

The complaint

Mr K complains, via a third party representative, that Blue Motor Finance Ltd (“BMFL”) acted irresponsibly when it lent him £15,000 under a hire purchase agreement to acquire a used car.

What happened

In June 2021 Mr K entered into an agreement with BMFL for a used car costing £17,480.

Under the terms of the agreement, everything else being equal, Mr K undertook to pay a deposit of £2,480 (to the supplying dealership) followed by 59 monthly payments of £348.79 and 1 monthly payment of £349.79 (to BMFL) – making a total repayable of £23,408.40 at an APR of 14.9%.

As of 1 March 2023, Mr K had paid £2,480 to the dealership and 19 payments of £348.79 to BMFL (against 20 required payments of the same amount). This meant that on 1 March 2023 he was £348.79 in arrears (one monthly payment). Between 5 July 2021 and 1 March 2023 Mr K had three monthly direct debits returned unpaid, two of which he then paid by way of debit card shortly after the monthly payment due date. Mr K says that at this point in time the odometer reading was 67,000 miles compared to approximately 53,000 miles at the time of acquisition – an increase of 14,000 miles.

Mr K’s complaint was considered by one of our investigators who came to the view that BMFL had indeed acted irresponsibly when it decided to lend Mr K £15,000. She then went on to explain what BMFL should do to fairly, and reasonably, compensate Mr K for this irresponsible lending. In summary she said that BMFL should:

- collect the car at no cost to Mr K
- end the agreement with nothing further to pay
- remove any adverse information it may have recorded (in respect of the agreement) with one or more third part credit reference agencies

BMFL agreed with the investigator’s view, but Mr K didn’t. Mr K said that he should be allowed to keep the car and simply be required to pay BMFL the capital sum he had originally borrowed at 0% ie he should be able to keep the car and simply be required to repay BMFL £15,000.

The investigator considered Mr K’s response to her view but wasn’t persuaded to change her mind. Therefore, Mr K’s complaint was passed to me for review and decision.

In May 2023 I issued a provisional decision on this case. In summary I said:

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

BMFL and Mr K's appointed representative 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. Information about our approach to these complaints is set out on our website.

The investigator concluded that given what BMFL's search of Mr K's credit file 'returned' it should have carried out further checks to assess whether the finance Mr K had applied for was affordable. And further checks on the part of BMFL would have, or should have, led it to conclude that the finance applied for wasn't affordable.

BMFL has provided a copy of the credit file search it undertook. I've looked at this and note that Mr K:

- *had £26,399 of credit card debt spread across 10 separate cards with a combined limit of £28,720*
- *was over his credit limit on 4 of his 10 credit cards*
- *was at, or over, 94% of his credit limit on 4 of his 10 credit cards*
- *was in arrears on 3 of his 10 credit cards*
- *was in default on one his 10 credit cards*
- *at 5% had monthly credit card repayment commitments of £1,320*
- *had 4 loans with an outstanding combined balance of £23,056*
- *had monthly loan commitments of £844*

Given that Mr K said he was earning £2,683 a month net, it's my understanding that after paying the above he would have had £519 (£2,683 less £1,320 less £844) to meet all of his other expenditure (whether sole or joint), expenditure that would have included, but not been restricted to, mortgage/rent, bills (including food) and the finance he was applying for with BMFL (at a monthly cost of £348.79).

And in my view this should have been enough for BMFL to have concluded that further affordability checks on its part were warranted, even if the finance being applied for was to replace existing finance at a higher monthly repayment cost.

Mr K has provided our service with bank statements (covering the period April to June 2021). Now I'm not saying BMFL should have requested these as part of its further checks, but I think they give a good indication of what further checks on the part of BMFL might have uncovered.

My review of these bank statements show that for 79 days out of 91 Mr K was overdrawn and had 6 direct debits returned unpaid. They also show that he had regular expenditure of more than the sum of £519 referenced by me above. And because of this (and given what BMFL's credit file search 'returned') I'm satisfied that it acted irresponsibly in granting Mr K the finance that it did.

