

## **complaint**

Mr R is unhappy that he couldn't cancel an order and associated finance through Close Brothers Limited trading as Close Brothers Retail Finance, for a private number plate he bought online.

He says he also never completed the online application for the fixed sum loan that was set up.

## **background**

Mr R's father has represented him on this complaint. But, to keep things simple, I'll only refer to Mr R in this decision.

In June 2018 Mr R applied to purchase a private number plate with a company I'll call 'F'. Mr R applied for a fixed sum loan with Close Brothers to finance the purchase.

The next day Mr R emailed F and said he'd changed his mind and didn't want to go ahead with the purchase. He also got in touch with Close Brothers and said he didn't require the finance.

Mr R then contacted his bank and requested no payments be made towards a direct debit to Close Brothers. Mr R hasn't made any repayments towards the loan, which will have been recorded on his credit file.

Mr R also says he never clicked on a link contained in an email that was sent after he applied for the finance. He believes this means the application for the loan wasn't completed.

F got in touch with Mr R and explained that the order couldn't be cancelled. It pointed to its terms and conditions which explained no cooling off period was permitted for the purchase.

Mr R complained to Close Brothers and it issued its final response letter in July 2018. This pointed out the same part of the terms and conditions that F showed Mr R. It also said the purchase couldn't be cancelled. And, it said the application for credit was completed when Mr R signed the loan agreement.

Mr R was unhappy with this and brought the complaint to this service. He says he believes Close Brothers should've allowed him to cancel the order. And, he thinks the loan should never have been set up.

Our investigator upheld the complaint. He thought Mr R did agree to take the loan out. But, he thought the private plate couldn't be considered 'personalised goods' – so he thought Mr R should've been able to cancel the order and the finance agreement. He said Close Brothers should cancel the finance agreement, remove any adverse information from Mr R's credit file about the agreement and pay him £100 to reflect the distress and inconvenience caused.

Close Brothers disagreed. It said the number plate was personalised, so Mr R didn't have a right to cancel the purchase or the finance. So, the complaint was passed to me to decide.

When the complaint was passed to me for a decision, I asked Close Brothers to provide some further details of F's sales process and any loss involved by the cancellation of the order.

Close Brothers confirmed F ordered the number plate from the DVLA the day Mr R purchased it. The associated certificate arrived a few days later and was sent on to Mr R. After Mr R said he wanted to cancel the order, F resold the plate and said it didn't suffer a financial loss.

I sent Close Brothers and Mr R a provisional decision on 29 July 2020. I've included my findings from this decision below:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I initially think this complaint should be upheld. I'll explain why.*

*Mr R's complaint is in two parts. So I'll consider each in turn. The first part of the complaint concerns whether Mr R agreed to take out the finance. The second part concerns how Close Brothers handled things when Mr R requested to cancel the purchase of the plate and the credit agreement.*

*I think that when Mr R told Close Brothers he no longer wanted the finance, he effectively asked for a refund. This meant Close Brothers could've considered this request under section 75 of the Consumer Credit Act 1974 ('S75'). So, I'll consider how it handled this claim.*

*Did Mr R agree to take the fixed sum loan from Close Brothers?*

*Mr R says he never completed the online application so he thinks the loan should never have been set up. He says after he applied, an email came through that contained a link he needed to click on to complete the purchase. But, he says he never clicked this link.*

*I've seen the email from Close Brothers that Mr R mentions. This email contains a link that says "Please click here to complete your purchase".*

*Close Brothers have sent us details of the process Mr R had to follow to apply for the loan. After Mr R had gone through the application and entered his details, it appears he was presented with a credit agreement. This contains details of the loan and contained a section for Mr R to electronically sign. Above this, it says "Only sign this agreement if you want to be legally bound by its terms". I can see Mr R electronically signed this form.*

*Looking at the timestamp on the electronic signature and the time the email Mr R refers to was sent, it appears Mr R signed the form a couple of minutes after receiving this email. So, I don't think it's most likely Mr R received this email after he'd completed the application. But, even if he did, I still think the loan was agreed to at this point. I'm satisfied Mr R agreed to the finance when he electronically signed the credit agreement. When the email was received, or whether or not Mr R clicked the link, doesn't change my opinion on this.*

*Thinking about everything, I'm satisfied Mr R agreed to take out the loan with Close Brothers. So, it follows I don't think it did anything wrong by processing and setting this up.*

*Did Close Brothers handle Mr R's S75 claim as it should?*

*Mr R has said he should have been able to cancel the agreement with F as the order was placed online. He says he believes he had 14 days to do this - and as he tried to cancel the purchase the next day the order and finance should've been cancelled.*

*When considering what's fair and reasonable, I have regard to relevant law and regulations. S75 is relevant to this complaint. This says, in certain circumstances, the borrower under a credit agreement has an equal right to claim against the credit provider if there's been a breach of contract or misrepresentation by the supplier of goods or services.*

*I've considered the details of the purchase and I'm satisfied a valid debtor – creditor – supplier ('DCS') link exists. The plate cost £464.79 – I'm happy this is within the financial limits detailed under S75. This means I'm satisfied Mr R had a valid S75 claim.*

*The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCR") are also relevant to this complaint. These explain certain contracts made from 'distance' – which this as an online sale would be – can be cancelled for a period of 14 days after they start.*

*F's terms and conditions say the purchase doesn't count as a 'distance sale' and is excluded from the CCR. Part of these terms say:*

