

Complaint

Mr T has complained about a hire-purchase agreement that Blue Motor Finance Ltd ("BMF") entered into with him. He's said the agreement was unaffordable for him as he already had a car on finance which he was making payments to. He's also said that he wasn't told the terms and conditions of the agreement required him to be the registered keeper for the vehicle purchased.

Background

In October 2018, Mr T entered into a hire purchase agreement for a used car. The entire purchase price of £9,000.00 was funded by a hire-purchase loan from BMF. The loan had an annual percentage rate ("APR") of 17.85% and this means that the total amount of £13,422.62 was due to be repaid in 60 monthly instalments of £217.42 and a final monthly instalment of £367.42.

In May 2019, BMF issued a notification stating its intention to terminate the agreement. And in August 2019 BMF issued a notice of default. I understand this was because Mr T wasn't the registered keeper of the vehicle and the terms and conditions of the agreement required him to be the registered keeper. Mr T said he wasn't informed of this requirement and this prompted his initial complaint.

BMF didn't uphold Mr T's complaint. It said that it contacted the dealer who sold him the vehicle and it confirmed Mr T was given the V5 document to complete himself and complimentary insurance for a month, which would only have been possible if he was the registered keeper of the vehicle. Mr T was dissatisfied at BMF's response and referred the complaint to our service. He also said the finance was unaffordable at this point.

Mr T's complaint was considered by one of our investigators. She didn't think the checks BMF carried out before providing the finance were reasonable and proportionate and such checks would have shown Mr T couldn't afford to make the monthly payments. She was also persuaded the dealer didn't tell Mr T about the need to be the registered keeper for the vehicle. So she recommended the complaint should be upheld. BMF 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.

Taking into account the relevant rules, guidance and law, and considering the main reasons for Mr T's complaint, I think there are two overarching questions that I needed to consider in order to decide what is fair and reasonable in the circumstances of this complaint. These questions are:

- Did BMF complete reasonable and proportionate checks to satisfy itself that Mr T would be able to make his repayments in a sustainable way?

- If so, was a fair lending decision made?
 - If not, would those checks have shown that Mr T would've been able to do so?
- Did BMF act unfairly or unreasonably towards Mr T in some other way?

I'll proceed to consider the first of the overarching questions.

Did BMF complete reasonable and proportionate checks to satisfy itself that Mr T would be able to make his repayments in a sustainable way?

The regulations in place when BMF lent to Mr T required it to carry out a reasonable assessment of whether Mr T could afford to make his repayments in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

Any affordability checks have to be “borrower-focused” – so BMF had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences *for Mr T*. In other words, it wasn't enough for BMF to think only about the likelihood that it would get its money back without considering the impact of repayment on Mr T himself.

Checks also had to be “proportionate” to the specific circumstances of the credit application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I think that a reasonable and proportionate check generally ought to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to repay a higher amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income); and
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for a longer period).

There may also be other factors which could influence how detailed a proportionate check should be for a given credit application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I've thought about all the relevant factors in this case.

BMF's decision not to uphold Mr T's complaint appears to be based on Mr T's application meeting the acceptance criteria of its search engine. BMF says that it is only if any concerns were triggered that further information would be requested.

BMF says its application engine showed Mr T exhibited good credit management showing a well-paid existing hire purchase agreement, good available credit on existing credit cards and no missed payments over the range of accounts held. It also believes there was further evidence of affordability as Mr T said he was living with parents which suggested that he had reduced outgoings.

I've thought about what BMF has said. While it has told us about the credit check it carried out and has offered some comments on what it says it saw at the time, it hasn't provided us with the results of the credit check. More importantly I'm unsure what a credit check on its own, in these circumstances, could possibly have told BMF about Mr T's ability to repay just over £13,000.00 at over £200 a month. Mr T might have been making payments to existing credit. But this doesn't in itself mean he had the disposable income to make the repayments to this agreement as and when they fell due.

