DRN-5639642

Complaint

Mr K complains that Close Brothers Limited (trading as "Close Brothers" Motor Finance) unfairly entered into a conditional sale agreement with him. He's effectively said that the finance wasn't affordable and so shouldn't have been provided to him.

Background

In December 2020, Close Brothers provided Mr K with finance for a car. The purchase price of the vehicle was £9,795.00. Mr K paid a deposit of £489.75 and entered into a 60-month conditional sale agreement with Close Brothers to fund the remaining £9,305.25 he required.

The loan had interest, fees and total charges of £2,168.95 (made up of interest of £2,158.95 and a title transfer fee of £10), and the balance to be repaid of £11,474.20 (which does not include Mr K's deposit) was due to be repaid in 59 monthly instalments of £191.07 followed by a final repayment of £201.07.

Mr K's complaint was considered by one of our investigators. She didn't think that Close Brothers had done anything wrong or treated Mr K unfairly. So she didn't recommend that Mr K's complaint should be upheld.

Mr K 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.

Having carefully considered everything, I've decided not to uphold Mr K's complaint. I'll explain why in a little more detail.

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 K's complaint.

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 K 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.

Close Brothers says it agreed to Mr K's application after he provided details of his employer and a declaration of his income. It says it also carried out credit searches on Mr K which showed that Mr K's existing credit commitments were up to date and there wasn't any indication that he had previous suffered significant adverse credit difficulties such as having defaulted accounts or County Court Judgments ("CCJ") recorded against him.

In its view, when reasonable repayments to Mr K's existing credit commitments were deducted from what Mr K declared as his income, this left enough for him to take on the payments for this new agreement and also meet his living costs. On the other hand, Mr K says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them without facing excessive financial strain.

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

The first thing for me to say is that I'm not necessarily persuaded that the checks carried out by Close Brothers went far enough here. I accept that the credit checks showed Mr K hadn't had any previous difficulties with credit. But I don't think this meant that it was reasonable for Close Brothers to assume that Mr K would have enough to meet this new monthly commitment, as well as his regular living costs, in circumstances where it proceeded with this application with an unchecked declaration of his income.

As I'm not persuaded that Close Brothers did carry out sufficient checks, I've gone on to decide what I think Close Brothers is more likely than not to have seen had it obtained further information from Mr K. 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 of Mr K's income and regular living expenses as well as his existing credit commitments.

The information Mr K has provided does appear to show that when his committed regular living expenses and existing credit commitments were deducted from the amount of his actual monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I note that Mr K has now carried out a line-by-line analysis of his bank statements and in his view he didn't have enough to make the payments for this agreement. The first thing for me to say is that Mr K's analysis has been carried out with the use of bank statements and this includes all of his expenditure. There was no requirement and there still is no requirement to obtain bank statements from a customer. In these circumstances, I don't think that the amount Mr K has worked out he had each month is representative of what a proportionate check is likely to have demonstrated.

I also have to keep in mind that Mr K's most recent submissions are being made in support of a claim for compensation and any explanations Mr K 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 K would have suggested that Close Brothers shouldn't lend to him because he was using an overdraft. Indeed, an arranged overdraft is a revolving credit facility that a customer permitted to use.

For the sake of completeness, I would also add that while this isn't in itself determinative, it's also worth noting that Mr K has made all of the repayments due on this agreement thus far on time and on schedule. In my view, Mr K's repayment record does not support his argument that he had a negative disposable income in the way that he has calculated.

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

However, for the reasons I've explained, I don't think Close Brothers irresponsibly lent to Mr K or otherwise treated him unfairly. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

Overall and having carefully considered everything, while I'm not necessarily persuaded that Close Brothers' checks before entering into this conditional sale agreement with Mr K did go far enough, I'm nonetheless satisfied that carrying out reasonable and proportionate checks won't have stopped Close Brothers from providing these funds, or entering into this agreement with Mr K. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Mr K. 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 K's complaint.

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

Jeshen Narayanan
Ombudsman