

The complaint

Mr C complains Blue Motor Finance Ltd (BMFL) irresponsibly entered into a hire purchase agreement with him which was unaffordable.

What happened

Mr C entered into a hire purchase agreement with BMFL on 27 June 2018 for a used car. The total cash value of the car was £9,213 and Mr C paid a deposit of £100. This meant the total amount of credit was for £9,113. The APR was 9.6% and the total amount payable was £11,492. Under the agreement, Mr C was to make 60 monthly repayments of £189.85 with a £1 option to purchase at the end of the term.

Mr C is represented in his complaint. He said at the time of the lending BMFL didn't ask any questions to confirm he would be able to pay the loan in a sustainable way and he already had multiple other credit commitments at the time he applied for lending. His representatives complained about the affordability of the agreement to BMFL on 16 January 2023.

BMFL responded to the complaint on 14 March 2023. It said Mr C confirmed his income and employment. It also said it used data from credit reference agencies to confirm Mr C's creditworthiness and assess affordability. It also looked for signs of financial stress (for example number of accounts and credit card debt). It said nothing was triggered and it felt the agreement was affordable as the monthly repayments reflected less than 10% of Mr C's stated income. Therefore, it concluded the checks had been proportionate and it was fair to enter into the agreement. It also said it drew Mr C's attention to the terms and conditions of the finance agreement.

Mr C didn't accept BMFL's response. Therefore, his representatives referred the complaint to our service. Our Investigator set out their view to the parties. They felt the checks carried out by BMFL weren't proportionate. They also said proportionate checks were likely to have shown the agreement was unaffordable and BMFL shouldn't have entered into the agreement.

BMFL didn't agree. In summary, it said:

- It took into account the income declared by Mr C, the expenditure on the credit file, the demographic expenditure expected and the fact the repayment was less than 10% of Mr C's income.
- The new hire purchase agreement was only £2 more than the previous one he had been successfully paying for a significant period of time. The view seemed to include the existing £187 hire purchase payment, but this monthly commitment was to be replaced by the new agreement.
- Therefore, in accordance with CONC 5.2.3 G, it felt it did not need to carry out any further affordability checks and it complied with the prevailing regulations.

Our Investigator explained they hadn't taken into account the existing hire purchase payment when considering the outgoings. And said the other points didn't change her opinion. But BMFL still didn't agree.

Therefore, the complaint has been passed to me to decide.

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.

In doing so, I've considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's handbook. I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in all the circumstances of this complaint. These questions are:

1. Did BMFL complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the borrowing?
 - a) If so, did it make a fair lending decision?
 - b) If not, would reasonable and proportionate checks have shown that Mr C could sustainably repay the borrowing?
2. Did BMFL act unfairly or unreasonably in some other way?

Did BMFL complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the agreement in a sustainable way?

Before granting credit, BMFL were required to carry out a reasonable and proportionate assessment of Mr C's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Mr C could sustainably afford the borrowing (considering his specific circumstances), rather than how statistically likely he was to repay. The latter, is the risk posed to BMFL as the lender, or its 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- The amount of credit;
- The total repayable and the size of the regular repayments;
- The duration of the agreement;
- The cost of the credit; and
- The consumer's individual circumstances.

BMFL said Mr C discussed the finance options with the car dealer and it wasn't directly involved with these discussions. I've seen the consumer information collected at the time of the agreement. I can see Mr C confirmed he was employed and earned £23,162 per year. He confirmed he paid rent and had dependents.

BMFL said it used a credit reference agency to check creditworthiness and applied an affordability score. It also said it applied a series of policy rules that looked for signs of financial stress and affordability issues. This included credit card debt and utilisation, the total number of accounts, excessive exposure of unsecured debt vs income, multiple recent searches and applications for credit. It said none were triggered and the finance proposal

was accepted in accordance with its credit policy. It said the monthly payment of £189.85 was less than 10% of Mr C's stated income and was considered affordable and sustainable.

BMFL also carried out a credit check and have provided a copy. I can see Mr C had two defaulted accounts in 2016 with a combined balance of £187. The balance was £36 at the time of the agreement. I can also see Mr C had two telecommunication accounts, two credit cards, two loans and a mail order account. His total active credit was £4,979.

There were three late or missed payments, but the accounts were up to date at the time of the agreement. The search seems to show me his monthly credit repayments were £206, this is excluding the active credit agreement he had for another hire purchase of £187. Mr C would need to be able to repay the balance on his credit card sustainably.

