

The complaint

Mr S is unhappy that Close Brothers Limited stopped collecting payments on a car supplied to him under a conditional sale agreement, eventually terminating the agreement.

What happened

On 2 February 2022, Mr S was supplied with a used car through a conditional sale agreement with Close Brothers. The agreement was for £5,495 over 60 months; with 59 monthly payments of £127.67 and a final payment of £137.67. The payment due date was the 2nd of every month, starting in March 2022.

The payment for April 2023 wasn't collected, as the direct debit was rejected by Mr S's bank. This also happened for the payments due in July 2023 and October 2023.

Close Brothers attempted to contact Mr S about these missed payments, and they also sent him notifications of the arrears, a default notice in July 2023, and eventually a notice of termination in November 2023. As the agreement was terminated in November 2023, Close Brothers didn't attempt to take any further payments after the failed attempt in October 2023.

Mr S has explained that he moved address shortly after taking out the agreement, and he says that he wrote to Close Brothers to tell them of this. However, Close Brothers have said that they never received any notification of a new address so the letters they sent, including the default notice and notice of termination, were sent to the address they held on file.

Close Brothers also attempted to contact Mr S by email and phone, leaving him voicemail messages asking him to call them. Mr S has confirmed that he received the emails but said that, as they were only asking him to contact them about his account, and not advising him that he was in arrears, he didn't respond to them. And this was also the same for any voicemail messages he received.

Unhappy with what had happened, Mr S complained to Close Brothers. But they said they'd tried to contact him on multiple occasions and by multiple methods. So, they didn't think they'd done anything wrong by defaulting and terminating his account. Mr S didn't agree, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Mr S had an obligation to ensure that he kept Close Brothers up to date with his contact details and, although the address they held was incorrect, they still attempted to contact Mr S through a valid email address and a valid phone number. So, the investigator thought Close Brothers took reasonable steps to contact Mr S about the arrears.

The investigator also said that Close Brothers acted reasonably by terminating the agreement due to the arrears, and by reporting the correct position about Mr S's account to the credit reference agencies. As such, they didn't think Close Brothers needed to do anything more.

Mr S didn't agree with the investigator's opinion. He maintained that he had written to Close Brothers to advise them of his change of address, and that he was not responsible for any

failure within the postal service that meant Close Brothers never received his letter. Mr S also provided copies of some of his bank statements, which he says shows that there were sufficient funds in his account to make the payments Close Brothers says were missed.

Because Mr S didn't agree with the investigator's opinion, this matter has been passed to me to decide.

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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've seen a copy of the agreement between Mr S and Close Brothers. This makes it clear what payments were required from Mr S, and that Close Brothers were entitled to both default the agreement and repossess the car if the payments weren't made. I've also seen a copy of the statement of account, which shows that the payments due on 2 April, 2 July, and 2 October 2023 weren't paid. Given that Mr S was three payments behind, and that he wasn't responding to Close Brothers' attempts to speak to him about this (which I'll cover in greater depth shortly), I'm satisfied that Close Brothers acted reasonably by both defaulting and then terminating the agreement.

Mr S has provided bank statements covering various non-consecutive periods between 25 August 2023 and 11 January 2024. While most of these show that Mr S had sufficient funds in his account to make a payment to Close Brothers at various different times during a given month, the statements don't show the position of the account when any of the three missed payments fell due. What they do show, however, is that when the payment was taken on 4 September 2023, Mr S had exceeded his overdraft limit, and it was only a credit paid into his account the same day that allowed the Close Brothers payment to be made.

The bank statements also show that the balance on the account on 5 October 2023, a few days after the third missed payment was due, Mr S was within £5 of his arranged overdraft. As such, based on what I've seen, I think it's more likely than not that Mr S didn't have sufficient money in his account to make the payments that fell due on 2 April, 2 July, and 2 October 2023, and these payments were therefore missed.

Mr S has said that he wrote to Close Brothers about his change of address, and I have no reason to doubt this was the case. I also have no reason to doubt that Close Brothers didn't receive this letter, which is why his address wasn't changed and why he never received the notices of arrears, the default notice, or the notice of termination. However, Close Brothers have shown that these letters were sent.

Close Brothers have also provided evidence of the emails they sent Mr S, and provided copies of the call recordings when they left messages on his voicemail. I've also noted that

Mr S has confirmed he received these emails and voicemail messages. And he's said that he never contacted Close Brothers because they never told him he was in arrears – instead he believed these were sales and/or spam/scam calls and messages.

I wouldn't expect Close Brothers to have specified that Mr S was in arrears on these emails and messages. I say this because this is sensitive financial information which Close Brothers were taking steps not to accidentally reveal to any third party who may see an email or overhear a voicemail message, especially given that Mr S hadn't responded to written attempts to contact him. But I don't think it was reasonable for Mr S to think these were sales or spam/scam messages either – Close Brothers quoted the agreement number and said they wanted to speak to Mr S about his account. What's more, I think it would be reasonable for Mr S to have realised from reviewing his bank statements and/or balance that some of the payments to Close Brothers hadn't been made.

As such I'm satisfied that Close Brothers made reasonable attempts, on multiple occasions by a variety of methods, to contact Mr S about his arrears. And when he failed to respond to these, as I've already said, they acted reasonably by defaulting and terminating the agreement, ceasing to collect any further payments, and taking steps to repossess the car instead.

Therefore, and while I appreciate this will come as a disappointment to Mr S, I won't be asking Close Brothers to take any further action, nor will I be asking them to make any amendments to the information they have reported to the credit reference agencies.

My final decision

For the reasons explained, I don't uphold Mr S's complaint about Close Brothers Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 February 2025.

Andrew Burford
Ombudsman