*"4. Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, if a buyer does not proceed with the transfer of the registration mark after paying the full/part payment, or fails to supply the full documentation required by DVLA, then no part of this payment is refundable, whatsoever, as the service period commences immediately. Ordered registrations cannot be refunded or exchanged, nor will and cancellations be accepted. If a balance payment is not received, a debt recovery company will be employed to recover any payments outstanding. There will be additional charges for their services. Please note there is no cooling off period permitted."*

*F says this is because 'bespoke and personalised goods' are excluded from the regulations. Close Brothers say F's understanding that the plate was a 'personalised item' is correct so F is right not to offer any cancellation.*

*I think it's important to point out here that for the purposes of considering the CCR, I think the contract that Mr R entered into with F was a contract for goods, rather than services. I say this as I think the main purpose of the contract was to supply a number plate to Mr R.*

*The CCR says the cancellation rights don't apply to "the supply of goods that are made to the consumer's specifications or are clearly personalised". So, I need to consider if this definition applies to the number plate Mr R bought.*

*The number plate Mr R ordered was selected from a number of plates that were already available from the DVLA. Close Brothers said that the plate had already been used on another car. So, I'm satisfied this means it wasn't made to his specifications. I've considered whether the plate was "clearly personalised". But, I don't think it was. The plate was for sale in the same state as it would've been supplied to Mr R. Nothing was edited or altered with the plate when Mr R bought it. So, I'm satisfied it wasn't personalised.*

*Close Brothers said that only a very limited number of people would buy the plate if the purchase was cancelled. I think the intention behind the exclusion about personalised goods in the CCR is to prevent retailers suffering a financial loss by having to take back goods which have been personalised or altered and so would be very difficult to resell. But I don't agree with Close Brothers that only a very limited number of people would buy this plate. I'll explain why.*

*This particular registration is a variation of a popular name in the UK. The plate was in use before Mr R acquired it. And, F confirmed that the plate was resold after Mr R said he no longer wanted to go ahead with the agreement. So, I'm still satisfied there was a market for the plate to be resold and this doesn't go against the spirit of the CCR.*

*Close Brothers told us F had said Trading Standards had informed it that private plates are 'personalised goods'. But, I asked it to provide some evidence of this and it has been unable to do so. So, this doesn't change my opinion*

*So, I'm satisfied that Mr R had a right to cancel this contract. Looking at the communication between Mr R and F, I'm satisfied Mr R validly exercised this right within the cancellation period.*

*There is an implied term in the contract that if Mr R validly exercised his cancellation rights under the CCR, which I'm satisfied he did, then any ancillary contracts – which would include the point of sale loan – should be automatically terminated. Close Brothers didn't terminate Mr R's finance agreement. I'm satisfied this was a breach of contract. So, I think Close Brothers should've upheld Mr R's claim under S75.*

*I did consider whether it would be fair and reasonable for some money to be retained for any significant services provided by F.*

*I asked Close Brothers to give details of the F's sales process and what it meant by a 'commission based sale' – as F described the transaction. F confirmed to Close Brothers that the sales process was for it to buy the plate from the DVLA, then pass the certificate onto Mr R. It didn't provide any further details of costs or time involved. And it specifically said that the plate was later sold on without any loss.*

*I've also considered that F confirmed that the certificate for the plate arrived after Mr R had told it he no longer wanted it. Assuming the plate wasn't bought at auction, which neither F nor Close Brothers have mentioned, the DVLA allows cancellation of any purchases within 10 working days. So, it appears F could've asked for a full refund from the DVLA if it didn't want to resell the plate.*

*Thinking about all of this, I don't think Mr R is responsible for the cost of any work F did to source the number plate.*

*In summary, I'm satisfied the number plate Mr R bought doesn't meet the exclusion for personalised goods in the CCR. I'm satisfied the contract Mr R entered into was for goods rather than services. I think this means F should have let Mr R cancel his purchase. And when he cancelled the contract with F, Close Brothers should've also cancelled the associated finance.*

*I've considered that Mr R hasn't made any repayments towards the finance, so no refund is due. Mr R has had no use of the plate he purchased. So, I think the simplest and fairest way to put things right is to cancel the credit agreement with nothing further to pay.*

*Mr R has said this has affected his credit rating which he has found very stressful. I also think it would've been upsetting for him to be told he couldn't cancel the finance. Mr R wouldn't have the negative information on his file had the order been cancelled as I think it should have been. So, I think Close Brothers should remove any adverse information from his credit file and pay him £100 to compensate him for the distress and inconvenience caused.*

*Finally, Mr R says he was recently declined a mortgage because of the negative information on his credit report from Close Brothers. But, having reviewed the credit report he sent in, I can see other issues which would affect his credit rating. So, I haven't seen enough to make me think he was declined a mortgage because of what Close Brothers did, rather than for some other reason.*

I gave both parties four weeks to respond to my provisional decision with any further comments or evidence for me to consider.

Mr R got in touch and said he was happy with the decision. Close Brothers responded and said it would put things right by doing what I set out in my provisional decision.

### **my findings**

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

Having carefully thought about everything again, I still think this complaint should be upheld. This is for the same reasons I explained in my provisional decision and which are detailed above.

### **my final decision**

My final decision is that I uphold this complaint. I instruct Close Brothers Limited trading as Close Brothers Retail Finance to do the following:

- cancel the agreement with nothing further to pay
- remove any adverse information about the account from Mr R's credit file
- pay Mr R £100 for the trouble and upset caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 October 2020.

John Bower  
**ombudsman**