

The complaint

Mr F complains that he was misled into entering a conditional sale agreement (“agreement”) with Close Brothers Limited trading as Close Brothers Motor Finance (“Close Brothers”) for a used car.

What happened

In November 2019 Mr F entered into an agreement with Close Brothers for a used car costing £12,250. Under the terms of the agreement, everything else being equal, Mr F undertook to pay a deposit of £3,000 followed by 47 monthly payments of £236.18 and 1 monthly payment of £246.18 making a total repayable of £14,346.64 at an APR of 10.9%.

In May 2023 Mr F complained to Close Brothers that he only entered into the agreement with it on the representation that he would be able to secure GAP insurance after doing so, which transpired he was unable to do.

In June 2023 Mr F settled his agreement with Close Brothers by paying it £950.10.

In July 2023 Close Brothers issued Mr F with a final response letter (“FRL”). Under cover of this FRL Close Brothers advised Mr F it wasn’t upholding his complaint.

In September 2023, and unhappy with Close Brothers FRL, Mr F referred his complaint to our service.

Mr F’s complaint was considered by one of our investigators who came to the conclusion it shouldn’t be upheld.

Mr F didn’t agree with the investigator’s view so his complaint has been passed to me for review and 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.

Having done so I can confirm that I've come to the same overall outcome as the investigator and for broadly the same reasons. There is also very little I can usefully add to what has already been said.

First I would like to point out that I've summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this and is due, in part, to the fact that the circumstances of this complaint are well known to both parties.

Secondly I would like to make clear that I've read the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point (including those made by Mr F in his response to the investigator's two views) or particular piece of evidence, 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. Our rules allow me to do this, reflecting the fact that we are an informal free service set up as an alternative to the courts.

Finally I would add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

In essence Mr F says the agreement was misrepresented to him because he was advised, prior to entering into it, that he would be able to secure GAP insurance after doing so. Mr F also says that had he been correctly advised that he would be unable to secure GAP insurance after entering into the agreement, he wouldn't have entered into it.

It's clear that there was some discussion around GAP insurance, but what isn't clear is exactly what those discussions involved.

In situations like this, where I can't know for sure what was discussed, I've to weigh up, on the balance of probabilities, what I think is more likely than not to have happened.

While I recognise Mr F's strength of feeling on the matter and that what he says he was told is his genuine recollection, I would make the following observations:

- When Mr F complained to Close Brothers he was recollecting discussions that took place some three and half years earlier. And I think it goes without saying that recollections, over time, can become faded.
- There are no recordings or transcripts of what was discussed to support what Mr F submits he was advised.
- Had Mr F been advised what he says he was, and contrary to what he says on this particular point, I might have expected him to have raised concerns, if not a complaint, with Close Brothers shortly after it became apparent that he was unable to secure GAP insurance.
- I've seen nothing to suggest that Mr F was unable to contact Close Brothers had he wanted to raise his concerns and/or a complaint with it.
- If Mr F became aware he was unable to secure GAP insurance within 14 days of entering into the agreement I might have expected him to have withdrawn from it at an additional cost of no more than £20, but he didn't do so.
- If Mr F became aware he was unable to secure GAP insurance after 14 days of entering into the agreement I might have expected him to have settled it early at a minimal additional cost, but he didn't do so.

So with the above in mind I'm satisfied that more likely than not Mr F wasn't misadvised as he submits but instead he was simply advised that if was interested in securing GAP insurance an introduction to an insurer or broker could be made, and was made, to discuss the possibility of doing so.

Finally, and for the sake of completeness, I would like to address Mr F's submission that he wasn't given the opportunity to read the agreement "*cover to cover*" before he signed it.

I accept I can't say for certain Mr F is incorrect in his submission that he wasn't given the opportunity to read the agreement "*cover to cover*" before he signed it. But ultimately Mr F did sign it and did so under the following statement:

"This is a Conditional Sale Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by its terms."

But in any event I'm not persuaded that Mr F's submission that he wasn't given the opportunity to read the agreement "*cover to cover*" before he signed it is material to the outcome of this complaint. I say this because although the agreement makes clear that that Mr F shouldn't "*..abandon, sell, gift or transfer the goods to a third party..*" this isn't what Mr F is complaining about. Instead, what Mr F is complaining about is being advised he would be able to secure GAP insurance and the agreement is silent on this point.

I appreciate Mr F will be disappointed, but on the balance of probabilities I'm satisfied that in the particular circumstances of this complaint Close Brothers has done nothing wrong.

My final decision

My final decision is I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 November 2024.

Peter Cook
Ombudsman