

The complaint

Mrs D has complained that Blue Motor Finance Ltd ("BMF") didn't treat her fairly when it terminated her hire purchase agreement.

Mrs D has brought her complaint via a representative but for clarity I will generally refer to her throughout.

What happened

In January 2018 BMF entered into a hire-purchase agreement with Mrs D, through an intermediary, in order for her to acquire a car. The cash price of the car was £12,500. The agreement was for a total of £21,128.75 including interest and charges, which was to be repaid in 60 monthly instalments of £343.75, and a final payment of £393.75.

The credit to buy the car was granted by BMF under a hire purchase agreement meaning Mrs D would own the car when the credit had been repaid. BMF was the owner until that point and Mrs D was, in essence, paying for the use of it.

Mrs D made her payments on time until October 2018 when a direct debit payment was returned. She made this payment a few days later by card. This happened again in March and July 2019. Mrs D continued to miss payments throughout 2020, each time catching up by direct debit again within weeks. However, Mrs D's direct debit payments were returned and remained unpaid from October 2020 to May 2021. Mrs D resumed her payments in June 2021 having missed eight payments. She then missed payments towards the end of 2021 and into 2022. I understand that by mid-July 2022 Mrs D had missed 14 payments in total.

Mrs D had requested a three month payment holiday on 13 October 2020. She explained that her income had been impacted by the pandemic and she would be able to resume her payments in January 2021. By this point her direct debit payment for October had been returned. On 6 November 2020 BMF sent Mrs D a notice of default and it terminated her agreement on 26 November.

In February 2021, BMF asked Mrs D to get in touch with its specialist Covid response team to "better understand your situation and tailor a solution to your needs." It seems Mrs D didn't get in touch. In March BMF sent Mrs D a letter outlining her options which were to surrender the car with a reduction in the total balance owing or come to a suitable arrangement to repay the arrears. Mrs D wasn't happy with these options and made a complaint to us, which we passed on to BMF. BMF wrote to Mrs D in May 2021 saying it couldn't investigate her complaint because it couldn't get in touch with her and it closed her complaint. As mentioned, Mrs D resumed her payments in June.

By February 2022, one of our investigators had looked into Mrs D's complaint and didn't recommend that it be upheld. They found that BMF hadn't treated Mrs D unfairly when it didn't allow her to defer her payments or when it terminated her agreement. Mrs D didn't agree with this conclusion and asked for her complaint to come to an ombudsman for review and so it came to me.

BMF told us on 1 June of this year that it would be willing to allow an extra six months beyond what would have been the end of the agreement to allow Mrs D more time to pay what is owed however, Mrs D had now missed 12 payments. BMF said that Mrs D would either need to increase her usual monthly payment in order to pay the missed payments over the extended time (to the end of August 2023) or clear the outstanding payments with a lump sum to continue with her usual monthly payment. In either case, BMF said it would need to speak with Mrs D to understand if this would be affordable for her, given she hadn't been able to maintain her usual monthly repayments.

Mrs D said in response that she wished to reinstate the agreement to enable her to keep the car at the end of it. She would like to continue with her usual monthly payment and extend the agreement term to enable her to repay the missed payments at the same level.

Despite both parties indicating their willingness to discuss the account, I understood that no discussion had taken place, prior to my sending out a provisional decision on the 1 September 2022. In this I explained why I thought Mrs D's complaint should be upheld and set out my proposals for putting things right for her. This included reinstating the agreement and extending the term.

Mrs D responded to say that she had made her usual direct debit payments in August and September just gone. She says that she doesn't see these payments as being a problem but rather being able to clear the arrears in a reasonable time. She asked that the agreement end date is extended further so that she would be able to clear her balance and arrears by continuing to make the usual monthly payment amount of £343.75.

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.

Having considered everything again, including what both parties have said in response to my correspondence, I remain of the view that Mrs D's complaint should be upheld and that the proposals for putting things right set out in my provisional decision are fair. I have set out my reasons again in this final decision and referred to the parties responses where appropriate.

I said the following in my provisional decision:

"I have taken into account the law and relevant regulatory rules. These include, for example, the Financial Conduct Authority's (FCA) Consumer Credit Handbook (CONC) which sets out its regulations and guidance for lenders such as BMF about what should happen before and during credit agreements. I've also borne in mind more recent guidance issued by the FCA from April 2020 onwards which set out how it expected businesses to provide "*exceptional and immediate support*" to customers in motor finance agreements facing temporary payment difficulties because of coronavirus.

