

Complaint

Mr H complains that Close Brothers Limited (trading as “Close Brothers” Motor Finance) unfairly entered into a conditional sale agreement with him. Mr H has said that he was treated unfairly as he was accepted for finance which had payments he couldn’t afford.

Background

In July 2016, Close Brothers provided Mr H with finance for a car. The purchase price of the vehicle was £13,098.00. Mr H received a part exchange value of £800 for his previous vehicle and paid a further £200 deposit in cash. He entered into a 60-month conditional sale agreement with Close Brothers to fund the remaining amount he needed to complete his purchase.

The amount lent was £12,098.00. The loan had interest, fees and total charges of £2,940.40 (made up of interest of £2,930.40 and a title transfer fee of £10), and the balance to be repaid of £15,038.40 (not including Mr H’s deposit and part exchange) was due to be repaid in 60 monthly instalments of £250.64. The agreement was settled early in September 2020.

In December 2023, Mr H complained to Close Brothers saying that it shouldn’t have entered into this conditional sale agreement with him. He said that Close Brothers treated unfairly as he was accepted for finance which had payments he couldn’t afford.

Close Brothers did not uphold Mr H’s complaint. It believed that it considered that it had carried out proportionate checks before lending to Mr H and these showed that the monthly payments were affordable. Mr H remained dissatisfied at Close Brothers’ final response and referred his complaint to our service. When providing its file of papers on Mr H’s complaint, Close Brothers told us that it believed Mr H had complained too late.

Mr H’s complaint was considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown Close Brothers that it shouldn’t have entered into the conditional sale agreement with Mr H. So she didn’t think that Mr H’s complaint should be upheld.

Mr H 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Close Brothers has argued that Mr H’s complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr H's complaint as being one alleging that the relationship between him and Close Brothers was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr H's complaint. Given the reasons for this, I'm satisfied that whether Mr H's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr H's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr H has not only complained not about the decision to lend but has also alleged that the unaffordable payments to this agreement resulted in him being treated unfairly.

I'm therefore satisfied that Mr H's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Close Brothers. I acknowledge Close Brothers may not agree that we can look Mr H's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr H's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr H's complaint is about the fairness of the lending relationship between him and Close Brothers, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Close Brothers) and the debtor (Mr H), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr H's complaint, I therefore need to think about whether Close Brothers' decision to lend to Mr H, or its later actions resulted in the lending relationship between Mr H and Close Brothers being unfair to Mr H, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr H's relationship with Close Brothers is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr H's ability to repay in circumstances where doing so would have revealed the repayments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Close Brothers didn't then somehow remove the unfairness this created.

I'll now turn to whether Close Brothers acted fairly and reasonably when entering into the conditional sale agreement with Mr H.

Our approach to complaints about irresponsible or unaffordable lending

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 H 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.

I've kept this in mind when determining Mr H's complaint.

Application to Mr H's complaint - Did Close Brothers act fairly and reasonably when agreeing to enter into this conditional sale agreement with Mr H?

Close Brothers says it agreed to this application after Mr H provided details of his employer and his income. It says it also carried out credit searches on Mr H which suggested that Mr H had no significant adverse information – such as defaulted accounts or County Court Judgments ("CCJ") - recorded against him. Furthermore, the credit checks showed that Mr H's active credit was being managed well.

In its view, when reasonable repayments to the total amount Mr H owed plus a reasonable amount for Mr H's living expenses were deducted from what it believed to be Mr H's monthly income, the monthly payments were affordable.

On the other hand, Mr H says that he was treated unfairly as he was accepted for an agreement with payments which he wasn't able to afford.

I've thought about what Mr H and Close Brothers have said.

The first thing for me to say is that I don't think that the checks Close Brothers carried out did go far enough. I don't think it was reasonable for Close Brothers to rely on an estimate of Mr H's living costs given that this agreement had a five-year term. Equally, I've not seen anything to indicate that Mr H's income was crosschecked either. In these circumstances, I'm not persuaded that the checks Close Brothers carried out were proportionate.

However, I think it's worth me emphasising that just because I don't think that Close Brothers carried out sufficient checks this, on its own, doesn't mean that Mr H's complaint should be upheld. Indeed, where a firm didn't carry out sufficient checks 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 this clearly shows that the repayments in question were unaffordable. I think that this is important context to keep in mind.

I've therefore gone on to consider what I think such checks into Mr H's circumstances are more likely than not to have shown Close Brothers. As I've said, bearing in mind the length

of time of the agreement and the amount of the monthly payment, I would have expected Close Brothers to have had a reasonable understanding about Mr H's regular living expenses.

Having considered everything provided, I don't think that Close Brothers obtaining such information is more likely than not to have made a difference here. I say this because I'm satisfied that Close Brothers is still likely to have lent to Mr H even if it had used information on his actual living expenses, rather than relied on estimates.

In my view, when reasonable repayments to Mr H's existing credit are added to the payments which I've been able to see for Mr H's living expenses (in the bank statements he's provided) and then deducted from the funds he received, he does appear to have had sufficient funds to make the monthly payments to this agreement.

I know that Mr H has referred to the fact that he was using his overdraft. However, Mr H was clearly earning significantly more than the amount of his overdraft limit. Equally, while Mr H might have been using his overdraft there isn't an automatic prohibition to lending to a prospective borrower who has used (or is using an overdraft) in the way that Mr H's arguments suggest he believes to be the case.

In reaching my conclusions, I've also noted that Mr H has now carried out a line-by-line analysis of his bank statements and has reached the view that he didn't have enough left over for emergencies once the payments to this agreement was deducted from his disposable income. The first thing for me to say is that Mr H's analysis has been carried out with the use of bank statements for more than one account and this includes all of his major expenditure.

I don't think that expecting Close Brothers to have obtained bank statements for multiple accounts. In any event the disposable income Mr H has arrived at, includes all of his major expenditure. And, in these circumstances, I don't think that the amount Mr H has concluded he had left over means that it was unreasonable for Close Brothers to have lent to him.

I also have to keep in mind that Mr H's most recent submissions are being made in support of a claim for compensation and any explanations Mr H would have provided at the time are more likely to have been with a view to persuading Close Brothers to lend, rather than highlighting any unaffordability. So I think it unlikely that Mr H would have volunteered that he had the level of expenditure he's now referring to, particularly as Close Brothers wasn't required to request bank statements from him in the first place.

Having considered all of this and weighed it up in the round, I don't think that Close Brothers accepted an application that was obviously unaffordable, or that it ought reasonably to have realised would cause significant harm to Mr H. As this is the case, I don't think that it was unfair for Close Brothers to have entered into a conditional sale agreement with Mr H, or that it doing so created unfairness.

Overall, and based on the available evidence I don't find that the lending relationship between Mr H and Close Brothers was unfair to Mr H. I've not been persuaded that Close Brothers created unfairness in its relationship with Mr H by irresponsibly lending to him when it entered into this conditional sale agreement with him. And I don't find Close Brothers treated Mr H unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr H's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr H. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 June 2025.

Jeshen Narayanan
Ombudsman