

The complaint

Mr C complains about his car finance agreement with Close Brothers Limited trading as Close Brothers Motor Finance.

What happened

In August 2022, Mr C bought a used van from a supplying dealership who I will refer to as P. He paid a £9,000 deposit and according to him, he was told the rest would be financed via a 'buy now, pay later' style finance agreement and in around 24 months time, he would be contacted to discuss the payments.

In March 2023, Mr C received correspondence from Close Brothers that a car finance agreement in his name had fallen into arrears. Mr C said he was shocked by this because as far as he was concerned, he didn't have an agreement with Close Brothers. Following an investigation, it came to light there was a conditional sale agreement set up in Mr C's name for this van. Additionally, payments had been made by direct debit from inception up to March 2023 when it was cancelled. Mr C denied the payments came from his bank account and Close Brothers later determined the banking details didn't belong to Mr C.

Mr C made two complaints, in summary he said:

- He never signed any paperwork and had no knowledge of a finance agreement with Close Brothers therefore the agreement should be null and void;
- He believed dealership P had given him wrong information about the agreement he had entered into and perhaps had acted fraudulently as the bank account details didn't belong to him;
- It was unfair Close Brothers were demanding he pays the agreement arrears;
- His credit file had been negatively impacted due to the arrears and this should be removed.
- Although he was willing to start paying the contractual payments, he was told not to do so by Close Brothers until they had completed their fraud investigation but in the meantime his credit file continued to be negatively impacted.

In response to the complaints, Close Brothers said:

First final response letter

- They were investigating the allegation of fraud and it would take some time;
- Arrears correspondence was automatically generated and couldn't be stopped;
- There was no evidence Close Brothers had told Mr C that he didn't need to make payment while the fraud investigation was ongoing;

Second final response letter

- Mr C is liable for the agreement as there is no evidence of fraud by P;

- There is no evidence he was told not to make payments while the fraud investigation was ongoing;
- The arrears totalled £4,260 and he had 30 days to pay it otherwise the agreement may be terminated;
- The adverse information won't be removed from the credit file.

Unhappy with their response, Mr C referred the complaint to our service and he also commented Close Brothers had tried to repossess the car which caused him distress. Following the involvement of our investigator, Close Brothers agreed to put the account on hold while we looked into it.

Our investigator recommended the complaint was upheld. To put things right, he said Close Brothers should set up a payment plan for Mr C to pay the arrears, remove the adverse information from his credit file, pay £300 compensation, recall the account from the debt collectors and remove all related charges.

Mr C accepted the investigator's outcome however Close Brothers didn't respond.

As an agreement couldn't be reached, the complaint was referred to me to decide.

However recently during my investigation, Close Brothers responded to say that:

- The £9,000 deposit was credited to the account;
- Payments of £2,840 had been received (from a person other than Mr C);
- Meaning a total of £11,840 had been paid towards the agreement;
- The agreement is currently 15 months in arrears totalling £3,550 and there is a further £4,980 still left to pay;
- Current fees total £315;
- There is contradictory information between the parties involved however their evidence shows the agreement was sent to Mr C's email address and it was signed by him;
- Mr C accessed the link for the agreement several times thereafter – 7 September 22, 2 October 2023, 29 October 2023 and 1 November 2023;
- The telephone number and email address they have on record belongs to Mr C;
- They contacted the bank for the person who had been paying the finance and there has been no attempt from them to reclaim it or complete a direct debit indemnity which is highly unusual;
- When Mr C was asked who he bought the van from, he refused to answer;
- They were willing to reach a resolution. Whilst it is possible to restart the finance this will be complicated with interest and rate changes;
- The arrears are significant and it's unclear whether Mr C can afford to repay it;
- To settle the complaint, they are willing to allow Mr C to voluntarily terminate the agreement. The amount required to do so is £10,185 and payments already received exceed that;
- As Mr C qualifies for voluntary termination, should he accept this offer, they would take back the van and there would be no further cost to Mr C (however it would be subject to damage charges as per the agreement terms);
- They would remove the remaining balance, fees and adverse information and agree to pay £300 compensation to Mr C for the trouble and upset caused.

