

The complaint

Mr B has complained about the way Close Brothers Limited trading as Close Brothers Motor Finance administered a conditional sale agreement he had with it to acquire a vehicle.

What happened

Mr B acquired a used vehicle under a conditional sale agreement with Close Brothers in August 2021. The vehicle cost around £15,600 and Mr B was due to pay the agreement back with 60 payments of around £280.

Mr B says he fell into arrears and Close Brothers' collection agents came to attempt to repossess the vehicle without serving a termination notice. He says he spoke to Close Brothers, and it was agreed he would clear the arrears after the collections agent had inspected the vehicle, and upon receipt of an income and expenditure form. Mr B says he didn't receive a visit or a notice of a visit. He says another repossession attempt was made but he moved the vehicle until the matter could be resolved. He said he made several calls to Close Brothers to sort things out. Mr B says Close Brothers' agents went on to repossess the vehicle without his knowledge, and that he'd still not received a termination notice. He said while the collections agents may have tried to contact him, this was from an unknown number and no voicemails were left. He says when it messaged him, he immediately responded.

Unhappy with what happened, Mr B complained to Close Brothers. He says it agreed he was told he could clear the arrears after an inspection, and that he wasn't sent a termination notice. Mr B says Close Brothers upheld his complaint but wouldn't return the vehicle. The vehicle was subsequently sold. He requested the debt be written off along with compensation for distress and loss of earnings.

In response to the complaint, Close Brothers said the agreement was terminated and the vehicle repossessed due to arrears. It said it acknowledged it spoke to Mr B in October 2022 and told him it would allow him to continue in the agreement if he cleared the arrears; allowed its collection agents to inspect the vehicle (and documentation); and returned the income and expenditure form. Close Brothers said it didn't receive an income and expenditure form from Mr B. Close Brothers also said its collections agents had tried to contact Mr B various times to arrange the inspection but was unable to reach him. The repossession was therefore approved and carried out.

Mr B referred his complaint to our service. One of our investigators looked into things and said the direct debit instruction was cancelled in July 2022. The account fell into arrears which led to Close Brothers issuing arrears letters and a default notice in August 2022. Our investigator thought Close Brothers gave sufficient notice it would terminate the agreement if arrears weren't cleared. He also noted Mr B hadn't returned an income and expenditure form to Close Brothers as requested.

Our investigator said the notice of termination was issued on 15 September 2022 as a result of Mr B not making contact regarding the repossession prior to further action being taken. Our investigator said it looked like Mr B was out of work at the time which might've

contributed to the situation. Our investigator ultimately didn't think it was unreasonable Close Brothers terminated the agreement. He didn't make any recommendations.

Mr B didn't accept the assessment. In summary, he said he made two complaints directly to Close Brothers which were upheld. He reiterated he had no message, email or voicemail from the collection agents. He was unhappy with the way the collections agents dealt with him. Mr B said Close Brothers upheld his complaint because it terminated the agreement without notifying him, and that he didn't know the income and expenditure form return was time sensitive. He also said it was agreed the arrears would be held until the vehicle was inspected. He said he wasn't comfortable handing over money until an arrangement had been put in place.

As things weren't resolved, the complaint has been passed to me to decide.

What I've decided – and why

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

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr B and Close Brothers I've reviewed everything on file. If I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. I also want to say I'm sorry to hear Mr B was in financial difficulties in 2022. It can't have been easy and I thank him for taking the time to bring his complaint.

Mr B acquired the vehicle under a regulated conditional sale agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

I'm considering whether (or not) Close Brothers acted fairly by terminating the agreement. Mr B was up to date on the agreement in June 2022, but I can see his July 2022 direct debit was returned because the instruction had been cancelled. There were two previous direct debits rejected for a different reason (direct debit rejected – refer to payer), but these were paid a week or two after by debit card. I think Close Brothers would have been concerned to see the direct debit had been cancelled in July 2022. In addition to the July payment being missed, no payment was made in the months following.

It looks like Close Brothers started debt recovery proceedings when it saw the direct debit had been cancelled. I don't think this was unreasonable. Its notes say it sent an annual statement and a notice of sums in arrears in August 2022. The notes say a default notice was sent to Mr B as well. I think that was fair as well given the arrears were increasing. Mr B was two payments behind. Around September 2022 it looks like Close Brothers thought that terminating the agreement would be the right thing to do. It was three payments in arrears, there had been no response from Mr B to its letters and the vehicle was depreciating. Broadly speaking, industry guidance says firms can step in and take these sorts of steps when customers are three payments behind. Close Brothers issued a notice of termination on 15 September 2022, although Mr B says he didn't receive it. Given he was three payments behind and there'd already been a default notice sent I don't find I have the grounds to say Close Brothers decision to terminate was unreasonable.

It wasn't until after Close Brothers had said it was terminating the agreement that Mr B spoke to it towards the end of September 2022. It looks like he said he'd been out of work but that he wanted to pay the arrears in full. He wanted Close Brothers to reinstate the

agreement because he was back in work. Close Brothers wanted to proceed to repossess the vehicle, which I don't think was unreasonable based on what I've set out above.

However, after reviewing the situation, on 17 October 2022, Close Brothers agreed to allow Mr B the opportunity to continue in the agreement if he cleared the arrears of around £1,200; completed an income and expenditure form; and the vehicle was inspected to confirm all documentation was in order. Close Brothers' call handler referred to Mr B's complaint being upheld. I think this was in relation to it allowing him to continue in the agreement based on what he'd told it.

Close Brothers offered to go through the income and expenditure form on the phone, but Mr B wanted it emailed. Close Brothers asked Mr B to contact it if he needed any help with anything. It also offered to take payment for the arrears over the phone, but Mr B wanted to wait for the email to be sent. I understand the recovery agents tried to speak to Mr B. As no payment or response was received by 26 October 2022 Close Brothers wanted to continue with the termination. From what I've seen, no substantive follow up action was taken until 18 November 2022 when Close Brothers contacted Mr B to let it know it was proceeding with termination. The vehicle was recovered on 23 November 2022.

On the one hand, I take Mr B's point that Close Brothers didn't specify a deadline for certain things to happen in the October call. I agree it would've been helpful if it had done this. I also take on board he says he didn't receive the correct notices from Close Brothers. I think Close Brothers could have been clearer in setting out, and supplying evidence if necessary, of when the default and termination notices were issued when Mr B said he hadn't received them. I can see it referred to his complaints being 'upheld' which might've led to some confusion. I can also see Mr B says he was unhappy with the collection agents' behaviour. I'm sorry to hear that, and I can imagine it was stressful having agents turn up to repossess the vehicle.

But on the other hand, the arrears were growing month by month. Mr B had told Close Brothers he was (previously at least) in financial difficulties. By the time Close Brothers recovered the vehicle, Mr B was five payments behind. While Mr B says he didn't receive the notices, on balance, I think a default and termination notice were issued, which is what Close Brothers was required to do. It was over a month from the time Close Brothers spoke to Mr B in October 2022 to when the repossession happened. I think Mr B had long enough to send back the income and expenditure form and to clear the arrears. He said he was going to do that when he received Close Brothers' email, which was sent on 17 October 2022. I don't know exactly what contact attempts the collection agents made, but I think Mr B ought to have known action needed to be taken off the back of the agreement he'd reached with Close Brothers in the October call.

In all the circumstances, while I know Mr B doesn't agree, I don't find it was unfair for Close Brothers to proceed with termination and recover the vehicle when it did. I'm therefore not going to make any directions.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 January 2024.

Simon Wingfield
Ombudsman