BMF almost presents it as fact that Mr T being a young adult living with parents and meeting his credit commitments means the agreement was affordable. But I disagree and I don't understand how it could possibly have reached this conclusion – notwithstanding the application having been accepted by its search engine – without taking any steps to verify Mr T's monthly income and his employment.

In the absence of anything else to indicate that BMF took any further steps to ascertain Mr T's monthly income or regular expenditure, I find that BMF did not carry out reasonable and proportionate checks before reaching the conclusion the agreement was affordable for Mr T.

Would reasonable and proportionate checks more likely than not have shown that Mr T was able to sustainably make the repayments to this agreement?

As proportionate checks weren't carried out before this agreement was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told BMF that it was unfair to enter into this agreement with Mr T.

Mr T has provided us with evidence of his financial circumstances at the time he applied for the finance. Of course, I accept different checks might show different things. And just because something shows up in the information Mr T has provided, it doesn't mean it would've shown up in any checks BMF might've carried out. But in the absence of anything else from BMF showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr T's financial circumstances were more likely than not to have been at the time.

Mr T's bank statements show that his income was at best around £1,000.00, the bulk of which he received as a result of being a contractor. It's clear that the monthly payments for the finance alone would have swallowed up a significant portion of Mr T's monthly income. And this is without even taking into account the payments Mr T had to make to the existing hire-purchase agreement, which BMF was aware of as it formed part of the reason why it decided to lend here.

BMF has consistently maintained that it considered the vehicle was for Mr T's use. So it would also have been aware that Mr T's age and the car sold meant that he'd also be faced with a significant outlay for insurance. Although BMF wouldn't have known exactly how much Mr T's insurance premium would be, it would have known the insurance group of the vehicle being financed and that it was a condition of the finance agreement as well as a legal requirement for Mr T to ensure the vehicle was insured. And when the running costs of the vehicle are added to the finance and insurance costs, for both vehicles (there was no indication that this was a replacement vehicle for Mr T), it's clear that Mr T didn't have enough funds to meet the cost of this additional vehicle in a sustainable manner. This isn't even taking into account Mr T's other credit commitments and living costs either.

So in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted BMF to the fact that Mr T wasn't able to make the payments to this agreement without experiencing financial difficulty and/or borrowing further. And so it follows that he wasn't in any sort of financial position to sustainably make the repayments to this agreement.

Did BMF act unfairly or unreasonably towards Mr T in some other way?

Mr T has says he wasn't told it was a requirement of the finance agreement for him to be the registered keeper of the vehicle. I'm mindful that the Consumer Credit Sourcebook ("CONC") includes provisions regarding the information a lender (or its agent on its behalf) is required to provide to a borrower and how it needs to be presented.

In October 2018, when BMF provided this agreement to Mr T, CONC 4.2.5R said:

"Pre-contractual adequate explanations

(1) Before making a regulated credit agreement the firm must:

- (a) provide the customer with an adequate explanation of the matters referred to in (2) in order to place the customer in a position to assess whether the agreement is adapted to the customer's needs and financial situation;*
- (b) advise the customer:*
 - (i) to consider the information which is required to be disclosed under section 55 of the CCA; and*
 - (ii) where the information is disclosed in person, that the customer is able to take it away;*
- (c) provide the customer with an opportunity to ask questions about the agreement; and*
- (d) advise the customer how to ask the firm for further information and explanation.*

[Note: section 55A(1) of CCA]

(2) The matters referred to in (1)(a) are:

- (a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;*
- (b) how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement;*
- (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee; [my emphasis]***
- (d) the principal consequences for the customer arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon the type and amount of credit and the circumstances of the customer:*
 - (i) the total cost of the debt growing;*

(ii) incurring any default charges or interest for late or missed payment or under-payment;
(iii) impaired credit rating and its effect on future access to or cost of credit;
(iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;
(v) repossession of the customer's home or other property; and
(vi) where an article is taken in pawn, that the article might be sold, if not redeemed; and

(e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

[Note: section 55A(2) of CCA and paragraph 3.13 of ILG]

(3) The adequate explanation and advice in (1) may be given orally or in writing, except where (4) applies.