All guidance is available on the FCA's website so I won't set it out in detail here. In summary, BMF's overarching obligations (ref. PRIN 2) are to:

- Pay due regard to their customers' interests and treat them fairly.
- Pay due regard to their customers' information needs and communicate information in a way that is clear, fair, and not mis-leading.

In general, BMF should treat customers in arrears or payment difficulties with forbearance and due consideration (ref. CONC 7). It should:

- Allow customers reasonable time and opportunity to repay the debt. This might include deferring arrears, as long as this doesn't make the term for the repayments unreasonably excessive and as long as BMF has no reason to believe that doing so will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties.

From April 2020 to 31 July 2021, if customers were having difficulty meeting repayments due to the impact of the pandemic, BMF:

- Should grant customers a payment deferral for three months unless it was obviously not in their customer's interests to do so.
- Didn't need to make enquiries with customers in order to agree a deferral.
- Could provide further deferrals up to a maximum of six deferrals in total.
- Should not terminate a regulated agreement (before January 2021) regardless of whether or not a customer was receiving support under the guidance, except in exceptional circumstances.
- Should make all reasonable attempts to contact their customers to find out whether they could resume full payments at the end of any deferral period – it could proceed on the basis that they could do so if they didn't respond.
- Allow customers to defer the payment of arrears (built up due to deferrals) if they were unable to pay them during the original agreement term by lengthening the term of the agreement. This could be either by the deferral period or by a period of time that enables them to keep the same contractual payments they had prior to the payment deferrals.

Bearing all this in mind, I think the main questions I need to consider are did BMF treat Mrs D fairly in its dealings with her, for example when she asked for a payment deferral, when it terminated her agreement, or when she continued to miss her payments? Did BMF provide Mrs D with clear, fair and not misleading information and, ultimately, did it pay due regard to her interests and treat her fairly?

What happened

Mrs D has sent us copies of correspondence she's had with BMF and it has sent customer contact notes and a statement of her account. I've set out below a timeline based on these different sources of information so both parties know what I've relied on.

At the end of September 2020 Mrs D's account was up to date. Her direct debit payment for October was returned on the 6th of the month.

13/10/2020	Mrs D asked for a three month deferral and explained how she'd been impacted by the pandemic.
13/10/2020	Mrs D was advised that her request had been forwarded to the relevant department.
13/10/2020	Mrs D was sent the following: "... In order for us to understand if a payment deferral is the right option for you, please complete our form on the following link: [-] We will get back to you within 7-10 working days following the receipt of your request."
15/10/2020	Email, text and phone messages were sent to Mrs D asking for urgent contact and the contact details given are for the collections department.
19/10/2020	As above.
26/10/2020	An internal BMF note says 'awaiting outcome of payment deferral

request.'

06/11/2022 Mrs D direct debit payment for November was returned.

06/11/2020 A Notice of Sums in Arrears (NOSIA) and a Default letter were sent to Mrs D.

26/11/2020 The agreement was terminated and a letter sent to Mrs D.

17/02/2021 BMF sent an email to Mrs D: "Dear Mrs [D], Good morning, We have tried to contact you in reference to your blue motor finance agreement. your account has recently been passed to the specialist Covid response team. Please contact us on [-] so we can better understand your situation and tailor a solution to your needs. Specialist Support Team T: [-] E: [-]".

21/02/2021 Mrs D responded with an email to say that she thought she would be able to work again within weeks and asked "What is the tailored solution that your Specialist Support Team suggests for me?"

23/02/2021 Mrs D sent a follow-up to the above email.

24/02/2021 BMF requested that Mrs D contact them on the specialist team telephone number.

25/02/2021 Mrs D said she would be in touch.

02/03/2021 BMF sent Mrs D a letter with an option to voluntarily surrender possession of the car and pay a reduced balance, or else agree an appropriate repayment plan for the arrears.

09/03/2021 Mrs D raised a complaint with us, which we referred to BMF to provide a response in the first instance.

10/05/2021 BMF sent Mrs D a final response to her complaint and closed it.

4/06/2021 Mrs D resumed her usual monthly payments.

