

The complaint

Mr W complains through a representative that Close Brothers Limited (“Close Brothers”) gave him two conditional sale agreements without carrying out the correct affordability checks.

What happened

This complaint is about the following two conditional sale agreements – both were taken out to purchase used motorbikes.

1. In May 2022, Close Brothers provided Mr W with a conditional sale agreement, through an intermediary. The cash price for the bike was £7,995 and Mr W paid a £1,000 deposit. The total amount of credit advanced was £6,995 with £2,101.41 of interest, fees and charges. Mr W was due to make 59 monthly repayments of £151.44 followed by a final payment of £161.44. This agreement was settled when Mr W took out the conditional sale agreement below.
2. In August 2023, another conditional sale agreement was agreed, this time through a different credit intermediary. The cash price for the bike was £7,995 and deposit along with a part exchange of £784.51 was paid. The total amount of credit advanced was £7,210.49 with £2,820.91 of interest, fees and charges. Mr W was due to make 60 monthly repayments of £167.19. Up to September 2024, Mr W's payments had been made as expected.

Close Brothers issued two final response letters about Mr W's complaint in July 2024 – each one dealing with a separate agreement. Close Brothers didn't uphold the complaint about either agreement. Mr W's representative then referred the complaint to the Financial Ombudsman.

Mr W's complaint was considered by an investigator. The investigator said the checks conducted by Close Brothers before it entered the two agreements were proportionate and showed that Mr W would likely be able to afford his repayments.

Mr W's representatives disagreed across a number of emails, and I've summarised its response below.

- The checks conducted by Close Brothers were not proportionate.
- Close Brothers should've verified Mr W's income given the amount he needed to repay.
- Mr W was required to make substantial monthly repayments.
- At the time of the agreements, Mr W already had £18,000 of existing debt and this should've warranted further scrutiny.
- Further checks were needed to ensure the finance was in Mr W's “...*best financial interest*....”

The investigator explained why these comments didn't change his mind and as no agreement could be reached the complaint has been passed to an ombudsman for a decision.

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.

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 Mr W's complaint. Having carefully thought about everything I've been provided with and I'm not upholding Mr W's complaint. I'd like to explain why in a little more detail.

Close Brothers needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Close Brothers needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable 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.

Agreement 1

Close Brothers as part of the application process took details of Mr W's income which he declared was £2,300 per month. It doesn't look like Close Brothers took any other steps to check or to verify what it was told.

Mr W's representative says Close Brothers ought to have checked Mr W's income for its accuracy. I'm not persuaded that in the circumstances of this complaint Close Brothers needed to check the income. But even if I were to agree that the income needed to be checked – to be clear I am not concluding this – than it could've checked Mr W's income through a payslip, an online verification tool or through bank statements.

Had Close Brothers taken any such steps to check Mr W's income it would've likely discovered that in the months leading up to the agreement, while Mr W's income did fluctuate slightly, it was around what he had disclosed. So had Close Brothers taken a closer look at his income, it would've been content that £2,300 per month was an accurate reflection of what he earned.

Mr W also provided some details about his expenditure which he disclosed as part of the application. In total, across a number of different categories such as rent, credit commitments, insurances and utilities. Mr W disclosed these were costing £875 per month.

Close Brothers conducted a credit search before granting the agreement and it has provided a copy of the results that it received. I've considered these results in order to see whether it was given any indication that Mr W was, or likely to be, having financial difficulties at the time the agreement was granted. In summary Close Brothers knew;

- There were no CCJs or other types of insolvency recorded against Mr W.
- No adverse payment information included defaults or missed payments.
- Credit card and store card debt of £5,913.
- An existing hire purchase agreement with £12,290 to pay.
- A communication account with a £66 balance.
- Mr W had a mortgage – which had a repayment amount equal to the amount declared by Mr W as part of his application.
- No other searches for credit within the last three months.

The credit search results wouldn't have indicated to Close Brothers that Mr W was currently having, or was likely to have in the near future, financial difficulties and so I don't think these results would've been sufficient to have led Close Brothers to carry out further checks or to have declined his application.

I've thought about what Mr W's representative says about the total amount of debt, but the majority of the debt was connected to an existing hire purchase agreement that according to the results had been well maintained and had been active for seven months. I don't think this on its own would've prompted further checks.

Overall, given what Close Brothers found about Mr W, and taking account of his existing commitments and the Close Brother finance payment, he would've had just under £1,300 to cover any other costs not asked about – such as food. I think this was sufficient.

In those circumstances, where there was no adverse credit file data, and Mr W's debts appear to have been repaid as expected, I think Close Brothers carried out a proportionate check which showed this agreement to be affordable. I therefore do not uphold Mr W's complaint about this agreement.

Agreement 2

It's worth saying that Mr W was an existing customer of Close Brothers, so it was entirely fair and reasonable for it, as part of this assessment to consider how he had managed his payments on the existing agreement. Mr W had successfully made all his repayments, as expected and so the way he had managed the first agreement wouldn't have caused any concerns for Close Brothers.

I have also considered that the payments due to Close Brothers for this agreement are also only marginally more per month than what Mr W had successfully repaid for the first agreement. So, it wasn't as if Mr W was significantly increasing his monthly repayments.

Close Brothers carried out the same sort of checks before this agreement was entered into. This time Mr W declared he earned £2,500 per month and across the same categories asked about for loan 1, Mr W declared his outgoings came to £878 per month.

A credit search was also carried out and the results have been provided, and having looked at the results there wasn't anything that would've led Close Brother to believe that it needed to do more. It knew that Mr W's mortgage balance had increased since the first agreement, and his overall debt to store / credit cards and loans had increased to just under £9,000. And of course, there was the ongoing HP repayments – including the first agreement.

As before there were no missed payments or defaults recorded. It was entirely fair and reasonable for Close Brothers to have concluded that Mr W was able to fulfil his existing monthly credit commitments.

However, this time, Close Brothers conducted a more thorough affordability check into Mr W's outgoings. This including finding out specifically for example what utilities Mr W had as for as food and vehicle running costs. Having carried out this more thorough income and expenditure check it discovered Mr W's outgoings came to around £2,173 per month. So, the agreement did look affordable because Mr W had sufficient disposable income to be able to afford his repayments.

But it's worth saying here, Close Brothers was aware that Mr W received a pension of around £500 per month, although this wasn't recorded within the income and expenditure it carried out because it had already passed. But this would've provided Mr W with a greater margin of disposable income and extra reassurance to Close Brothers that the agreement was affordable.

I'm therefore satisfied that for the second agreement, Close Brothers had a more thorough understanding of Mr W's income and expenditure. But even carrying out a more detail check still indicated that the agreement was affordable.

Overall, I am also not upholding Mr W's complaint about his second agreement because in total, the checks carried out by Close Brothers was proportionate and showed the agreement to be affordable.

An outstanding balance appears to remain due for the second agreement, and Close Brothers has an obligation to treat Mr W fairly and with forbearance – if necessary. If Mr W needs any assistance with repaying the loan, then he should contact Close Brothers.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Close Brothers lent irresponsibly to Mr W or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I've outlined above, I am not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 April 2025.

Robert Walker
Ombudsman