Having concluded that BMFL acted irresponsibly in granting Mr K the finance that it did, what I now need to decide is what it should have to do to fairly and reasonably compensate Mr K.

As I don't think BMFL should have granted the finance, it should refund all the payments Mr K has made, including any deposit. However, Mr K has had use of the car and I think it's only fair that he pays for that use. But I'm not persuaded that monthly repayments of nearly £350 a month are a fair reflection of that usage.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr K's likely overall usage of the car, Mr K's previous agreement and the monthly cost of the same and what his costs to stay mobile would likely have been if he didn't have the car. And having done so, I think Mr K should have to pay £250 for each month he has had the car or continues to have the car.

Mr K says he would like to keep the car and I can understand his reasons for wanting to do so. But given that I'm of the view that the finance shouldn't have been granted in the first instance, it means I'm now asking BMFL to terminate the agreement.

I note that the cash price of the car was £17,480. From the information provided, Mr K had repaid around £9,000 (including the deposit) as of 1 March 2023, which represents about 50% of the cash price. But the purpose of our awards is to try as best as possible to place consumers like Mr K back in the position they would have been in had the unfair lending not taken place.

Mr K doesn't own the car and as things stand he's a long way from paying off the cash price. I'm also of the view that allowing Mr K to keep the car and allowing him to repay the remaining capital balance owing on it at affordable monthly repayments (as he has requested) would be unfair on BMFL.

So, to settle matters, I currently find that BMFL should:

- end the agreement and collect the car from Mr K with nothing further to pay*
- refund all the payments Mr K has made (including his deposit) less £250 a month for each month he has had the car, or continues to have the car*
- if Mr K has paid more than the fair usage figure, BMFL should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement, or*
- if Mr K has paid less than the fair usage figure, BMFL should arrange an affordable and sustainable repayment plan for the outstanding balance*
- once BMFL has received the fair usage amount, it should remove any adverse information recorded on Mr K's credit file regarding the agreement*

**HM Revenue & Customs requires BMFL to take off tax from this interest. BMFL must give Mr K a certificate showing how much tax it's taken off if Mr K asks for one*

BMFL responded to say it accepted my provisional decision but was concerned that my direction that it should "refund all the payments Mr K has made (including his deposit) less £250 a month for each month he has had the car, or continues to have the car" is ambiguous and open to interpretation.

Mr K responded to say that he didn't wish to give the car back (as he needed it), but he was prepared to repay the capital sum he borrowed from BMFL at 0%.

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.

I appreciate Mr K would like to keep the car. But for the reasons explained in my provisional decision (which I'm satisfied I don't need to repeat, or expand on, here) I'm not persuaded this would, in all the circumstances of this case, be fair or reasonable.

BMFL is concerned that my direction that it should *"refund all the payments Mr K has made (including his deposit) less £250 a month for each month he has had the car, or continues to have the car"* is ambiguous and open to interpretation. I'm not persuaded that it is, but to avoid any uncertainty I've expanded slightly on this direction below (in the section 'Putting things right').

So, with the exception of a slight expansion on one of my provisional compensation findings, I can confirm that I see no good reason to depart from my provisional decision and I now confirm it as final.

Putting things right

To settle matters, I find that BMFL must:

- end the agreement and collect the car from Mr K with nothing further to pay
- refund all the payments Mr K has made (including his deposit) less £250 a month for each month he has had the car, or continues to have the car between the date of this (final) decision and it being collected by BMFL in line with my direction above
- if Mr K has paid more than the fair usage figure, BMFL should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement, or
- if Mr K has paid less than the fair usage figure, BMFL should arrange an affordable and sustainable repayment plan for the outstanding balance
- once BMFL has received the fair usage amount, it should remove any adverse information recorded on Mr K's credit file regarding the agreement

**HM Revenue & Customs requires BMFL to take off tax from this interest. BMFL must give Mr K a certificate showing how much tax it's taken off if Mr K asks for one*

My final decision

My final decision is I uphold this complaint and find that Blue Motor Finance Ltd must compensate Mr K as explained in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 June 2023.

Peter Cook
Ombudsman