

The complaint

Ms K complains about a hire purchase agreement with Blue Motor Finance Ltd ('BMF'), which was taken out to get a used new car in her name.

What happened

In April 2018, Ms K says a third party, who I'll call 'A', asked her to take out finance in her name, so that they could get a used car. She says she allowed A to use her details. But in view of her financial circumstances, she didn't think an application for further borrowing would succeed.

Ms K says A applied for a hire purchase agreement in her name with BMF, in May 2018. She says she only found out about it a month later, when BMF sent a confirmation letter.

BMF's records show that Ms K contacted them soon after the agreement was taken out, to tell them what A had done and that she didn't have access to the car. Ms K also says she told BMF she had contacted the police and had been given a crime reference number. In response, BMF said they needed more information from the police, to be able to investigate her concerns.

Over the next two years Ms K continued to make payments due under the agreement. She says she did this partly to avoid adverse information on her credit file. But, mainly because Ms K says A and the dealer had made threats to her, to stop her from trying to end the agreement.

In October 2020, Ms K complained to BMF. She said BMF hadn't done enough checks to make sure she could afford the payments towards the agreement. She also said she didn't sign the agreement and that A had taken it out without her authorisation.

In their final response, BMF said Ms K was aware of the application and that they had checked her financial circumstances with an external agency, to show she could meet the repayments. BMF also said they couldn't have taken her previous concerns forward, without more evidence from the police and that Ms K was still liable for the repayments.

Ms K didn't accept BMF's response and brought her complaint to us. One of our investigators looked into Ms K's case and found that BMF hadn't treated her fairly. The investigator said it was likely Ms K was aware of the application and had agreed to it. But, that she had come under pressure from A to allow them to keep using the car.

The investigator concluded that BMF didn't do enough to check Ms K could afford the repayments. So, she asked BMF to refund all the charges and interest applied under the agreement and for any adverse information to be removed from Ms K's credit file. Because Ms K wanted to keep the car, the investigator also asked BMF to pay interest on any amount she had paid over the cash price of the car. Or, if there was still a balance to pay, she said BMF should come to an affordable repayment plan with Ms K.

Ms K accepted the investigator's findings, but BMF didn't. They said they accepted the risk

when they chose to provide the borrowing for the car. BMF also said they didn't think it was fair to pay interest to Ms K, as she would be in a better position overall.

The investigator didn't change her conclusions and Ms K's case has now been passed to me to make a final 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.

This case is about an application for a hire purchase agreement, which is a regulated financial product. As such, we are able to consider complaints about it.

The start of the hire purchase agreement

Throughout her complaint with BMF, Ms K says she agreed to work with A, to see if she could take out car finance in her name. I acknowledge that Ms K says she did this as she didn't think an application would be accepted by a lender. And that she was simply trying to help A with their personal circumstances.

I've thought about Ms K's involvement with A and I've looked at the application records provided by BMF. Having done so, I think Ms K's personal and contact details were used in the application for the hire purchase agreement. Furthermore, I can see that BMF sent confirmation of the agreement to Ms K and that she contacted BMF soon afterwards.

Overall, I accept Ms K very quickly regretted her involvement with A and the application to BMF. On balance, I'm persuaded by what Ms K says, in that she found herself in very difficult and worrying circumstances, after the agreement had started.

But, having considered everything, I think Ms K was aware of the application for the hire purchase agreement and had authorised the contract with BMF. So, I think BMF treated Ms K fairly when they started processing the application from her in April 2018.

BMF's checks before the borrowing was agreed

The relevant regulations and guidance for BMF to have followed are included in the Financial Conduct Authority's Consumer Credit Sourcebook (CONC). BMF was entering a regulated credit agreement and it was required to take reasonable steps to be satisfied Ms K would be able to make repayments sustainably without having to resort to further finance.

Checks had to be proportionate to the specific circumstances of the loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including, but not limited to, the particular circumstances of Ms K.

For example, her financial history, any foreseeable changes in future circumstances, and any indications of vulnerability or financial difficulty. The amount, type, length of borrowing and cost of credit Ms K applied for, would also be considered.

In light of this, I think the greater the potential risk to Ms K of not being able to repay the credit in a sustainable way, the more thorough a reasonable and proportionate check ought to have been carried out by BMF.

The hire purchase agreement meant Ms K borrowed around £25,000 from BMF to get the used car. This was repayable over five years and with interest added, Ms K was required to make monthly repayments of around £600.

To assess if Ms K could sustain the repayments, BMF say they asked Ms K about her annual income and employment status. Their records show Ms K told them her annual income was around £29,500 and that she was employed full time.

BMF say their checks with an external agency showed Ms K had a net monthly income of around £1,900. And that, amongst other things, Ms K had an existing car finance agreement, a current account and a credit card account. BMF's records show Ms K had missed some repayments to her credit card account and that its balance at the time was significant compared to her monthly income.

