

The complaint

Mr S complains that Close Brothers Limited trading as Close Brothers Motor Finance ("Close Brothers") have recorded negative markers against his credit file after saying this would not happen when he voluntarily surrendered his car.

What happened

Firstly, Mr S was represented in bringing the complaint by his wife, but for simplicity, I will always refer to Mr S. Mr S entered into a conditional sale agreement with Close Brothers in 2021 to acquire a car. The agreement was for around five years. The car broke down in December 2022 and Mr S was told the engine had failed and would cost several thousand pounds to repair.

Mr S discussed this with Close Brothers who said he was responsible for repairs. He explained he couldn't afford to repair it.

In May 2023, Mr S reached out again to Close Brothers. He explained that he had been storing the car on a relative's drive, as it couldn't be driven, but he needed to move it. As it was registered off road (SORN), he couldn't park it on a road, and it also had an MOT due shortly, which it couldn't pass, meaning he also couldn't tax or insure it.

He asked if he could scrap the car but continue paying the agreement, but Close Brothers explained that if he scrapped the car, he would have to end the agreement, as the finance was secured against the car. A number of phone calls ensued over May and June 2023 and eventually, Mr S has told us that he was advised to cancel his direct debit payments and told handing the car back wouldn't impact his credit record.

Eventually the agreement was marked as having been defaulted as part of a voluntary surrender, and Mr S was also told he was in arrears as the direct debit had been missed before the account was defaulted.

Mr S complained to Close Brothers about this, saying that the credit file impact was preventing him getting a mortgage he had planned, and also potentially preventing him getting a new rental agreement, when he and his family had to imminently leave their existing rental property.

He asked that Close Brothers allow him to continue to repay the agreement, rather than pass it to another firm to collect the debt and that they remove the negative markers from his credit file.

Close Brothers accepted that they had mistakenly told him that it wouldn't affect his credit file, but they said the negative markers were correct, so offered him £150 compensation for giving him the wrong information but said the negative markers had to remain in place.

Unhappy with this Mr S brought his complaint to our service. An investigator here investigated it and didn't uphold it. They agreed that it was fair for Close Brothers to recognise their error and compensate him but said they didn't need to do any more. They

explained that Mr S had confirmed he most likely would have returned the car to Close Brothers anyway, even if he knew it would result in a default being marked on his credit file, and he said that he felt this was because he was left with no other options.

Mr S didn't agree with this outcome however and asked for an Ombudsman to make a final decision. He sent through some evidence that he was looking at potential off road storage sites where he could have kept the car if he'd known the agreement would have been defaulted.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr S was supplied with a vehicle under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Firstly, I'd like to say that I empathise with the situation Mr S has found himself in, which was clearly a very difficult one. I know he had concerns about the car itself and the quality of it, but that doesn't form part of this complaint. All I can consider in this complaint is whether, in handing the vehicle back, Mr S was treated fairly.

I think Mr S has been given the correct outcome and explanations in the investigator view, but I'll just link a couple of these points together to perhaps help Mr S to understand.

There was no option, as Mr S had hoped, to just continue to pay the finance agreement after handing the car back or scrapping it. This has been explained in the view, Close Brothers are entitled to end the agreement if the car is no longer on the road or roadworthy, as the agreement is secured upon the vehicle, so it can't be scrapped or sold on without ending that finance agreement.

Mr S now says he could have stored the car somewhere else potentially, although this is something he was aware of and looking into when he decided to hand it back and end the agreement.

He's come back and provided evidence that he was looking at storage facilities to leave the car off road, and I appreciate that this could seem like a suitable resolution to avoid the agreement being defaulted. But Mr S was unable to MOT the car due to its condition, and therefore would be incredibly unlikely to be able to insure or tax the vehicle, which is a requirement under the agreement.

The terms of the agreement with Close Brothers state that fully comprehensive insurance must be in place at all times. They also say the car must be kept in reasonable order during the agreement. I have real empathy for Mr S, but I don't believe he had any option here other than to surrender the car and default the agreement, once he made the decision that he couldn't afford to either pay for the repairs or pay off the finance left owing on the car.

It's very unfortunate that he has initially been given wrong information by Close Brothers

about the effect this would have on his credit file, but I don't think he could or would have made a different decision even if they had given him the right information up front.

Alongside this, in going through the contact notes between Close Brothers and Mr S, I can see many conversations where Close Brothers have confirmed that their initial advice about this having no impact to his credit file was wrong. The notes say this was discussed during conversations in June 2023, and also that Mr S had been told this on several calls after the initial wrong information was given, which was earlier than this.

The notes also confirm that due to delays collecting it, the car was still with Mr S until at least July 2023, so it appears no default and termination had been completed by this time. If he had decided he needed to raise the funds to pay off the agreement or repair the car, to avoid the default being registered, it would appear that he had the opportunity to do this before the agreement was defaulted and terminated.

I can appreciate that when given wrong information like this, it might feel fair to Mr S that the business honours this wrong information they've provided. But as I've explained, this wasn't possible. The car had to be insured and taxed to fairly remain in his possession and for the agreement to remain in place, and this wasn't possible. I'm satisfied that Close Brothers had most likely given Mr S the correct information about his credit file before the agreement was defaulted, and he had proceeded with returning the car and the default anyway, as he seems to have had no choice but to go down this route.

Finally, I've considered whether Close Brothers were correct to mark the agreement as defaulted on Mr S's credit file, when the car was surrendered, and the agreement ended. I'm satisfied this was fair. There appears to have been no other way to end the agreement, without repairing the car or paying the remaining finance off. The voluntary surrender means the agreement has been defaulted, as it hasn't been cleared/paid off, and can no longer remain active.

I'm sorry that Mr S has ended up in this situation. But with regards to the way the agreement ended, I can't say Close Brothers have done anything wrong. I won't be asking them to do anything more than the £150 offer they already made for giving him wrong information during the process.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 December 2024.

Paul Cronin
Ombudsman