

The complaint

Mr W complains that Blue Motor Finance Ltd (BMF) irresponsibly granted him credit. Mr W has brought his complaint to us via a complaints management company but I'll refer to him throughout for simplicity.

What happened

Mr W entered into a credit agreement with BMF in February 2020 to acquire a used car. The cash price of the car was £16,985 and the total amount owing under the agreement (including interest and fees) came to £23,750. This was to be paid with a deposit of £365, followed by 60 monthly instalments of £381 and a final payment of £511 (all figures rounded).

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

It seems Mr W had problems meeting his repayments from the beginning and his account was in sustained arrears by the end of 2020. BMF said Mr W voluntarily terminated the agreement and the car was repossessed on or before the 6 October 2021. The car was subsequently sold and the proceeds credited to the account in early 2022. I understand that Mr W had paid £1,493 towards the agreement in addition to his Deposit of £365.

Mr W complained to BMF that the credit was unaffordable for him and it didn't carry out proportionate checks before lending to him. BMF didn't uphold Mr W's complaint. It said it carried out a reasonable affordability assessment which didn't trigger any concerns.

Mr W referred his complaint to us and one of our investigators looked into things. They found that BMF should have reviewed Mr W's circumstances further before lending to him and that, had it done so, would likely have declined to lend to him. They concluded that BMF had made an irresponsible lending decision and recommended that it refund the payments Mr W had made. They also recommended that BMF could charge Mr W an amount of £275 a month to cover his use of the car while in his possession. They estimated this time to be 23 months.

Mr W accepted this recommendation. BMF accepted our investigator's view that the agreement wasn't affordable for Mr W but disagreed with how things should be put right for him. BMF said that £285 a month would be a fairer usage charge.

BMF also said that the car was returned in a poor condition with damage to bodywork and a gearbox malfunction. The agreed refurbishment fee quoted on a vehicle condition report on 6 October 2021 was £641. An invoice for the replacement of the car's main propeller shaft and rear disc dated the 3 November 2021 amounted to £1,739.22. BMF said Mr W should pay for these repairs in addition to paying a fair usage charge.

The complaint was passed to me for a decision. I issued a provisional decision on 20 June 2023 explaining why I planned to uphold Mr W's complaint and setting out my proposals for what needed to happen to put things right for him. I allowed some time for both parties to comment on what I'd said and provide any new information they wish me to consider. BMF let me know it didn't have anything further to add and I haven't heard from Mr W.

As I'd said in my provisional decision, Mr W didn't mention the condition of the car when he brought his complaint to us nor did he have any comments when the issue of refurbishment and damage charges was raised by BMF. I haven't made any finding on whether or not it's fair for BMF to apply these charges to Mr W's account. If BMF chooses to do this and Mr W disagrees, he can raise a complaint with BMF and refer it to this service if any charges remain in dispute.

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 reconsidered everything, and having nothing new from either party to consider, I remain of the view that Mr W's complaint should be upheld and resolved as I set out in my provisional decision. For completeness, I'll set everything out again in this final decision on the matter.

As before, I've had regard to the regulator's rules and guidance on responsible lending which lenders, such as BMF, need to abide by. BMF will be aware of these, and our approach to this type of lending is set out on our website, which I've followed here.

BMF has accepted it was irresponsible to enter into the agreement with Mr W so I won't revisit this point as it is no longer in dispute.

Our general approach to putting things right where a business has made an error is, as far as possible, to put a customer back into the position they would have been in had everything happened as it should have. Had the credit been declined Mr W wouldn't have paid a deposit or any instalments to BMF. I think a fair starting point is to return these payments to him.

Mr W hasn't been able to use the credit as intended, in other words to have the use of the car for the term and to potentially become the owner. Mr W has had the use of the car for 19 months (March 2020 to September 2021 inclusive) and travelled approximately 14,150 miles in it (based on the mileage in the agreement and that noted by BMF on its return).

As the car was the property of BMF it's fair that Mr W pays something for its hire. There isn't a formula for working out what a fair usage charge should be. I've thought about the amount of interest charged under the agreement and the likelihood that Mr W would have paid some level of transport costs if he didn't have the car and considered his usage in general. As mentioned, our investigator recommended an amount of £275 a month.

BMF said that £285 would be a fairer monthly charge as it means Mr W would have covered the cash price of the car had the agreement run to term. Mr W borrowed £16,620 and the agreement term was 61 months. However, the agreement didn't run to term, Mr W didn't manage to meet his repayments and end up owning the car. I think the level of monthly charge suggested by our investigator, and accepted by Mr W, is the most he should pay per month as a fair usage charge under the circumstances.

Putting things right

BMF should now:

- Reduce the outstanding balance on Mr W's account to zero;
- Apply a fair usage charge of £5,225 to the balance based on Mr W's use of the car for 19 months;
- Deduct all payments including the deposit Mr W paid from the above figure;
- If Mr W has paid more than £5,225 (which I don't think is the case here) then any overpayment should be refunded to him along with 8% simple interest per annum from the date of overpayment to the date of refund; or
- If Mr W has not yet repaid this amount, BMF needs to treat him sympathetically and fairly regarding any outstanding balance which may include agreeing an affordable repayment plan with him;
- Remove any adverse information about this agreement reported to Mr W's credit file up to the date of acceptance of this decision.

My final decision

For the reasons I've explained above, I'm upholding Mr W's complaint about Blue Motor Finance Ltd and it now needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 August 2023.

Michelle Boundy
Ombudsman