

The complaint

Mr R complains that Close Brothers Limited unfairly closed a conditional sale agreement he had entered into.

What happened

In August 2021 Mr R entered into a five-year conditional sale agreement for a car with Close Brothers. Mr R was to make monthly payments of a little over £300, and he set up a direct debit for those payments.

The account statements indicate that, from the end of 2022, some direct debit payments were rejected and that payment was often made by debit or credit card instead – sometimes a day or two before the direct debit was due to be taken.

Direct debit payments were then rejected in September, October and November 2023. Mr R made a debit card payment covering those missing payments on or about 23 November 2023, clearing the arrears and bringing the account up to date. Around that time, he changed the date of the direct debit payment, so that it would be taken on or about the 18th of the month, rather than at the beginning of the month, as had been the case. However, the direct debit payments for December 2023 and for January and February 2024 were also rejected.

It appears that Mr P tried to make a payment online at the beginning of January 2024, but that this was unsuccessful.

Close Brothers says it sent a Notice of Default to Mr P on 23 January 2024 and a pre-termination letter on 14 February 2024. On 13 March 2024 Close Brothers sent a termination letter, requiring Mr P to repay the balance of more than £10,000. Mr P paid the arrears and has since sold the car and paid off the balance due to Close Brothers.

Mr P complained about what had happened. He said that it was unfair of Close Brothers to continue with the termination after had had paid off the arrears on the account. He said too that he was unaware of the missing payments until he received the termination notice.

Mr P referred the matter to this service, where one of our investigators considered his complaint. She did not think that Close Brothers had acted unfairly and did not recommend that the complaint be upheld. Mr P did not accept the investigator's assessment and asked that an ombudsman review the case. He added that Close Brothers had registered a default against his name.

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, however, I have reached the same overall conclusions as the investigator did, and for similar reasons.

The terms of the conditional sale agreement included, at clause 7:

“7. Default

7.1 The following will each be an Event of Default upon which we will be entitled to terminate the agreement after following the statutory requirements:

7.1.1 if you fail to pay any of the repayments specified overleaf within 7 days of their due date in accordance with clauses 2.2 and 2.6 or breach any of clauses 3.2,3.6, 4 or 5 of this Agreement...”

There can be no dispute that Mr P did not make the payments due under the agreement between December 2023 and February 2024. Close Brothers could therefore terminate it. Clause 8 of the agreement went on to say that, upon termination, Mr P should return the car and pay all sums due.

Mr P says he did not receive the arrears and default notices. I think however that it is more likely than not that he did. Close Brothers’ records show that they were sent and that the only address used was the same as the address to which the termination notice was sent. In addition, clause 10.7 of the agreement said that notices could be sent to Mr P’s last known address and would be assumed to have been received 48 hours after posting. But, whether or not Mr P actually received the notices, he must have known that payments were missing.

I don’t accept either that Close Brothers should have stopped the termination process once the arrears had been repaid. It was a matter for its commercial judgment whether to do so, and I don’t believe it was unreasonable for the process to continue.

Finally, I note what Mr P has said about the default which was registered against Mr P’s name. That is an issue which arose after he had referred this complaint to this service, so I make no further comment on it. Mr P may be able to ask to consider that issue, one Close Brothers has had the opportunity to address it.

My final decision

For these reasons, my final decision is that I do not uphold Mr P’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 5 November 2024.

Mike Ingram

Ombudsman