

## **Complaint**

Miss M complains that Close Brothers Ltd (“Close Brothers”) unfairly entered into a hire-purchase agreement with her. She’s said that the payments were higher than she said she could afford and didn’t sign an agreement.

## **Background**

In October 2021, Close Brothers provided Miss M with finance for a used car. The cash price of the vehicle was £19,495.00. Miss M paid a deposit of £1,000.00 and applied for finance to cover the remaining £18,495.00 she needed to complete her purchase.

As a result she entered into a 60-month ‘personal contract purchase’ style hire-purchase agreement with Close Brothers. The loan had an APR of 12.9%, interest, fees and total charges of £6,474.76 (comprising of interest of £6,464.76 and an option to purchase fee of £10), and the balance repayable of £25,903.40 (not including Miss M’s deposit) was due to be repaid in 48 monthly instalments of £381.87 followed by an optional final payment of £6,640.00 which Miss M had to pay if she wanted to keep the car.

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

Miss M 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 M’s complaint.

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

I think that it would be helpful for me to start by setting 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 was 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 mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where 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 M's complaint.

Close Brothers says it agreed to Miss M's application after it completed an income and expenditure assessment. During this assessment, Miss M provided details of the funds she received. Close Brothers says it also carried out credit searches on Miss M which showed little in the way of active credit commitments.

And when reasonable repayments to the amount Miss M could owe plus a reasonable amount for Miss M's living expenses were deducted from her monthly income the monthly payments were affordable. On the other hand, Miss M says she couldn't afford the full amount of the monthly payments.

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

The first thing for me to say is that 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 significant previous difficulties. It would also have known that Miss M was making a reasonable advance payment too.

That said, given the amount of the monthly payments, I do think that it would have been prudent for Close Brothers to find out more about Miss M'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 M.

I've considered the information Miss M has provided us with. And having done so, this information does appear to show that when Miss M's committed regular living expenses and existing credit commitments are deducted from the funds that she received each month, 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 M's circumstances may have been worse than what proportionate checks are more likely than not to have shown. I know that Miss M says that she wasn't working. But it wouldn't have been fair and reasonable for Close Brothers to have declined Miss M's application solely on the basis that she was in receipt of benefits. A lender

is entitled to consider benefits as a prospective customer's income and it isn't unreasonable for a lender to lend to an individual in receipt of benefits provided the payments are affordable.

Furthermore, given the information provided does not clearly show me that the monthly payments were unaffordable, I'm afraid that I can't reasonably say that Close Brothers doing more in this instance would have resulted in Close Brothers determining that the agreement was unaffordable for Miss M.

So overall and having carefully considered everything, while I think that Close Brothers' checks before entering into this hire-purchase agreement with Miss M 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.

I've also thought about what Miss M has said about not signing the agreement and that she only agreed to payments of around £260. I appreciate that Miss M has approached other authorities regarding this. In terms of what I can consider, I know that Miss M has provided an unsigned copy of an agreement. But what Miss M has provided is copies of the pre-contractual documentation rather than the executed agreement.

I've been provided with a copy of the executed hire-purchase agreement. This has a signature on it. I can't say for sure that Miss M signed this document. However, the signature does not look too dissimilar to the identification documentation Miss M supplied at the time. I'm also mindful that Miss M took delivery of the car after the agreement was executed.

I appreciate Miss M says that she did this on the understanding that she would be provided with updated paperwork with lower monthly payments. I don't know what Miss M was told when she took delivery of the car. However, I do have to keep in mind that Miss M made the full payment for nearly two and a half years before taking this matter up with Close Brothers.

In these circumstances, I'm afraid that I'm not in a position where I can reasonably say that Miss M did not enter into this agreement on the terms set out in the background section of this decision. So I'm not upholding Miss M's complaint on this basis either.

In reaching my conclusions, I've also considered whether the lending relationship between Close Brothers and Miss M might have been unfair to Mr P under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think that Close Brothers lent irresponsibly to Miss M 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 M. 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 M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 7 February 2025.

Jeshen Narayanan

**Ombudsman**