07/07/2021 BMF told Mrs D it required a repayment plan to avoid a return of goods order.

15/07/2021 BMF sent a follow-up email to ask how Mrs D wished to proceed to avoid collections activity.

23/07/2021 BMF sent a follow-up.

28/07/2021 BMF said again that it required a repayment plan to avoid a return of goods order.

23/09/2021 BMF's collections agent sent a letter stating it would visit Mrs D unless she made a payment towards her arrears.

01/10/2021 BMF apologised to Mrs D for passing her account to its collections agent for a visit. It said that this was a mistake and thanked her for continuing to make her payments under the agreement while the investigation (with this service) into her complaint was ongoing.

My conclusions

I don't think BMF provided "immediate and exceptional support" to Mrs D when she told it that her income had been temporarily impacted by the pandemic and she was having problems with cash flow. It should have dealt with Mrs D's missed payments in October and November 2020 as deferred payments, and not as arrears.

BMF didn't provide Mrs D with clear, fair and not misleading information about what was happening with her account after she made her request for a payment deferral. I appreciate that it sent Mrs D notice about her arrears and told her it had defaulted her account but Mrs D had received these types of letters before and hadn't yet been told what was happening with her deferral request.

The guidance stated that *"Where a firm is required to send information to customers under the Consumer Credit Act 1974, such as a Notice of Sums in Arrears (NOSIA), and the firm, acting reasonably, considers this risks causing confusion for the customer due*

to the interaction with the payment deferral, the firm must accompany this with contextual information to reduce that risk. This information should be clear, fair and not misleading in accordance with Principle 7.” I can’t see that BMF provided any context to these letters, as per the guidance, or let Mrs D know what was happening with her deferral request until several months later.

BMF continued with its usual collections activity and defaulted Mrs D’s account when she missed her payments in October and November 2020 and then terminated the account before the December payment was due. BMF could have been more flexible regarding its collections activity and not exercised its rights under the agreement, given the circumstances. The guidance is clear that terminating an agreement during this time should only happen by exception. I’ve concluded that BMF treated Mrs D unfairly and without due regard to her interests when it terminated her agreement.

BMF noted in its internal records towards the end of April 2021 that it should have agreed to Mrs D’s request and deferred her payments for October, November and December 2020. It also noted that it should have made more of an effort to contact her before February 2021, by which point Mrs D had missed five payments.

The maximum number of payment deferrals allowed under the guidance was six. Had BMF granted Mrs D this number (October 2020 to March 2021) she would have had to resume her repayments in April 2021. BMF gave Mrs D two options in early March – either return the car to be eligible for a reduction in the total amount owing or agree a repayment plan for the outstanding amounts. I can’t see that at that point BMF gave Mrs D the option of deferring the payment for the missed months by, for example, extending the amount of time over which she could repay these beyond the original end date. Neither did it remind her that she had the option to voluntarily terminate the agreement and return the car, which would leave her liable for half the amount owing under the agreement.

Mrs D didn’t make her payments for March, April or May 2021. BMF sent Mrs D a final response to her complaint on 10 May 2021 in which it said it needed more information from her to investigate her complaint and so it considered it closed. The statement of account shows that Mrs D resumed her monthly payments in June 2021. She’d missed eight payments by then and her arrears balance was £2,750.

Let me say at this point that BMF has sent many emails, text messages and letters to Mrs D asking her to get in touch to discuss her account but she has declined to make contact. Mrs D did tell BMF on a number of occasions that English isn’t her first language and that she prefers written communication. It may be that this was a factor in her lack of telephone communication however, Mrs D brought her complaint to us through a representative so I consider that she has support for her information needs to enable her to deal with her financial affairs.

When Mrs D complained in March 2021, she asked for the agreement to be reinstated and to resume payments as per the request she’d made in October 2020, in other words to continue making her usual monthly repayments. Had that request been granted at the point when Mrs D had missed six or even eight months of payments, then this might have been one way to have resolved the matter.

However, events have moved on since BMF gave Mrs D its final response to her complaint. Mrs D missed her October and November 2021 payments. I understand that she made payments in January, February and March of 2022 but hasn’t made a payment since then. This amounts to an additional six missed payments, and so as of mid-July 2022 Mrs D had missed 14 payments. BMF has not taken any action beyond instructing its collections agent to organise a home visit, which I understand didn’t happen and it has

apologised.

