

The complaint

Mrs F complains that Blue Motor Finance Limited (“Blue Motor Finance”) irresponsibly granted her a hire purchase agreement she couldn’t afford to repay.

What happened

In July 2016, Mrs F acquired a used car financed by way of a hire purchase agreement from Blue Motor Finance. Mrs F was required to make 60 monthly repayments of £100.66 with one with a final payment due of £250.66. The total repayable under the agreement was £6,300. The agreement ended when it was settled in May 2018.

Mrs F says that Blue Motor Finance didn’t complete adequate affordability checks. She says if it had, it would have seen the agreement wasn’t affordable and that she was struggling with her finances at the time. Blue Motor Finance didn’t agree. It said that it carried out a thorough assessment which included reviewing Mrs F’s credit file.

On 13 December 2022 I issued my provisional decision. Whilst I agreed with our adjudicator that the complaint ought to be upheld I put forward a different redress method for compensating Mrs F, given that the agreement had been settled in May 2018. I set out an extract below:

“The credit check Blue Motor Finance completed showed some details about Mrs F’s employment , although not her income. The check also showed some information about Mrs F’s other financial commitments at the time and also that she owned her own property. It also included information about some previous account defaults, the most recent being about a year earlier. Ms F also had credit owing elsewhere of around £9,000 and a joint loan with her partner of £4,500. Blue Motor Finance relied on her monthly income as being £1,800, as set out in her application. In fact the correct figure, allowing for earned income and benefits, was closer to £900. We know this from having had the opportunity to review Mrs F’s bank statements from four months before she took out the agreement.

Had Blue Motor Finance taken steps to verify Ms F’s income, it likely would have seen that Mrs F’s earnings situation was not as strong as its checks had indicated. Her income was much lower than the credit data suggested whilst around a third of the income she received came from benefits, suggesting that she needed financial help to meet her daily expenditure.

I think all this shows it’s unlikely that Mrs F would be able to afford to sustainably repay the new agreement as well as her existing commitments. I think Blue Motor Finance would likely have found this out too if it had completed proportionate checks.

I also think it would have been proportionate for Blue Motor Finance to have found out more about Mrs F’s committed expenditure. I think it would be reasonable to place significant weight on the information contained in Mrs F’s bank statements as to what would most likely have been disclosed.

I’ve reviewed four months of bank statements leading up to the lending decision. These show that, although Mrs F’s regular outgoings were lower given that a family member was

paying the utility bills she was still having to find money to meet food spending, credit card bills and other incidental daily costs. Her income was only just matching her level of expenditure. This strongly suggests that given Mrs F's existing debt commitments, taken alongside her existing debt and daily living costs, would not leave her with any disposable income to pay the amount due under the agreement.

It follows that I currently don't consider Mrs F would have had enough available disposable income to be able sustainably to afford the addition monthly cost of £100.66 under the agreement. Blue Motor Finance therefore didn't act fairly by approving the finance."

Blue Motor Finance responded to my provisional decision to say that Mrs F is not due a refund because she has paid less than the total cash price of her car.

Mrs F however says she thinks she has paid more than the total cash price of the car and is therefore due a refund.

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.

Blue Motor Finance will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

Neither Blue Motor Finance nor Mrs F have challenged the reasons I've given for upholding the complaint. But having been made aware that Mrs F is concerned about the redress I set out in my provisional decision, I want to explain about our approach in awarding compensation in this complaint in a bit more detail.

The position is that the hire purchase agreement is fully settled and Blue Motor Finance has received everything that was due under the agreement at the point of settlement. This took place in May 2018, after the car was in a road traffic accident in December 2017 that led to it being written off by Mrs F's insurers.

As I am upholding the complaint, I don't consider it would be fair for Blue Motor Finance to charge interest or other fees on the amount borrowed. This is because it should never have granted the borrowing in the first place.

I've seen that Mrs F's insurers paid the sum of £2,765.47 from the balance that was due under the agreement. This should be treated in the same way as if it was money paid by Mrs F to Blue Motor Finance. This is because it was paid to Blue Motor Finance on Mrs F's behalf.

If the amount of money paid by the insurer was more than was needed to pay amount needed to settle the agreement, such overpayment would need to be paid to Mrs F.

Given that we think fair and reasonable redress is that the amount to settle the finance should only have been the original cash price of the car, and there has been no overpayment by Mrs F's insurer, no money needs to be returned to Mrs F. At the point of settlement, Mrs F had paid a total of £2,193.57. Mrs F had therefore paid less than the £3,775 total cash value of the car and so she is not due a refund.

From what I've seen, because Mrs S and her insurers have not paid more the total cash price of the car, Blue Motor Finance doesn't need to do anything more by way of paying redress.

Putting things right – what Blue Motor Finance needs to do

As I don't think Blue Motor Finance ought to have approved the lending, I don't think it's fair for it to be able to charge Mrs F any interest or charges under the agreement.

To settle Mrs F's complaint, we therefore require Blue Motor Finance to do the following:

- Refund any payments Mrs F or her car insurer have made in excess of £3,775, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mrs F's credit file regarding the agreement.

My final decision

I uphold this complaint and direct Blue Motor Finance Limited to put things right in accordance with the redress I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 13 February 2023.

Michael Goldberg

Ombudsman