

Complaint

Mr M is unhappy as he believes that Close Brothers Limited (trading as “Close Brothers” Motor Finance) sold or financed the purchase of a Guaranteed Asset Protection (“GAP”) policy.

Mr M’s complaint has been made by a representative who I’ll refer to as the representative in this decision.

In effect, the representative says that the commission on the GAP policy was high, wasn’t disclosed to Mr M and that this resulted in the relationship between Mr M and Close Brothers being unfair to Mr M under section 140 of the Consumer Credit Act 1974 (“CCA”).

Background

In May 2015, Mr M purchased a used van. The ‘cash-price’ of the vehicle was £16,794.00. Mr M paid a deposit of £2,800.00 and the remaining £13,394.00 was financed by a conditional sale agreement which he entered into with Close Brothers. Under the terms of the agreement, Mr M had to pay 48 monthly payments of £377. Mr M had to pay £3,734.00 in interest and an acceptance fee of £199 as well as a title transfer fee of £169. All of this meant that the APR for the agreement was 14.1%.

In around February 2024, the representative contacted Close Brothers, on Mr M’s behalf, setting out that the regulator paused the sale of GAP insurance policies in September 2023 and setting out some reasons why it believed Close Brothers may have unfairly sold such a policy to Mr M. It also went on to argue that this created an unfair relationship under s140 CCA.

Close Brothers didn’t respond to the complaint. After more than eight weeks had passed without a final response being issued, the representative on behalf of Mr M, referred the complaint to our service.

The complaint was subsequently reviewed by one of our investigators. The investigator didn’t think that Close Brothers had sold Mr M a GAP insurance policy. So he wasn’t persuaded that Mr M’s complaint should be upheld.

The representative, on behalf of Mr M, disagreed with our investigator and requested that an ombudsman consider the matter.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I don’t think that Close Brothers acted unfairly towards Mr M and so I’m not upholding his complaint. I’ll explain why in a little more detail.

Bearing in mind Close Brothers didn't issue a final response, I can, to an albeit extremely limited extent, understand why Mr M may feel a degree of scepticism at the investigator's conclusions. However, I'm satisfied that the information Close Brothers has provided to us indicates that it didn't sell or even finance the sale of a GAP policy in this instance.

The representative has said that it hasn't seen any evidence that Close Brothers didn't sell a GAP policy to Mr M. It's unclear what evidence it is the representative is seeking – particularly as it is seeking evidence of a GAP policy not existing, rather than evidence of the existence of such a policy.

In any event, our service doesn't just accept, at face value, what a respondent firm says in relation to a complaint. In this instance, Close Brothers has provided a copy of Mr M's signed and executed Conditional Sale agreement. Having reviewed it, I can see that there is a section on it entitled '*Description of Goods*'. The goods described is the van that Mr M was acquiring. There aren't any other goods listed on the agreement.

In addition to this Close Brothers has also provided us with a screenshot from its records on Mr M's agreement. These records have a tabbed section for insurance. When this is selected a section on insurance details is shown. The screenshot provided is for this section. Having reviewed the screenshot I can see that Mr M's name and his agreement number are included on it. I therefore have no reason to disbelieve or doubt the authenticity of the record provided. This screenshot also shows that Close Brothers has no insurance policy, relating to Mr M's Conditional Sale agreement, recorded on it.

I note that the representative has suggested that our investigator should have contacted the dealership to obtain a copy of the order form and the dealership invoice so that he could definitively conclude that GAP wasn't sold in this instance. However, this argument betrays a fundamental misunderstanding of the role of our service and the standard for determining cases.

I say this because I'm required to make a decision that is based on the balance of probabilities. What this in effect means is that I'm required to determine what I think is more likely than not to be the case – not what is definitively or certain to be the case. In this case, Mr M's Conditional Sale agreement doesn't have a GAP policy included in the list of goods on it. Close Brothers has also provided an insurance details screenshot showing that it doesn't have any record of a GAP policy associated with Mr M's agreement.

On the other hand, the representative has provided nothing other than an assertion that a GAP policy was sold. It hasn't provided anything at all to substantiate what it has said and it has therefore made a bare assertion that Close Brothers sold Mr M, or financed, a GAP policy. In these circumstances and having weighed up the evidence provided, I'm satisfied that it is more likely than not that Close Brothers did not sell and neither did it finance the purchase of, a GAP policy in connection with Mr M's Conditional Sale agreement. Furthermore, I'm satisfied that I don't require anything further in order to reach my conclusion.

For the sake of completeness, I would also add that when making this complaint, the representative argued that Close Brothers unfairly sold, or (given the s140 CCA argument made) financed, a GAP policy to Mr M. For the reasons I've already explained, I've seen sufficient evidence to be satisfied that it is more likely than not that this isn't the case and therefore Close Brothers didn't act unfairly or unreasonably in its dealing with Mr M.

As this is the case, I don't think it would be fair, reasonable or in keeping with our statutory obligation to provide a quick and informal dispute resolution service, for me to contact a third-party that isn't the respondent to this complaint, to request further information, that I

don't consider to be critical to my determination, simply to assuage the representative. Ultimately, if it considered this information to be important, the representative could have contacted the dealership itself to obtain it and has had more than enough opportunity to do so.

Overall and having considered everything, I'm satisfied that it is more likely than not that Close Brothers did not sell, or finance a GAP policy associated with Mr M's Conditional Sale agreement. Therefore, I've not been persuaded that the lending relationship between Mr M and Close Brothers was unfair to Mr M and I'm not upholding this complaint. I appreciate that this may be disappointing for Mr M. But I hope he'll understand the reasons for my decision and that he'll appreciate why I think Close Brothers hasn't acted unfairly or unreasonably towards him in this instance.

My final decision

For the reasons I've explained above, I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 October 2025.

Jeshen Narayanan
Ombudsman