

The complaint

Mr W has complained about a hire purchase agreement he had with Blue Motor Finance Ltd (BMF). He says he shouldn't have been given the agreement.

What happened

In March 2020 Mr W entered into a 5-year hire purchase agreement with BMF to acquire a car. The car cost around £21,500 and Mr W paid a £1,000 deposit. Monthly repayments to the agreement were around £600, with a total amount payable of around £37,000.

Shortly after taking out the agreement Mr W contacted BMF to ask what support it offered for customers impacted by the Covid-19 pandemic. I can see BMF responded to his queries asking to speak to him on the phone. I can't see Mr W made further contact for Covid-19 support.

Mr W says he settled the agreement in June 2021 because he found a lender under better terms.

In October 2022 Mr W raised a complaint with BMF. He queried the commission BMF paid the broker. He said BMF's affordability checks weren't sufficient, and that it shouldn't have granted him the credit. He also said he didn't have time to go through all the paperwork properly.

BMF said the broker had no influence on the interest rate offered, but there was a £200 commission payment made, and that this was disclosed. BMF said it carried out credit checks including reviewing a payslip and bank statement. It said there wasn't a sign that Mr W was in financial distress. It said Mr W e-signed all the documents and he was given the opportunity to review them. It said it can't be held responsible for Mr W's situation having changed and that its lending decision was fair.

Mr W brought his complaint to our service to consider. He said BMF ought to have known he couldn't afford the agreement. But he said he needs the car for work and doesn't want to lose it. He asked our investigator to focus on the affordability aspect of his complaint, as opposed to the other points he originally complained about

Our investigator looked into things. From looking at the credit search provided, he noted BMF would have seen defaulted agreements from February 2015 (£305), February 2017 (£6,196) and May 2018 (£2,737). And that Mr W took out recent borrowing – a credit card with a limit of £500 in November 2019; a loan for £1,279 the same month; and a further loan for £5,241 the following month. Our investigator thought this should have indicated to BMF that Mr W may have been struggling with his finances and that it ought to have asked further questions.

Our investigator noted BMF obtained bank statements and payslip from Mr W, which he thought was a proportionate step. Our investigator also reviewed the evidence BMF saw. He thought based on what he'd seen BMF could have fairly assessed Mr W as having around

£800 disposable income. He didn't think BMF had been put on notice of any impending changes to that and so, overall, he didn't think BMF acted unfairly by granting the finance.

Mr W didn't agree. He said the agreement was unaffordable. He said his salary was £2,636 after tax, and there was an additional £137 highlighted by our investigator but this was for expenses. Mr W highlighted he needed to take out additional maintenance costs for the car costing around £55 per month. He says the bank statement BMF saw demonstrated affordability concerns. He highlighted the new high-cost loan of over £5,000, and cash withdrawals of around £1,300. He said his living situation was likely to have changed from living with his parents when he took out the agreement, and that this wasn't properly considered.

I issued a provisional decision that said:

We've explained how we consider complaints about unaffordable lending on our website. I've thought about this approach when deciding this part of Mr W's complaint.

BMF was required to make sure, via its lending decision, that Mr W could sustainably repay the borrowing. The checks that BMF were required to carry out had to be 'borrower focused'. So instead of seeing how statistically likely Mr W was to repay the borrowing, it needed to assess whether he could sustainably repay the borrowing, taking into account his personal circumstances. And it needed to base its creditworthiness assessment on sufficient information.

What is considered proportionate will depend on a number of factors such as (but not limited to): the type, amount and duration of the credit; the frequency and size of the repayments; the total amount payable and total charge for credit; the interest rate and any other costs which may be payable; and any other potential adverse consequences for the customer arising from a failure to make payment.

In this case, Mr W was asked to pay back around £37,000 over five years with payments of nearly £600 – a significant commitment over a moderate term.

I've reviewed the credit search information BMF has provided. I agree with our investigator that the results ought to have prompted BMF to ask further questions. The results show three defaulted accounts, recently taken out loans and various balances across different types of borrowing. The credit search BMF undertook showed Mr W had over £18,000 'current balance' across the borrowing.

BMF asked Mr W for proof of income by way of a payslip, and it asked for a copy of his bank statement as well. I think this was a fair step for it to take given what it had found out on its credit search.

