

## **Complaint**

Mr B complains that Close Brothers Limited (“Close Brothers”) unfairly entered into a hire-purchase agreement with him. He’s said that the finance wasn’t affordable for him.

## **Background**

In April 2018, Close Brothers provided Mr B with finance for a car. The purchase price of the vehicle was £24,410.30. The parties haven’t been able to provide a copy of the agreement. However, as I understand it the figures involved are that Mr B paid a deposit of £500 and also received a part-exchange of around £9,352.36 for his previous agreement. He entered into a 60-month hire-purchase agreement with Close Brothers to fund the remaining amount.

The amount lent was £14,557.94. The loan had interest, fees and total charges of £5,144.86 (made up of interest of £4,804.86 and an acceptance fee of £340), and the total amount to be repaid of £19,702.36 was due to be repaid in 59 monthly instalments of £328.38 followed by a final instalment of £327.94.

In October 2023, Mr B complained that the agreement was unaffordable and so should never have been provided to him. Close Brothers said that its checks confirmed that the finance was affordable and so it didn’t think that it had done anything wrong and it was reasonable to lend. Mr B remained dissatisfied and referred his complaint to our service.

Mr B’s complaint was considered by one of our investigators. He didn’t think that Close Brothers had done anything wrong or treated Mr B unfairly. So he didn’t recommend that Mr B’s complaint should be upheld.

Mr B disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

## **My findings**

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

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr B’s complaint.

Close Brothers needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Close Brothers needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr B before providing it.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Having carefully thought about everything I've been provided with, I'm not upholding Mr B's complaint. I'd like to explain why in a little more detail.

Close Brothers says it agreed to this application after Mr B provided details of his monthly income. It says it also carried out credit searches on Mr B which did show some existing debts but nothing these weren't excessive and there was any evidence of any recent difficulties making payments. And when the amount owing plus a reasonable amount for Mr B's living expenses were deducted from his monthly income the monthly payments were still affordable.

On the other hand, Mr B says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr B and Close Brothers have said.

The first thing for me to say is that much like our investigator, I don't think that the checks Close Brothers carried out did go far enough. I don't think it was reasonable to rely on an estimate of Mr B's living costs given the amount being lent and the term of the agreement.

As Close Brothers didn't carry out sufficient checks, I've gone on to decide what I think Close Brothers is more likely than not to have seen had it obtained further information from Mr B. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected Close Brothers to have had a reasonable understanding about Mr B's regular living expenses as well as his income and existing credit commitments.

The information Mr B has provided does appear to show that when his committed regular living expenses and existing credit commitments were deducted from the amount of the monthly income he declared, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that the real reason for Mr B's inability to make his payments to this agreement wasn't due to his existing credit commitments or his living expenses. Mr B has referred to his additional spending and that this is apparent when Mr B's bank statements are considered. But what I need to think about here is what did Close Brothers need to do in order to answer the questions its initial checks left unanswered – in other words, what were Mr B's actual regular living expenses given Mr B was being provided with a car rather than cash.

Bearing in mind checking bank statements wasn't the only way for Close Brothers to have found out more about Mr B's actual living costs – it could have obtained copies of bills or other evidence of payments etc – I don't think that proportionate checks would have extended into obtaining the bank statements Mr B has now provided us with.

So I don't think that Close Brothers could reasonably be expected to have known about the nature and extent of Mr B's additional spending at the time. Furthermore, as Mr B was being provided with an asset rather than cash, which he simply wasn't able to spend in the same way, I think that this in any event limits the relevance of his additional spending in this instance. For the sake of completeness, I'd also add that Mr B sometimes using his overdraft doesn't mean that he shouldn't have been provided with these funds either.

Overall and having carefully considered everything, while I don't think that Close Brothers' checks before entering into this hire purchase agreement with Mr B did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Close Brothers from providing these funds, or entering into this agreement with Mr B.

So I'm satisfied that Close Brothers didn't act unfairly towards Mr B when it agreed to provide the funds and I'm not upholding this complaint. I appreciate that this will be very disappointing for Mr B. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

My final decision is that I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 April 2024.

Jeshen Narayanan  
**Ombudsman**