

## The complaint

Ms R complains that a car she has been financing through an agreement with Close Brothers Limited trading as Close Brothers Motor Finance (Close Brothers) was misrepresented to her.

### What happened

In May 2019, Ms R entered into a 60 month conditional sale agreement for a used car. The car's cash price was around £10,300. It was first registered in May 2017 and it had travelled around 9,700 miles. Ms R did a part exchange (£1,400) and took out finance for the rest. She was required to pay monthly instalments of £211. The total amount payable was around £14,000.

Around April 2023, Ms R was looking to acquire another car and she intended to use this car as a part exchange. Having approached a couple of dealerships about it, she discovered the car (subject to this agreement) had previously been stolen and sold at salvage. Because of this, she said she couldn't get the full value of the car should she sell it or use it as part exchange. She said she was never told about this about the car's history and had the dealership done so, she wouldn't have entered into the agreement. She complained the car had been misrepresented to her and she wanted to reject it and be compensated.

Close Brothers said they had carried out a HPI check (hire purchase inspection) and it confirmed no adverse information so it was of satisfactory quality. They didn't agree to a rejection.

Unhappy with their response, Ms R referred the complaint to our service. The investigator recommended the complaint wasn't upheld. She said appropriate checks had been carried out by the dealership at the point of supply and they weren't aware the car had been previously stolen, damaged or sold at a salvage auction. She concluded the car hadn't been misrepresented to Ms R.

Ms R disagreed and reaffirmed her stance. She further commented she had evidence the car was sold at a salvage auction. She also said when she initially asked about the car's history, she was told it was a part exchange and it hadn't been subject to an insurance write off.

In January 2024, I issued a provisional decision outlining my intentions to uphold the complaint. I said:

*“Under section 56 of the Consumer Credit Act 1974, the finance provider (Close Brothers) can be held responsible for antecedent negotiations (meaning what was said or done) by the broker and/or supplier before the consumer enters into a finance agreement. So I've taken this relevant law into account when looking into this complaint.*

*For there to be a misrepresentation, the following must be satisfied:*

- 1. Whether a false statement of fact has been made; and*
- 2. Whether this false statement induced Ms R to enter into the agreement to acquire the car.*

Was there a false statement of fact?

*For obvious reasons, I wasn't party to the conversations between Ms R and the dealership. Therefore I've relied on the submissions and testimonies from both parties about what was said and discussed when Ms R entered into the agreement.*

*I haven't been provided with a copy of the online advert for this car so I can't determine what it said.*

*In summary, Ms R says the following about the agreement and how she entered into it:*

- *This was going to be her second car and she visited the dealership to look at it. She felt it was safer to buy a car at a dealership rather than a private seller;*
- *When she asked about the car's history, she was told it had one previous owner and they had part exchanged it for another;*
- *There were minor scratch marks in the car as the previous owner had a cat;*
- *She asked whether there were any insurance categories on the car. Although she was young and inexperienced on such matters she knew doing so wouldn't be a good idea. She didn't want to buy a 'dodgy car';*
- *The dealership told her the HPI check was clear and they didn't sell cars with any insurance categories. She never received a copy of the HPI check;*
- *She trusted them and believed as a professional dealership they would carry out their own checks. This led her to believe it was safe to purchase the car from them;*
- *When she tried to part exchange the car, a dealership told her the HPI check may not have shown anything but most reputable dealerships are aware and do an additional check to see if the car was stolen or subject to salvage and in this case, that's what their check revealed;*
- *That same dealership provided her with information as to the salvage company where the car was brought from.*

*Ms R has given detailed testimony about what happened, the questions she asked and why. Overall I find her version to be plausible and persuasive. I believe she did ask whether the car was subject to an insurance claim or had any adverse history.*

*I've also considered Close Brother's submission. Due to the time that's passed, they've said the dealership doesn't hold any further documentary evidence about the sale but they've outlined the sales process. I can reassure both parties I've carefully considered it but I won't set it out in this decision as I find it's reasonable to rely on documentary evidence, that is, Close Brother's account notes.*

*From the account notes, I can see there are entries around June 2019 (around a month after the agreement had been entered into) which says:*

*"VRM And VIN Vehicle Recorded As Insurance Theft".  
It goes on to say:*

*"Dealer Is Working With HPI To Get Stolen Marker Removed"*

*I can see in a later entry it says the HPI is clear of a stolen marker.*

*Based on the above, it's clear both Close Brothers and the dealership were aware the car had previously been stolen and the HPI check showed the same. As part of my investigation,*

*I've asked Close Brothers how and when this adverse information on the HPI check was brought to Ms R's attention before she entered into the agreement. Unfortunately at the time of writing this decision, I've received no response. Given the above, I find the dealership made a false statement of fact to Ms R.*

#### *Did the false statement of fact induce Ms R?*

*Ms R said had she known the car was stolen, salvaged or subject to an insurance claim, she wouldn't have bought it. She accepts although she may not have been particularly well versed in cars, she was fully aware that if a car was subject to any of the above it could impact the value, insurance, etc. In her words, she didn't want to buy a 'dodgy car'. In my opinion, this is supported by the questions she said she asked to the dealership. To my mind, that demonstrates the car's history was important to her and a key factor in her decision making so any adverse history was likely to mean she wouldn't have entered into the agreement.*

