

## **Complaint**

Mr B complains that Close Brothers Limited (trading as “Close Brothers” Motor Finance) unfairly entered into a conditional sale agreement with him. He’s effectively said that the finance wasn’t affordable and so shouldn’t have been provided to him.

## **Background**

In May 2021, Close Brothers provided Mr B with finance for a car. The purchase price of the vehicle was £12,000.00. Mr B paid a deposit of £500 and he entered into a 60-month conditional sale agreement with Close Brothers to fund the remaining amount he needed to complete his purchase.

The amount lent was £11,500.00. The loan had interest, fees and total charges of £4,230.60 (made up of interest of £4,220.60 and a title transfer fee of £10), and the total amount to be repaid of £15,730.60 (not including Mr B’s deposit) was due to be repaid in 59 monthly instalments of £262.01 followed by a final monthly payment of £272.01. Mr B settled the agreement early and in full in June 2023.

In December 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. 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.

Having carefully considered everything, I’ve decided not to uphold Mr B’s complaint. I’ll explain why in a little more detail.

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.

Close Brothers says it agreed to Mr B's application after he provided details of his employer and a declaration of his income. It says it also carried out credit searches on Mr B which showed that Mr B's existing credit commitments were low and there wasn't any indication that he had previously suffered significant adverse credit difficulties such as having defaulted accounts or County Court Judgments ("CCJ") recorded against him.

In its view, when reasonable repayments to Mr B's existing credit commitments were deducted from what Mr B declared as his income, this left enough for him to take on the payments for this new agreement and also meet his living costs. 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 without facing excessive financial strain.

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

The first thing for me to say is that unlike our investigator, I'm not necessarily persuaded that the checks carried out by Close Brothers went far enough here. I accept that the credit checks showed Mr B hadn't had any previous difficulties with credit. But I don't think this meant that it was reasonable for Close Brothers to assume that Mr B would have enough to meet this new monthly commitment, as well as his regular living costs, in circumstances where it proceeded with this application with an unchecked declaration of his income.

As I'm not persuaded that Close Brothers did 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 of Mr B's income and regular living expenses as well as his 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 his actual monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

Indeed even a cursory look at the bank statements provided show that Mr B had most of the funds needed to make the monthly payment for this agreement at the end of the month and this even includes his discretionary spending. I accept that Mr B did go on to have difficulties making payments to credit and that he ended up with defaulted accounts. But this happened after this agreement so I can't expect Close Brothers to have known this would happen at the time it was deciding whether to lend to Mr B.

Furthermore, it's also worth noting that any difficulty Mr B may subsequently have had with repayments to credit is somewhat odd as while I appreciate that this isn't in itself determinative, I'm nonetheless mindful that Mr B settled this agreement in full around two years after entering into it. This was a full three years ahead of schedule and, in my view, does not support the fact that he was short of the funds necessary to make his repayments.

Overall and having carefully considered everything, while I'm not necessarily persuaded that Close Brothers' checks before entering into this conditional sale agreement with Mr B did go far enough, I'm nonetheless 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.

In reaching this conclusion I've also considered whether the lending relationship between Close Brothers and Mr B might have been unfair to Mr B under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Close Brothers irresponsibly lent to Mr B or otherwise treated him unfairly. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So 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 6 August 2024.

Jeshen Narayanan  
**Ombudsman**