I can also see from BMF's records that Miss K and A had discussed a different finance agreement, before the hire purchase contract was put into place. The notes from the first proposal show Ms K's income as around £6,000 more than BMF eventually said it was and that her job description is different. The notes from BMF also show that they wanted Ms K to end her existing car finance agreement with a different lender, before they could agree to the new loan.

Overall, I think the size of the loan compared to Ms K's income, the missed payment information and discrepancies with the initial proposal, were indicators to BMF to ask for further information. I accept that BMF wanted Ms K to repay her exiting car finance agreement. But I cannot see that she did this until long after the hire purchase agreement was put into place.

Having considered everything, I don't think BMF completed reasonable or proportionate checks to show Ms K could sustain the repayments due under the agreement. I accept BMF used an outside agency to verify Ms K's income information. But in light of everything, I still think further details, such as payslips or bank statements would have done more to support the fairness of their lending decision.

So, I've gone on to consider what further information any further checks by BMF would have revealed.

Ms K has provided us with bank statements for the three months prior to the beginning of the agreement with BMF. Having looked at the statements, I can see that Ms K's income from her employer was lower than the amount on BMF's records. I can also see Ms K was in receipt of benefit payments, which made up some of that difference.

I've considered Ms K's monthly expenditure and her regular payments for household bills, regular costs and her childcare fees. I can also see the payments she made to her other creditors at the time.

Having done so, I think had BMF looked at further information, it would reveal that Ms K didn't have sufficient funds left after her regular expenditure, to make the loan repayments under the hire purchase agreement.

Additionally, further checks on the credit card account would have showed that in April 2018, Ms K was making token monthly repayments on a debt of around £4,000. Against this background, I think Ms K financial circumstances were difficult, in that she wasn't able to repay the minimum repayments to another lender.

From looking at this information alone, I think BMF would have seen that the hire purchase agreement wasn't affordable to Ms K, had further information been sought.

In all the circumstances, I think that reasonable and proportionate checks would have

demonstrated that Ms K would not have been able to make the repayments to the loan without borrowing further or suffering undue difficulty.

And, in these circumstances, I find that reasonable and proportionate checks would have alerted BMF to the fact that Ms K was in no sort of position to make the payments on this loan without suffering significant adverse consequences.

Having considered all the evidence, I don't think BMF treated Ms K fairly when they agreed to the borrowing under the hire purchase agreement. So, I think it's fair for BMF to provide a remedy to Ms K.

Overall, I think it's fair for BMF to refund all the charges and interest they've applied to the agreement, leaving Ms K to pay the balance of what she borrowed. I also think it's fair for BMF to remove any adverse information they've recorded with credit reference agencies about the hire purchase agreement.

Next steps for the agreement and the car

I've concluded that BMF should reduce the outstanding balance of the hire purchase agreement, by refunding the charges and interest they've applied under the contract. The cash price of the car was £28,299. By making monthly repayments of around £600, over the last four years, Ms K may have repaid nearly all of that cash price.

Although Ms K says that she's struggled to maintain the payments, she'd like to keep the car. And I think BMF stands to get back the purchase price of the car they financed through the dealer. So, after BMF has completed the refund of charges and interest, I think it's fair for Ms K to keep use of the car.

Should the refund of interest and charges place the agreement into a credit balance, then I think it's fair for the agreement to be ended. I think it will be possible for Ms K to then talk to BMF about taking ownership of the car.

In these circumstances, I think BMF should calculate when Ms K reached the purchase price, so they can see how much she's paid in excess of it.

Ms K has been without the use of those funds, because they were instead paid to BMF. So, I think it's fair for BMF to pay Ms K interest at an annual rate of 8% simple, from the date Ms K would have repaid the purchase price of the car, to the date of settlement.

However, it's also possible that there still may be a balance payable by Ms K, after the refund of interest and charges. In other words, her repayments may have not yet exceeded the purchase price. In these circumstances, I think it's fair for the agreement to continue, until that balance is repaid by Ms K.

I think it's fair for BMF to then engage with Ms K, to talk about the level of repayments she can afford for any remaining balance. In doing so, I remind BMF of their responsibility to treat Ms K's financial circumstances with forbearance and due consideration.

Putting things right

To settle this complaint BMF should:

1. refund all interest and charges applied to Ms K's hire purchase agreement to reduce the outstanding balance;

2. add interest to any credit balance created after part one is applied, at an annual rate of 8% simple, from the date Ms K would have repaid the cash price (£28,299) of the car, to the date of settlement;
3. arrange an affordable repayment plan with Ms K, for any outstanding balance remaining, after part one of this settlement is applied; and
4. remove any adverse information about the hire purchase agreement, recorded with credit reference agencies.

BMF must pay these amounts within 28 days of the date on which we tell them Ms K accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If BMF deducts tax from any interest they pay to Ms K, they should provide Ms K with a tax deduction certificate if she asks for one, so she can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Blue Motor Finance Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 22 July 2022.

Sam Wedderburn
Ombudsman