This offer was put to Mr C for his consideration. In response he said he doesn't want to accept it. He commented that this van is his primary mode of transport. He maintains this agreement was mis-sold to him, without his knowledge a bank account was set up to make payments and Close Brothers should've carried out sufficient checks. This situation has involved debt collectors, demand letters, conflicting information being provided which have all negatively impacted his mental health.

He further commented he's intending on paying the balance in full and owning the van. As a minimum to resolve the complaint, he wants the adverse information removed from his credit file and the ability to pay this agreement in full.

In September 2024, I issued a provisional decision outlining my intentions to partially uphold the complaint. I said:

"Did Close Brothers act fairly in setting up the credit agreement?"

I consider section 56 of the Consumer Credit Act 1974 (CCA) to be relevant to this complaint. In summary, it says that finance providers (Close Brothers) are liable for what they say and for what is said by a credit broker or a supplier (dealership P) before the consumer takes out a credit agreement.

For obvious reasons I wasn't present for the conversation between Mr C and P so I can't say with any certainty what was discussed. So I've relied on Mr C's testimony and documentary evidence at the point of purchase.

Mr C has outlined what happened when he spoke to P about buying the van. I won't set it out in detail but the parts I consider most relevant are as follows:

- *He attended the dealership (P) in person;*
- *During the initial visit, P explained the different finance deals including buy now, pay later etc;*
- *He was told he had been approved by several finance companies and they would contact him in due course. The payments would be around £200. P would talk about it further when he comes back to collect the van;*
- *P agreed to carry out some work on the van and would let him know when he could collect it;*
- *Upon collection, there was no further discussion about the finance and he assumed as he paid a large deposit, he was on a buy now, pay later arrangement;*
- *This was his first vehicle finance agreement;*
- *He mistook the finance agreement for a cancelled insurance policy which was funded by Close Brothers.*

Before agreeing to lend to Mr C, I would expect Close Brothers to carry out checks and overall due diligence such as an affordability check, identification checks, etc. Ideally I would've been provided with a copy of the same but this information hasn't been forthcoming.

I have only seen a copy of the deposit receipt and the van invoice. However based on Close Brothers investigation notes, it says as part of their initial checks, they were provided with a copy of Mr C's driving licence and passport and no concerns were noted. In light of the same, I find on balance Close Brothers did carry out some level of checks and there is no indication of any concerns. Having done so, they agreed to approve the application to provide finance for the van.

In line with what I would expect, they sent a copy of the agreement to Mr C for him to read, consider and sign if he agreed to the terms. I've seen the email Close Brothers sent to Mr C attaching the same. I note it was sent to the correct email address and the subject title was "Your vehicle finance agreement is ready to sign". The date of this email is 9 April 2022 which is before Mr C collected the car on 24 April 2022. I find this timeline of events is consistent to what Mr C said P told him, that is, the finance lenders would contact him.

Attached to the email is the finance agreement. As I would expect, it sets out all the key details such as the name of the lender (Close Brothers), the type of credit agreement (conditional sale agreement), the cash price of the van, the deposit paid, the term of the agreement, the amount of credit, total amount payable, the monthly instalments, the full terms and conditions, etc. Mr C is named as the borrower and his address is provided. I note the monthly payments were £236 which supports what Mr C said P told him it would be payments of around £200. At the bottom of the first page of the agreement, Mr C has electronically signed it and there's a signature from Close Brothers.

In a separate document, is the direct debit mandate form. Mr C is named as the account holder. It also outlines the name of the bank where the direct debits should be collected from and the account number and sort code. As before, Mr C was required to check and sign this which I can see he done.

Mr C has commented that he mistook these documents for ones relating to a cancelled insurance policy which was funded by Close Brothers. He says he was busy at work when he signed them. However based on what I've seen, I'm not persuaded by this. It's evident the documents were for a new finance agreement concerning the purchase of a van. Given the importance of such a legally binding financial contract and the large amount of money involved, it's reasonable to expect Mr C would've taken the time to consider it. I find the onus was on him to check and make sure the details were correct and if there was an error, to raise it with Close Brothers. However there is no evidence he did.

Following the signing of both documents, it would appear Mr C has returned them to Close Brothers as later on the same day, a confirmation email is sent to him which says "Thank you for signing. Your finance agreement has now been completed". The email goes on to explain the finance has been set up and the agreement can be viewed by following the link and in due course he will receive a welcome pack and instructions about setting up an online account. Mr C later went on to collect the van around 22 April 2022.