As part of my review of this complaint, I asked both parties to clarify what they wanted to happen now to resolve the complaint. Mrs D said that she wanted the agreement to be reinstated, to continue making her usual contractual repayments and to extend the term to allow her to clear her missed payments on this basis and take possession of the car.

BMF says that it will not extend an arrangement to clear the amount owing beyond six months or reinstate the agreement. It says that Mrs D can either make a lump sum payment to clear the missed payments and continue with her usual monthly payment until August 2023 or pay an increased sum each month in order to clear the total owing by then. BMF says that in order to consider these options it would need to understand how Mrs D could manage either a lump sum payment or an increased monthly instalment.

My proposed redress

As I've provisionally concluded that BMF shouldn't have terminated Mrs D's agreement when it did, it needs to reinstate this.

Having considered everything carefully, I think allowing Mrs D to continue to repay her debt at the level of her usual instalment would require an excessive extension to the original agreement as this would mean allowing Mrs D more than a year's extension to clear the amount now owing. I don't think it would be excessive to extend the original end date of the agreement by eight months as Mrs D missed eight payments from October 2020 to May 2021 which I currently think should fairly be considered as deferrals not arrears. (I appreciate that the deferral guidance referred to six payments but BMF could also accept deferred payments as a forbearance response.)

Payments missed after July 2021 should be treated as arrears. Mrs D hasn't been making her usual monthly payments and hasn't been in touch with BMF, as far as I'm aware, about these missed payments. I think it's reasonable for BMF to have doubts as to the sustainability of any repayment arrangement for her to repay these.

BMF needs to allow Mrs D a reasonable period of time to develop a repayment plan, which might include a lump sum payment. As per CONC 7 this should generally be for 30 days where there is evidence of a genuine intention to develop a plan. BMF can consider extending this for a further 30 days where there is reasonable evidence demonstrating progress towards agreeing a plan. I appreciate that some time has passed since Mrs D began to miss payments after the 31 July 2021, however the debt was in dispute during that time and BMF was right to suspend its collections activity.

I think the fairest thing to do now is allow Mrs D 30 days from her acceptance of a final decision on this complaint to either clear her (post-July 2021) arrears or satisfy BMF that doing so over the course of the extended agreement would be sustainable for her.

In summary, I currently think BMF needs to:

- reinstate the hire purchase agreement with Mrs D with an end date extended by eight months; and
- allow 30 days from Mrs D's acceptance of a final decision in which to agree a sustainable arrangement for her to clear the arrears built up after 31 July 2021 within the extended term; and
- remove any adverse information on Mrs D credit file regarding payments missed

before 31 July 2021.”

In response to my provisional decision Mrs D said that she had resumed her monthly payments. She reiterated that she wishes to have a longer period of time to enable her to repay her arrears at this level until the total amount owing under the agreement is repaid.

As I'd said in my provisional decision, given the number of payments Mrs D has missed, the agreement would need to be extended by more than a year to enable her to clear this debt by continuing with her usual monthly payments. I think it's fair that the agreement is extended to enable Mrs D to catch up with her payments which should have been considered as deferrals. This seems to me to go as far as is reasonable to put Mrs D back into the position she would have been in, had BMF treated her fairly when she asked for help in dealing with the impact of the pandemic.

I appreciate that Mrs D now has an additional six months payments to catch up with. If she accepts my decision she and BMF will need to discuss how these arrears can be sustainably repaid. If Mrs D is unable to meet her arrears payments sustainably within this extended term then BMF should have regard to CONC 7, which sets out rules and guidance for business in their dealings with customers regarding arrears, defaults, recoveries and reposessions. BMF will be aware it needs to treat Mrs D with forbearance and due consideration.

Putting things right

In summary, BMF needs to:

- reinstate the hire purchase agreement with Mrs D with an end date extended by eight months; and
- allow 30 days from Mrs D's acceptance of a final decision in which to agree a sustainable arrangement for her to clear the arrears built up after 31 July 2021 within the extended term; and
- remove any adverse information on Mrs D credit file regarding payments missed before 31 July 2021.

My final decision

For the reasons I've explained above I am upholding Mrs D's complaint about Blue Motor Finance Ltd and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 24 October 2022.

Michelle Boundy
Ombudsman