

The complaint

Mr M is complaining that Close Brothers Limited trading as Close Brothers Motor Finance (CBMF) shouldn't have lent to him – he says the lending was unaffordable. A representative has brought his complaint to us but for ease I've written as if he's dealt with us directly.

What happened

In November 2018, Mr M took out a conditional sale agreement with CBMF to finance the purchase of a vehicle. He paid a deposit of £1,000 and borrowed £11,695 – the cash price of the vehicle was £12,695. The agreement required Mr M to make 59 monthly repayments of £250.63, followed by a final instalment of £260.63 (including a £10 option to purchase fee). Mr M made all his payments on time and settled the agreement in full at the end of 2023.

In February 2023, Mr M complained to CBMF, saying that he thought CBMF had failed to conduct appropriate checks before lending to him. He said he was earning less than £16,000 a year and had to pay a mortgage, another car finance agreement, insurance and utility bills and had substantial credit card debt. He said his wife wasn't working and he also had one dependent child. Mr M added that he ended up taking out more debts to cover his everyday living costs so that he could meet the repayments to CBMF.

In response, CBMF said they'd carried out appropriate checks before lending to Mr M and his application had been auto-accepted. Mr M was unhappy with CBMF's response and brought his complaint to our service, and one of our investigators looked into it.

Our investigator upheld the complaint, saying he didn't think CBMF had done enough to check that the lending was affordable for Mr M and if they had, they wouldn't have been able to fairly lend to Mr M. Our investigator said CBMF should refund all amounts Mr M had paid over the cash price of the car, together with interest at 8% per year on any overpayments.

Mr M accepted our investigator's view but CBMF didn't respond. So the complaint's been passed to me for a decision.

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.

Having done so, I'm upholding Mr M's complaint for broadly the same reasons as our investigator. I'll explain below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did CBMF carry out proportionate checks?

CBMF said they reviewed Mr M's credit file. I haven't seen that they did any other checks. Mr M's credit file at the time showed he had a mortgage, hire purchase agreement, and three credit cards. It also showed he'd missed payments against his utilities bills and two credit cards within the last twelve months.

CBMF noted Mr M's income was £1,350 per month. I can't see they did anything to verify this despite the CONC guidelines saying that it's not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, and what CBMF found. At over £16,000, the total amount Mr M would have to repay was significant, and the term of the loan was five years. The checks they did do showed Mr M had a significant amount of existing credit, against which he'd likely need to make payments of around £1,000. And they showed he'd recently missed some payments to his existing creditors.

I'm not satisfied CBMF did proportionate checks – they should have done more to verify his income and understand his expenditure before lending to Mr M.

What would CBMF have found if they had done proportionate checks?

If CBMF had sought to verify Mr M's income they'd have learned he was paid in cash. He's sent us tax documents which show that for the year to 5 April 2019 he earned £11,877. And his bank statements show him paying in around £1,000 per month. Mr M has told us he paid some of his expenses by cash. And I can't see many outgoings in his bank statements. So it makes sense that his income was around the £1,350 he told CBMF. But his verifiable income was only around £1,000 per month.

Mr M needed to make monthly repayments of £380 for his mortgage and £199 for an existing hire purchase agreement which had over a year left to run on it. He also had three credit cards with an existing balance totalling over £10,000. I'd have expected CBMF to include around £500 in their estimates for repayments against this credit card debt. That means before covering any other living expenses, Mr M already needed to pay nearly £1,000 per month out to his existing creditors and would have had no verifiable income left from which to pay the £250 per month needed to CBMF under this new agreement.

In summary, Mr M had verifiable income of £1,000 per month, and payments to existing creditors totalling around the same amount. He had nothing left over from which to make the payments required for the new agreement and that's before considering his living expenses, which he seems to have been covering from a combination of cash and credit. So if CBMF had done proportionate checks, they'd have found the agreement was unaffordable for Mr M and couldn't have fairly decided to lend to him.

Putting things right

As CBMF shouldn't have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mr M has had use of the vehicle and still has it so it's fair he pays the cash price of the car, being £12,695. To settle Mr M's complaint, CBMF should do the following:

- Refund all the payments Mr M has made in excess of £12,695 (including the deposit), adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr M's credit file regarding the

agreement.

If CBMF consider tax should be deducted from the interest element of my award they should provide Mr M a certificate showing how much they've taken off so that Mr M can reclaim that amount, assuming he is eligible to do so.

My final decision

As I've explained, I'm upholding this complaint. Close Brothers Limited trading as Close Brothers Motor Finance need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 April 2024.

Clare King
Ombudsman