Having thought carefully about the checks carried out and what they showed, I'm of the view BMFL should have carried out more checks to ascertain Mr C's committed expenditure. I also think they could have done more to verify his income. This is because of the length of the agreement and the amount of the monthly repayments. Whilst I've noted what proportion of Mr C's declared income the repayments amounted to and what the bureau information showed about his credit commitments, I don't agree these were sufficient checks for BMFL to satisfy itself that the agreement was affordable. This is because it didn't collect specific information about Mr C's non-discretionary expenditure or verify his income.

I'd also note he declared that he was a tenant with dependants, and I think this also suggests more information about the specific circumstances would be useful here because there could have been further expenditure not accounted for. And I'm also mindful of the information BMFL had about Mr C's two defaulted accounts. This indicated some previous financial difficulties which should have prompted further checks.

Would reasonable and proportionate checks have shown Mr C would be able to repay the agreement in a sustainable way?

As reasonable and proportionate checks weren't carried out on this agreement, I need to decide what a reasonable and proportionate check would have shown. Such additional checks might have included asking Mr C about his committed expenditure and depending on what was said, verifying this by obtaining further information.

To understand what information BMFL were likely to have received, I've reviewed three bank statements which show Mr C's income and expenditure in the three-month period leading up to the agreement. I want to be clear that I'm not suggesting BMFL needed to check Mr C's bank statements specifically, but I'm satisfied that these give me a good indication of what information it would likely have found out about his financial circumstances had it completed reasonable and proportionate affordability checks.

The average income received by Mr C over the three months from his salary was around £1,530. Although, it should be noted in two of the months Mr C received around £1,300.

In addition to this, Mr C received some support with the rent and household bills. I've looked at the amount he received over the three months and there doesn't appear to be a stable or set agreed amount. In one of the months, he received £800 and, in another month, he received around £200. Also, considering statements from outside of the three-month period it seemed he received around £400. But over the three-month period he received an average of £530. Therefore, his average income was around £2,057.

I've also reviewed Mr C's regular credit commitments and non-discretionary expenditure and I'm of the view this was around £1,880. The identified monthly expenditure includes (but is

not limited to) things like council tax, water, gas and electric and rent. As well as, car insurance, appliance insurance, other bills and food shopping.

I've also considered the credit commitments which are outlined on the statements and on the bureau information collected by BMFL. I've noted the balance shown in the search. But the statements also show payments towards credit commitments. This includes Mr C's regular monthly credit payments.

I'm mindful Mr C was also paying towards another hire purchase agreement for £187 which BMFL have said this new agreement was intended to replace. Therefore, I've not included this when making the calculations for the regular committed expenditure.

Taking all of this into account, Mr C had non-discretionary expenditure of around £1,880. Bearing in mind the average income over the period, his disposable income was around £177. Therefore, I'm not satisfied he had sufficient disposable income to sustainably afford the repayments of £189.95.

Having reviewed the information, I'm satisfied its likely proportionate checks would have shown the lending was unaffordable. This is because Mr C's income wasn't sufficient to cover non-discretionary expenditure, regular credit commitments and the repayments under the agreement. BMFL have said the new borrowing was only £2 more than his previous hire purchase agreement, which he had been paying successfully. However, for the reasons outlined above, I don't agree he did have sufficient disposable income and it meant it was unlikely Mr C could make the repayments in a sustainable way. Therefore, I don't think it was reasonable for BMFL to enter into the agreement.

Did BMFL act unfairly in some other way?

The evidence I've seen doesn't demonstrate BMFL acted unfairly outside of entering the hire purchase agreement.

Putting things right

Where a business has made an error, our service would usually aim to put the consumer back in the position they would've been in had the error not occurred. However, in cases where a business has lent irresponsibly this isn't entirely possible, as the lending provided cannot be undone. BMFL have confirmed Mr S has paid the agreed amount and now the agreement has ended he has kept possession of the car.

As I don't think BMFL ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr C should therefore only have to pay the original cash price of the car, being £9,213. Anything Mr C has paid in excess of that amount should be refunded as an overpayment.

To settle Mr C's complaint Blue Motor Finance Limited should do the following:

- Refund any payments Mr C has made in excess of £9,213, 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 Mr C's credit file regarding the agreement.

*If Blue Motor Finance Limited considers that it's required by HM Revenue & Customs to deduct the inform tax from that interest, it should tell Mr C how much it's taken off. It should

also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs.

My final decision

I'm upholding this complaint and Blue Motor Finance Ltd should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 October 2023.

Laura Dean
Ombudsman