

Complaint

Miss B complains that Close Brothers Ltd (“Close Brothers”) unfairly entered into a conditional sale agreement with her. She’s said that no checks were done for the finance and she was provided with the funds at a time when she had a bad credit score.

Background

In April 2018, Close Brothers provided Miss B with finance for a used car. The cash price of the vehicle was £5,495.00. Miss B paid a deposit of £1,000.00 and applied for finance to cover the remaining £4,495.00 she needed to complete her purchase.

As a result she entered into a 60-month conditional sale agreement with Close Brothers. The loan had an APR of 11.9%, interest, fees and total charges of £1,408.40 (comprising of interest of £1,058.40, an acceptance fee of £340 and a title transfer fee of £10), and the total amount to be repaid of £5,903.40 (not including Miss B’s deposit) was due to be repaid in 60 monthly instalments of £98.39.

Miss B’s complaint was considered by one of our investigators. She didn’t think that Close Brothers had done anything wrong or treated Miss B unfairly. So she didn’t recommend that Miss B’s complaint should be upheld.

Miss B disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss B’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss B’s complaint. I’d like to explain why in a little more detail.

Given Miss B’s response to our investigator’s assessment and her reiteration of what she thinks about the checks that were carried out, I think that it would be helpful for me to set out that we consider what a firm did in order to understand whether the repayments to any credit were affordable (asking it to evidence whatever checks it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we don’t think it’s unreasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired

credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do. It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to a credit agreement were affordable, this doesn't on its own meant that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances were we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and most importantly this recreated check clearly shows that the repayments in question were unaffordable and had the potential to result in significant adverse consequences for the customer.

I kept this in mind when deciding Miss B's complaint.

Close Brothers says it agreed to Miss B's application after it completed an income and expenditure assessment. During this assessment, Miss B provided details of her monthly income and her employer. Close Brothers says it also carried out credit searches on Miss B which showed no adverse information recorded and only a current account as an active commitment.

And when reasonable repayments to the amount Miss B could owe plus a reasonable amount for Miss B's living expenses were deducted from her monthly income the monthly payments were affordable. On the other hand, Miss B says she had a bad credit score and the payments were unaffordable.

I've thought about what Miss B and Close Brothers have said.

The first thing for me to say is that contrary to what Miss B has argued, Close Brothers did obtain a reasonable amount of information about her before deciding to lend to her. It conducted credit searches which didn't show much of the way in existing credit or any previous difficulties. It would also have know that Miss B was making an advance payment of close to a year's worth of monthly payments too.

That said, given that Miss B didn't have much in the way of a credit history and therefore didn't have a track record of making repayments to show, as I've explained she only had a current account recorded on her credit file, I do think that it would have been prudent for Close Brothers to find out more about Miss B's actual living costs.

So I've gone on to decide what I think Close Brothers is more likely than not to have seen had it obtained further information about this from Miss B. I've considered the information Miss B has provided us with. And having done so, this information does appear to show that when Miss B's committed regular living expenses and existing credit commitments are deducted from her monthly income at the time, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept it's possible that Miss B's circumstances may have been worse than what proportionate checks is more likely than not to have shown. I know what she's said about gambling and being declined for credit elsewhere previously. But Close Brothers didn't know about any gambling and I can't see how it ought to have known about this either as obtaining bank statements, which it is pretty much the only way it could have found this out without being told, for a loan with such low monthly payments wouldn't have been proportionate.

Furthermore, it doesn't automatically follow that Close Brothers should have declined Miss B's application simply because another lender may have declined an application for credit, which may have been for any number of reasons. Indeed, it may have been that another lender wasn't prepared to accept the credit risk of lending to Miss B – given she hadn't had much previous credit and lacked the ability to show that she had kept to credit agreements in the past – rather than because it believes any credit for her was unaffordable.

In any event, what's important here is that I don't think that it would have been unfair for Close Brothers to have concluded that Miss B could make the payments to this agreement, notwithstanding what other lenders may or may not have decided, had it carried out further checks here.

So overall and having carefully considered everything, while I think that Close Brothers' checks before entering into this conditional sale agreement with Miss B may not have gone far enough, I'm satisfied that carrying out further checks won't have prevented Close Brothers from providing these funds, or entering into this agreement with her.

For these reasons, I don't think that Close Brothers lent irresponsibly to Miss B or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A Consumer Credit Act 1974 or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Miss B. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 24 July 2024.

Jeshen Narayanan
Ombudsman