I agree that Mr W's payslip broadly evidences his monthly earnings of around £2,600. And I can see his salary is paid into his account.

BMF seems to have put most weight on the statement closest to the time Mr W entered into the agreement with it, which I can understand as it's probably the most representative of his circumstances at the time he applied for the finance. This is dated 8 February 2020. Our investigator thought Mr W's disposable income was somewhere in the region of £800 per month. But I'm not sure the February statement demonstrates that's the case. Or I'd at least have had further questions from only looking at the February statement.

From what I can see, Mr W had outgoings of over £1,500 for things like direct debits; standing orders; insurances; subscriptions; lending and communications. This is more than

half his salary. Of note on the February 2020 statement, I can see there are two first direct debits being paid – a loan repayment of around £230 and a credit card payment of £50. So around the time Mr W entered into the agreement with BMF he'd recently taken on further financial commitment.

I think the calculations of disposable income possibly missed a payment to a short-term lender of around £370 and an insurance payment of around £180. It's not clear from the statement if these payments were regular or one of expenses. But even putting those two payments to one side, Mr W still had over £1,000 going out towards what could well be regular expenses. And that doesn't include other regular expenses for things like rent, food, travel and so on. It's also concerning Mr W had direct debits returned unpaid in that month due to lack of funds. I think this should have been of concern to BMF, and perhaps a sign that he was struggling with the extra commitments he'd recently taken out. Moreover, Mr W says his rent, food and travel costs came to around £1,000 per month. If BMF had asked him for an estimate of those costs, I think it would have thought the agreement wasn't affordable at around £600 per month.

I can't see BMF had the statement for the previous month (8 January 2020). If it had it would have seen Mr W had outgoings of over half his salary going to gambling sites. So, even putting aside the other outgoings, I think if it asked for this statement it likely would have come to the conclusion that entering into an agreement with Mr W to pay back £600 per month for five years might've been irresponsible.

When looking at the previous statement that BMF did have (8 December 2019), I can see Mr W had outgoings of over £1,200 for things like direct debits; standing orders; insurances; subscriptions; lending and communications. Again, two of these were new direct debits. And there's evidence of short-term lending payments as well. So if BMF had asked Mr W about his other regular expenditure such as rent, food and travel costs, I don't think it would have concluded Mr W could sustainably repay £600 per month for five years.

Taking everything into account. I think BMF's checks were fair to an extent. But I think it ought to have asked Mr W further questions off the back of what it saw. I think it ought to have filled in the gaps so to speak. Had it done that I think it would have seen it wasn't clear Mr W could sustainably repay £600 per month. It might have seen there were times Mr W was spending heavily on gambling. Mr W has explained he had a gambling problem, and he borrowed money to gamble. He didn't just pay gambling sites direct. He tells us he also took out cash to gamble. Moreover, Mr W would likely have had other expenses off the back of purchasing a £25,000 car in addition to the monthly repayments.

I think the significant regular expenses; the various new credit agreements; the returned direct debits; and the reliance on short term lending ought to have prompted BMF to, at the least, have asked further questions. Had it done so I think it would have seen it wasn't clear Mr W would be able to sustainably repay the borrowing. And there's a good chance it would have seen the level of gambling that was going on.

All things considered, based on what I've seen, I don't think BMF should have granted Mr W the finance. Mr W has now settled the agreement (using other finance). But I think as a way to resolve the complaint, BMF should repay Mr W the interest portion of what he's paid to it, together with interest. Adverse information, if there is any, relating to the agreement should also be removed from Mr W's credit file.

Mr W agreed with the provisional decision. BMF had nothing further to add.

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'd like to thank the parties for responding to my provisional decision. Seeing as neither party has submitted anything materially new for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision.

My final decision

My final decision is that I uphold this complaint and direct Blue Motor Finance Ltd to:

- Treat payments made over and above the purchase price of the car as overpayments. Any overpayments should be refunded to Mr W.
- Interest* should be added to the above amount at a rate of 8% per year simple, from the date of the overpayment to the date of settlement.
- Remove any adverse information about the agreement from Mr W's credit file.

*If BMF considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much tax it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 August 2023.

Simon Wingfield
Ombudsman