Based on Close Brother's contact notes, I can see Mr C called them on 24 May 2022 which was around a month after the agreement was entered into. He said he had received a missed call and he was told that it was from the welcome team and they will attempt to call him again. Although it doesn't appear any further call attempts were made by Close Brothers or a welcome pack was sent by post as they said it would, this only further supports my opinion that Mr C was sufficiently aware a finance agreement had been set up in his name regarding the finance of this van.

Based on the evidence presented to me, I'm not convinced there was a discussion with P where it was agreed Mr C had entered into a buy now, pay later style finance arrangement. I recognise this was Mr C's first finance agreement for a vehicle so it's entirely plausible he was unfamiliar with the procedure and terminology in such matters. Given that was the case, it was even more prudent for him to seek clarity (without making assumptions) before agreeing to such a financial commitment.

Taking everything into account, I'm satisfied Close Brothers didn't do anything wrong by setting up this finance agreement. I also find Mr C had sufficient knowledge of the same.

There is not enough evidence the agreement was mis-sold or mis-represented to Mr C by P or Close Brothers.

The direct debit details

I've already set out above that Mr C signed the direct debit mandate. However it wasn't until March 2023 (several months after the agreement was entered into) that it came to light that although payments had been made, it wasn't from Mr C's bank account.

How these incorrect bank details came to be inputted to the direct debit mandate is unclear. I know Mr C believes P may have fraudulently and knowingly entered these details knowing it was incorrect but there is insufficient evidence for me to reasonably conclude the same. However it's possible an administrative error had been made by one of the parties involved. Mr C has argued that Close Brothers should've carried out checks to make sure the bank details provided matched his own. While I can understand why he would feel this way, I don't necessarily agree. I find it was reasonable for them to rely on the information it had been provided with by P as part of the application process. Moreover to avoid such mistakes from happening, the details were sent to Mr C to check and sign, which he did. As payments were initially made without issue, Close Brothers had no reason to believe something was amiss or Mr C wasn't making the payments. So I can't say Close Brothers did anything wrong.

Based on their investigation notes, once this issue came to light, Close Brothers made enquiries with the relevant. It was confirmed the bank details belonged to another person other than Mr C. So it's evident an unknown third party had been making payments for this agreement.

Close Brothers has said this third party may decide to claw back the money but to date, that hasn't happened. While I agree it is strange that hasn't happened, that doesn't mean it won't happen at a later date. In the meantime, if Close Brothers were to say Mr C was liable for all payments from inception, they would be doubly compensated for this van for a period of several months which isn't fair as that puts them at a financial advantage. Therefore I find Close Brothers should proactively look to return these funds to the bank/person who has been making these payments. This should be done irrespective as to whether that person decides to do a direct debit indemnity or try any other means of clawing back the money.

There is no dispute Mr C has had this van since April 2022 and based on the mileage and the fact he continues to use it, it's only fair he pays for doing so. Had things gone according to plan, he would've been paying the contractual payments from the beginning as per the agreement terms he signed for. So I find it's fair to say Mr C should be held liable for all payments subject to this agreement including any arrears. I note he has maintained his willingness to pay the same.

Based on the statement of account provided, I'm satisfied the £9,000 deposit paid by Mr C was successfully credited to the account so I have no concerns about that not being correctly applied.

To put things right, Close Brothers should continue this agreement on the same terms i.e. the same rate of interest, etc. Mr C should provide his correct bank account details to Close Brothers and start making the contractual payments moving forward. For the months where he didn't make the payment (because it was paid by the third party or not paid due to the ongoing investigation), he needs to pay this. Close Brothers should send him a revised statement so Mr C is clear about what he needs to pay.

The amount owed in arrears is a considerable sum but from the outset of this complaint, Mr C has made it clear that he's willing to pay it but he can't do so in a lump sum which is

understandable. I don't find Close Brothers acted fairly by saying he needed to pay this amount within 30 days otherwise the agreement would be terminated. So Close Brothers should set up an affordable payment plan for him to do so. They should stop all action in relation to the repossession of the car and remove the £315 fees applied.