[Note: section 55A(3) of CCA]

(4) Where the matters in (2)(a), (b) or (e) are given orally or to the customer in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the customer.

[Note: section 55A(4) of CCA]

BMF has relied on the terms and conditions of the agreement to justify its decision to terminate the Mr T's agreement. However, Mr T says that not only was he not told about this requirement but the dealer (BMF's agent) knew that he would be paying for the car for someone else and that they'd be the registered keeper.

The first thing to say is that it isn't in dispute that it was a requirement of the terms and conditions of Mr T's agreement for him to have been the registered keeper of the vehicle. And it also isn't in dispute that Mr T not being the registered keeper permitted BMF to end the agreement and take possession of the vehicle. But the question I have to consider here is whether BMF and/or its agent on its behalf acted fairly and reasonably by meeting its obligation to adequately explain the need for Mr T to be the registered keeper of the vehicle.

BMF initially said that it spoke to the agent about this matter and it confirmed Mr T had completed the V5 document himself and was provided with complimentary insurance for one month. BMF also says that Mr T would only have been able to have been provided with this complementary cover if he was the registered keeper of the vehicle. It also said that the registered keeper of the vehicle had changed in May 2019 and it believes this is when Mr T changed the registered keeper to the person who the vehicle was purchased for. We asked BMF to provide copies of the V5 document and the insurance cover to verify what it told us. For whatever reason, it has been either unable or unwilling to provide this documentation to us. So we've not been able to verify BMF's claims.

On the other hand, Mr T says he was never recorded as the registered keeper of the vehicle and he would never have gone ahead with the purchase had this term been made clear to him. We've also spoken to the dealership which says it asked Mr T to complete the details of the registered keeper on the V5 document, which it then passed on to the relevant authorities. It also said that it had no record of Mr T having been provided with complimentary insurance on its database.

I've thought about the representations the parties have made on this matter. I don't know what was discussed at the time. Only those who were present do. The lack of the V5 document here, which we've asked the parties to provide us with, doesn't help matters either. That said, I am required to make a determination based on what I think is more likely

than not to have happened. So what I have to do here is look at the evidence and information I do have and form a view on what I think is more likely than not the case.

I'm mindful that while the dealership has said Mr T was asked to complete the V5 document it hasn't said that he was recorded as the registered keeper. Equally, it has no record of arranging the complimentary insurance cover BMF has referred to. Finally, while BMF says that it believes the registered keeper of the vehicle was changed in May 2019 and this is when it believes Mr T transferred registration from himself to the person using the vehicle, it appears as though someone other than Mr T recovered the vehicle when it was impounded in April 2019. And the notes from the pound suggest the vehicle was returned to the registered keeper at this stage.

Given it doesn't appear to be in dispute Mr T wasn't the person who collected the vehicle from the pound, this also points to Mr T not having been recorded as the registered keeper when the vehicle was sold either. Bearing in mind all of this, I think it is more likely than not Mr T wasn't recorded as the registered keeper of the vehicle at the time the finance was agreed.

For the sake of completeness, I'd also point out that even if the change in registered keeper did take place after October 2018, (I want to be clear in saying that's not the finding I make here) all of the available evidence suggests BMF's agent knew that someone other than Mr T would be the main driver of the vehicle. Bearing this in mind, I think that BMF's agent ought to have realised that the requirement, in the terms and conditions, that Mr T was the registered keeper of vehicle for the duration of the agreement would be of greater significance to him. And, in my view, in order to have acted fairly and reasonably here, BMF's agent will have needed to have done more to adequately explain this given it ought to have realised that this was a feature of the agreement which may have operated in a way which would have a significant adverse effect on Mr T, which he is unlikely to have foreseen.