*Taking everything into account, I'm satisfied the false statement of fact most likely induced Ms R into entering the agreement, meaning a misrepresentation has been made.*

#### *Putting things right*

*As I've found there was a misrepresentation, the remedy is to put Ms R back in the position she would've been in had the misrepresentation not been made. I intend to say Close Brothers should end the agreement with nothing further for Ms R to pay. They should collect the car at no cost to her, refund any cash deposit paid and the value of the part exchange (£1,400). They should also remove any adverse information from her credit file.*

*Ms R is likely to say the car's cash price when she entered into the agreement was higher than what it should've been as it didn't take into account its adverse history, meaning she's likely to have paid more than what it was worth. Generally speaking if a car is an insurance write off and subject to a claim, it is likely to have a negative impact on its value. Unfortunately, I don't have any evidence to say what would've been the value of the car had the adverse information been correctly taken into account. But I believe the fairest way to compensate Ms R for the same is for Close Brothers to refund 20% of the monthly instalments she's paid. I won't be asking Close Brothers to refund the entire monthly payments as Ms R has had use of the car for a significant amount of time (over three years) therefore it's fair she pays for that use.*

*I understand Ms R has gone to some effort to determine the car's history, spoken to different dealerships and is upset the car wasn't what she thought. I must also take into consideration, she intended to part exchange the car for a new one but as this car will be returned, she will be unable to do this. In light of this trouble and upset, I intend to say Close Brothers must also pay £200 compensation".*

#### *Response to the provisional decision*

*Close brothers responded that due to the time that's passed, they no longer have a copy of the advert for the car. They said the dealership had arranged for the stolen marker to be removed so it's no longer present. They added getting such a marker removed is a rigorous process and can't be done without legitimate evidence but due to the time that's passed they're unable to provide that evidence. They maintained the car hadn't been mis-sold.*

*Broadly speaking Ms R accepted the findings but she didn't believe the actions to put things right were enough. In summary she said:*

- The advert for the car made no reference to the car being subject to an insurance category or that it was stolen. It also wasn't mentioned in the agreement or point of sale documentation;
- Close Brothers and the dealership were fully aware of the HPI marker on the car and by not telling her of the same was deceitful and fraudulent, they actively arranged for the marker to be removed;
- She would've never bought a car which such a HPI marker as she's aware of the pitfalls in doing so;
- This was a conditional sale agreement meaning she would own the car at the end but by Close Brothers taking the car back she would lose out financially. She believes she should be refunded the monthly payments in full.

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### **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 thank both parties for their further submissions which I've carefully considered.

I must stress I'm considering what happened when Ms R entered into the agreement and what she was told about the car. So I'm not persuaded by Close Brother's comments that because the HPI marker was later removed means the car wasn't mis-sold. In fact, it only supports my finding that it was sold with one and that wasn't brought to Ms R's attention before she agreed to buy the car. Close Brothers has provided insufficient evidence to demonstrate how and when this was brought to Ms R's attention before she agreed to buy the car. Nor has Close Brothers provided the evidence that was relied on to request the stolen marker was removed. I remain of the opinion the car was misrepresented to Ms R.

Turning to Ms R comments, I won't comment on them all as I'm satisfied I've already addressed several in my provisional findings. Many of her further comments don't materially change the outcome, they only further support it. I agree with her the car was misrepresented.

Working out how to put consumers back in the position they would've been in had there not been a breach of contract isn't an exact science. However as a service, we try to put the consumer as close to that position as we can.

I accept this is a conditional sale agreement meaning Ms R would've owned the car when it ended. There isn't a large balloon payment which is often seen in PCP agreements where the monthly payments tend to be lower. This means Ms R's monthly payments are for the use and the ultimate purchase of the car. However it isn't possible for me to work out exactly how much of the instalments were contributing to the eventual purchase of the car.

As I'm saying Close Brothers should end the agreement, I understand Ms R's concerns that these monthly payments will essentially be 'lost' which is why she feels she will be financially disadvantaged. However I must also take into account she's used the car for over three years so it's fair she pays to reflect that use. If I was to say all the monthly instalments should be refunded that would mean she would've had use of the car for 'free' for three years, that would put her in a better position before she entered into the agreement. That isn't fair nor reasonable.

Overall, I've taken a broad view in this case. Given I'm saying Close Brothers should end the agreement, refund the deposit amount, refund the part exchange amount, refund 20% of the

monthly payments and pay compensatory interest, amongst other things, I find this is fair in the circumstances.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

### **My final decision**

For the reasons set out above, I've decided to uphold Ms R's complaint.

To put things right, Close Brothers Motor Finance (Close Brothers) must:

- End the agreement with nothing further for Ms R to pay;
- Collect the car at no cost to Ms R;
- Refund the deposit and the part exchange value plus pay 8% simple interest per year from the date of payment up to the date of settlement;
- Refund 20% of the monthly payments paid plus pay 8% simple interest per year from the date of payment up to the date of settlement;
- Remove any adverse information about this agreement from Ms R's credit file;
- Pay £200 compensation to Ms R for the trouble and upset caused.

\*If Close Brothers Limited trading as Close Brothers Motor Finance considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Ms R how much it's taken off. It should also give Ms R a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 21 March 2024.

Simona Reese  
**Ombudsman**