

complaint

Mr S complains about a default that Close Brothers Limited has registered on his credit file, and the fact it has ended his finance agreement. Mr S is assisted in his complaint by a legal representative.

background

Mr S entered into a hire purchase agreement in March 2017 with Close Brothers to acquire a car for his partner, Ms R. She was the registered keeper of the car and the insurance policy was in her name. Mr S made the payments due under the finance agreement. Mr S says that Close Brothers was aware the car was for Ms R.

Mr S and Ms R later separated. She took the car and moved away. Mr S does not know where she is.

Mr S was contacted by the insurance company to tell him the car had been stolen in August 2017. The car has not been recovered.

Close Brothers issued a notice of default asking for the agreement to be settled in full. This is because the car is not registered at Mr S's property, and he is not in possession of it. Close Brothers say the terms and conditions of the finance agreement say he cannot give the car to a third party. Mr S has to keep the car in his possession or control. Close Brothers says it is entitled to end the agreement in these circumstances. It issued a default notice and asked Mr S to repay the balance due under the agreement.

Mr S was not happy with this and he brought a complaint to us to consider.

The investigator did not recommend that the complaint should be upheld. She noted that Mr S says the sales advisor was aware the car was for Ms R. The investigator considered Close Brothers was entitled to add a default and demand full payment when the car was stolen from a different address from the address on the agreement. The car has not been recovered. The terms and conditions of the agreement say that Close Brothers can default your agreement if *'any information you've given them is false or misleading'* and they can terminate the agreement if Mr S is no longer in possession of the goods.

The investigator pointed out that Mr S was not the legal owner of the car until he had finished paying off the loan. Close Brothers agree to lend on the basis that they own the car, whilst Mr S pays them back. The terms and conditions state that Mr S must keep the goods in his control. Mr S breached the terms and conditions of the agreement he had with them when Ms R took the car after the couple separated. Because the property has been lost, Close Brothers can demand payment of the loan in full and issue a default notice.

Mr S does not agree with the investigator's recommendation. He says, in summary, that the car was bought for Ms R. The V5 was in her name and at her separate address. The couple were estranged at the time Mr S entered into the finance agreement. Ms R was the legal registered keeper of the car. The car was insured in her name and at her address.

Mr S says the default has been issued by Close Brothers as it says he is in breach of the finance agreement. Mr S says Close Brothers and the dealer were aware that the car was for Ms R. This was clear from the documents. Mr S has not transferred the car as it was never in his control. Mr S has not breached the finance agreement as a result.

Mr S says it is not clear if Close Brothers has tried to recover the cost of the car from the insurance company.

Mr S has been charged multiple fees for the default notice. He has paid all payments due under the finance agreement.

In response, the investigator considered she had no evidence to show that Close Brothers was aware the car was not to be kept at Mr S's address. Mr S has said his English was not fluent so he did not speak much to the dealer. Close Brothers has said it had no problems communicating with Mr S due to any language barrier.

The investigator considered that Mr S signed a finance agreement which says he is responsible for the car. The car should remain in his possession and at the address named in the agreement. Close Brothers has said a person can take out a finance agreement to acquire a car for their partner. The couple are usually at the same address. Mr S has said he was still with Ms R when he entered into the finance agreement. Close Brothers would not have known the car was at a different address.

Mr S did not agree and asked for his complaint to be considered by an ombudsman.

my findings

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

When Mr S put in a complaint to us, he very helpfully attached a lengthy submission which detailed the factual background to his complaint. This makes it clear that when Mr S entered into the finance agreement, he was still with his partner. They had not separated at this point. They did not separate until after Mr S signed the finance agreement. Given the couple were together and living at the same address at this time, I consider that Close Brothers would not have been aware that the car was not to be kept at the address provided by Mr S. Ms R was living there at that time. The car may have been for Ms R, but I consider Close Brothers was entitled to assume the car would be kept at the couple's address given they were living together at that time.

Mr S sets out in his complaint form that the couple separated shortly after he entered into the finance agreement. Ms R moved out of the address contained in the finance agreement.

The finance agreement says the car had to be kept under Mr S's control or possession. Mr S admits he did not know where Ms R was living after their separation. He is not in contact with her. This means he was in breach of the finance agreement. I consider that Close Brothers was entitled to end the finance agreement and demand payment in full. Further, it was entitled to default the account when Mr S failed to comply with the termination notice.

I note Mr S says he has limited English. He did not indicate on his complaint form that he had any additional communication needs. Close Brothers says it has not had a problem communicating with him. I am persuaded Mr S had enough knowledge of the English language to understand what he was signing. If he did not, I consider he should not have agreed to enter into the agreement.

I agree with the investigator that a car can be registered in another person's name but still be at the address stated in the agreement. The registration of the car in Ms R's name did not mean that Mr S did not have to follow the terms of the finance agreement. This said the car had to be in his possession or control. When it was not, Mr S broke the agreement. Close Brothers was entitled to end it and demand full payment.

Mr S agrees in his complaint form that he agrees he was bound by the requirement of the agreement to make payments due under it. I consider he was bound by all the terms of the agreement not just the payment clauses.

I note Mr S has queried how much he has been charged for the default which has been issued. Close Brothers should send Mr S a breakdown of the charges which have been added to his balance.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 March 2019.

Rosemary Lloyd
ombudsman