I can't see that BMF's agent took any additional steps at all to highlight this requirement to Mr T. So even if Mr T was recorded as the registered keeper at the time of the sale, I, in any event find that BMF's agent didn't adequately explain, in a fair and reasonable way, a feature of the agreement which may have operated in a way which would have a significant adverse effect on Mr T, which he is unlikely to have foreseen. And so any breach of this condition is more likely than not to have occurred as a result of BMF's agent's failure to act fairly and reasonably towards Mr T in the first place. And so BMF acted unfairly and unreasonably towards Mr T in some other way

Conclusions

Overall and having thought about the two overarching questions, set out on page 2 of this decision, I find that

- BMF *didn't* complete reasonable and proportionate checks on Mr T to satisfy itself that he was able to make the payments to this agreement;
- reasonable and proportionate checks *would* more likely than not have shown Mr T was unable to sustainably make the repayments to this hire purchase agreement;
- BMF *did* act unfairly or unreasonably in some other way towards Mr T;

The above findings leave me reaching the overall conclusion that BMF didn't act fairly and reasonably when it entered into this hire purchase agreement with Mr T.

Did Mr T lose out as a result of BMF's shortcomings?

I've considered whether Mr T suffered adverse consequences as a result of BMF unfairly entering into this hire purchase agreement with him. The agreement was terminated in or around November 2019. BMF chose not to take possession of the vehicle from the registered keeper at the time and instead demanded the entire amount due under the agreement at this stage. Given Mr T was being asked to pay this entire amount when the repayments were in any event unaffordable - I think Mr T lost out.

So overall and having thought about everything provided and what's fair and reasonable in all the circumstances of this case, I find that Mr T lost out because BMF unfairly entered into a hire purchase agreement, which it ought to have realised was unaffordable for him, with him. And this means I think that BMF needs to put things right.

Fair compensation – what BMF needs to do put things right for Mr T

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean BMF putting Mr T in the position he'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr T did enter into the agreement and *was*, at least, given custody of the car in question. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr T back in the position he would be in if he hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

So, in this case, this would mean Mr T paying back the £9,000.00 originally lent. But I don't think that a refund of the interest fees and charges is appropriate here. It appears as though BMF has taken a conscious decision not to recover the car from the registered keeper in circumstances where it may have a right to do so and a settlement on this basis would mean Mr T paying the full amount lent for a car in circumstances where he shouldn't have been lent to and BMF hasn't taken reasonable steps to limit the loss.

I've therefore given careful thought to how else it might be fair and reasonable to put things right for Mr T bearing in mind he was provided with a hire-purchase agreement, rather than cash here.

In considering this matter I'm mindful that I've found BMF acted unfairly or reasonably towards Mr T in some other way through its agent failing to adequately explain that the terms and conditions required him to be the registered keeper of the vehicle, or the agreement could be ended. I think that had BMF acted fairly and reasonably in relation to this matter, Mr T wouldn't have bought the vehicle in the first place. I say this because it is clear he was never intending to keep this vehicle.

So I'm satisfied that BMF not being able to limit its losses by being unable, or choosing not to, take possession of the vehicle was a reasonably foreseeable consequence of its agent failing to act fairly and reasonably towards Mr T when entering into the hire purchase agreement. As this is the case, I don't think that BMF's unwillingness or inability to take possession of the vehicle should limit its liability here and should increase the amount Mr T now has to pay.

Bearing all of this in mind, I think that it would be fair and reasonable for BMF to waive all remaining outstanding amounts on Mr T's balance.

Mr T's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on any credit they shouldn't have been given. But I'm mindful that the payments Mr T did make will not have been enough to repay the amount he was lent. So he will be having an amount written off.

So having carefully thought about everything, I think that BMF should amend Mr T's credit file to reflect that an amount equivalent to the purchase price of £9,000 minus the payments Mr T made was written off. And the default should be amended to reflect this.

All of this means BMF should put things right in the following way:

- Write-off all amounts outstanding under Mr T's agreement;
- amend the default on Mr T's credit file so that his credit reflects that an amount equivalent to the purchase price of £9,000 minus the payments made was written off.

My final decision

For the reasons I've explained, I'm upholding Mr T's complaint. Blue Motor Finance Ltd should put things right in the way that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 August 2021.

Jeshen Narayanan
Ombudsman