the amount of **D**, to Miss S. CBL should then deduct the total of **D** from **C** and reduce the outstanding balance on the agreement by that amount.

CBL should pay 8% simple interest on the refunded amount. In addition, I'm in agreement with our investigator that Miss S has invested a significant amount of time into this issue

and that's not withstanding the stress and inconvenience that would have caused her. I think CBL should pay Miss S some compensation for this and I'm in agreement with our investigator that £150 is fair in the circumstances.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct Close Brothers Limited trading as Close Brothers Motor Finance to:

- Refund to Miss S the additional £19.44 she's been paying on her agreement since August 2022 up to the date of settlement (**D**).
- Deduct **D** from **C** (as described above) and rework the PCP agreement to ensure the outstanding balance is reduced by that amount.
- CBL should pay 8% simple yearly interest on all refunds to Miss S from the date of payment until the date of settlement
- CBL should pay Miss S £150 compensation for the distress and inconvenience caused by this issue.

If Close Brothers Limited trading as Close Brothers Motor Finance considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss S how much it's taken off. It should also give Miss S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 29 September 2023.

Benjamin John
Ombudsman