Mr C has confirmed he is willing to pay the balance in full meaning that an affordable payment plan may not be needed. If that is the case, he should speak directly to Close Brothers about this and ask for a settlement quote.

The impact on the credit file

One of the key aspects of this complaint is that Mr C is unhappy about the negative impact of this situation on his credit file.

Although he says he was always willing to start making payments and pay the arrears, he maintains he was told by Close Brothers on more than one occasion not to do so until their fraud investigation had concluded. Given the second final response marked the end of that investigation, it could be said that it would've been reasonable for Mr C to have started making the necessary payments from that point. That said, given this ongoing dispute and no agreement had been reached about how the credit file would be impacted, he chose not to do so. I've reviewed the statement of account up to November 2023 and it shows no payments have been made since February 2023.

I have been provided with Mr C's full credit report and I can see adverse information has been recorded about this agreement since March 2023. It shows the account is at least six months in arrears. I can see all his other accounts are up to date so I can understand why the impact of this situation is so important to him.

Mr C has asked our service to listen to the relevant calls where he says he was told not to make payments. Meanwhile Close Brothers vehemently deny telling him this. Unfortunately despite our service's several requests, these haven't been provided. So in the absence of the same, I've relied on what Mr C has said (which I accept in good faith) and the information shown in Close Brothers contact notes. Having done so, I believe it's more likely than not, Mr C was told not to make payments while the investigation was ongoing or at the very least given conflicting information about it. This has understandably led to further confusion in what is already a confusing situation.

I wish to stress financial businesses like Close Brothers have a duty to report fair and accurate information to credit reference agencies about how an account is being managed. This is to allow lenders and other account providers to check credit files to help them decide whether or not they want to do business with a customer, or to continue doing business with them.

While technically I accept payments may have been missed, for the reasons highlighted above, I don't believe it's fair to say it was missed due to a fault of Mr C. To put things right, once Mr C starts making the contractual payments, an affordable payment plan is set or alternatively the agreement is paid in full, Close Brothers should remove any adverse information about this agreement from his credit file up to that point. However should the balance not be paid in full and instead arrangements are made for future payments, I must make it clear to Mr C should he not adhere to it, it is likely Close Brothers will record negative information to his credit file.

Distress and inconvenience

Lastly I've thought about the impact of this situation on Mr C. I've already explained why I don't believe Close Brothers did anything wrong when setting up this agreement. However I find the level of service provided once this complaint was raised fell far below what a reasonable person would expect. This was a worrying and stressful time for Mr C and he was trying to gain an understanding from Close Brothers about what had happened but I don't find they were particularly forthcoming. Rather than proactively trying to reach an affordable solution for Mr C to make up the payments (which he always said he was willing to do), they sent recovery agents to his address to try to recover the car which caused upset. They also demanded he make the full payment within 30 days otherwise the agreement would be terminated which in my opinion wasn't fair.

I've seen the extent of Mr C's correspondence with Close Brothers and the numerous requests he made to have a call back to discuss the situation. It's clear it was having an impact on him and causing considerable worry and upset which he says affected his mental health. Given the circumstances, I agree with the investigator that Close Brothers should pay £300 compensation to Mr C for the trouble and upset caused".

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.

Close Brothers responded to say they had no further comment to add. No response was received by Mr C.

On the basis I haven't been provided with any further information to change my decision I still consider my provisional findings to be fair and reasonable in the circumstances.

My final decision

For the reasons set out above, I've decided to partially uphold Mr C's complaint.

To put things right, Close Brothers Limited trading as Close Brothers Motor Finance must:

- Allow this agreement to continue on the same terms as signed by Mr C;
- Proactively look to return the paid sums to the correct account holder;
- Stop all action in relation to the repossession of the car and remove the £315 fees;
- Send Mr C a revised statement which clearly states what is owed;
- Update their systems to reflect Mr C's correct bank account/ direct debit details so contractual payments can be made moving forward;
- Set up an affordable payment plan for Mr C to pay the outstanding arrears or alternatively allow him to pay the balance in full;
- Once the above is set up, to remove any adverse information about this agreement from Mr C's credit file;
- Pay £300 compensation to Mr C for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 November 2024.

Simona Reese
Ombudsman