

The complaint

Ms F complains that Blue Motor Finance Ltd ('Blue') provided her fiancé for a car when it shouldn't have. She says she was struggling financially and couldn't afford the repayments. Ms F also complains that Blue paid commission to the car dealer and didn't make her aware of this.

To resolve her complaint Ms F wants Blue to reduce the interest in the car loan as and to refund the commission paid to the dealer

What happened

I issued a provisional decision on this case where I set out a detailed background to this complaint and explained my findings and my provisional conclusions. I gave both parties the opportunity to provide further evidence or comments before I issue my final decision. My provisional decision should be read along side this decision as it forms part of my final decision.

The relevant part of my provisional decision is in italics below.

"What I've provisionally 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.

*There are two key aspects to this complaint, and I will deal with each one in turn.
Was the hire-purchase agreement affordable for Ms F?*

Blue is aware of its obligations under the regulator's rules for responsible lending. I say this because it has quoted CONC 5.2A in its response to the adjudicator's view. As this is the case, I don't intend to repeat its obligations to lend responsibly but I will summarise it. Blue needed to make sure that its lending was responsible such that Ms F could meet the obligations of the agreement over its term in a way that didn't have a negative impact on her finances. To do this, Blue needed to carry out reasonable checks on Ms F's financial circumstances, these checks had to be customer focussed.

Blue has provided evidence to show it searched Ms F's credit file, considered her income, and looked at her bank statements to consider her affordability. It said it specifically considered the availability of the car deposit – around £25,714.

In its final response letter, Blue says Ms F declared her monthly income as £4,800 which it says it checked her P60 to verify this. Blue has provided a copy of the P60 and from what I can see, Ms F's monthly income was significantly lower than what was declared and closer to around £3,880 after tax. From the bank statements provided Ms F's income on average over the three months prior to the loan was around £2,915. I can see that in November 2018, she received work and child tax credit of around £831.56 but this didn't appear to be a regular source of income as it didn't appear on subsequent bank statements.

Ms F also declared she had two other properties she rented out and the rent was used to repay the mortgages for those properties. Ms F has also provided her credit union savings account statements and statements of an account she held in trust on behalf of her

daughter. Ms F's credit union account statement shows she had a balance of around £25,000.

Blue's underwriter thought its checks showed Ms F could afford the monthly repayment of the loan and the balance in her credit union account suggested she had sufficient funds to pay the deposit.

Overall, I think Blue's checks went far enough and so I've considered whether it made a responsible lending decision based on the results of its checks.

Ms F's bank statements show her monthly living costs were on average around £1,862, this includes the mortgage payment on the property she lived in. Ms F's credit commitments were £317 and a combined credit card balance of around £12,194. Aside from her credit union account, Ms F's accounts either had low or negative balances and she mainly moved money around those accounts. Ms F's bank statement also show she borrowed a loan of around £15,000 in February 2019, which she's told us she used to towards the deposit for the car.

On this basis, while it appeared Ms F had a lot of money coming into her account and her credit union account appeared to have a large balance, this wasn't the reality. Ms F had to borrow to pay the deposit for the car and even if she hadn't taken out the loan for the purpose of paying the deposit, she'd have had to empty her credit union savings account to afford the around £25,000 deposit for the car. Bearing in mind her average income and monthly living costs and credit commitments, she couldn't meet the monthly repayment of over £1,300.

Having carefully looked at Ms F's bank statements, most of the money was moving between her accounts and she had little to no credit balance available. She's also had to borrow to afford the deposit.

I think Blue's checks showed sufficient concern Ms F wouldn't be able to afford this loan and I don't think it should have lent to her. So, I'm therefore intending to uphold this complaint.

In circumstances where a borrower was provided with finance to purchase goods – such as a car – that they were unable to afford to make the payments for we typically direct the lender to do something different from what we would ask it to do in cases where cash funds were irresponsibly lent. In cases involving a car, it's usually appropriate for the car to be returned, the agreement be terminated, and for the lender to return the payments the borrower made, less a fair and reasonable amount to reflect the borrower having had use of the vehicle for a period.

However, having considered the statement of account provided by Blue, I'm mindful that the payments Ms F has already made exceed the amount Blue lent to her. As this is the case and given there are additional costs in recovering a vehicle and then selling it to generate the funds to clear a loan, I think that it would be fair and reasonable for Blue to compensate Ms F in the way that I would expect a lender to, should it have irresponsibly provided a customer with cash.

So, I'm currently minded to tell Blue to refund all of the interest, fees and charges Ms F paid as a result of this hire-purchase agreement, plus interest at 8% per year simple. In other words, I'm planning to tell Blue to refund any payments it received over and above the £50,000.00 it lent, plus interest at 8% per year simple from when any 'overpayments' were made. Blue will also need to terminate this hire-purchase agreement (if it hasn't already done so) and transfer ownership of the vehicle to Ms F. Finally, Blue will also need to remove any adverse information it may have recorded about this agreement from Ms F's credit file. Ms F's complaint regarding any commission Blue may have paid to the broker bringing about this hire-purchase agreement.

I must start by saying I have found the information provided by Blue in relation to any commission payment contradictory. It initially told this service there was no commission paid

towards this transaction and then it said it paid a flat commission on £3,000. There are also parts of its documentation that suggest the commission model may have been different.

In any event, regardless of the contradictory information provided, I've nonetheless already found that Blue shouldn't have entered into this agreement with Ms F as it ought to have realised that it was unaffordable for her. I'm satisfied that my proposed method of putting things right for Ms F, as a result of this, effectively places her in the position she would now be in had her agreement never existed. I think that this also unwinds the impact of any commission that Blue might have paid to the broker for introducing Ms F.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't make a difference to the overall outcome.

Fair compensation – what I'm intending to direct Blue to do to put things right for Ms F

Having thought about everything, I'm currently minded to direct Blue to put things right for Ms F by:

- *Terminating the hire-purchase agreement (if it has not already been) and transferring ownership of the vehicle to Ms F.*
- *Removing all interest, fees and charges applied to the balance from the outset. The payments Ms F made should be deducted from the new starting balance – the £50,000.00 originally lent. Any payments Ms F made after she paid the £50,000.00 Blue lent, should be treated as overpayments and refunded.*
- *Adding interest at 8% per year simple on any overpayments from the date they were made by Ms F to the date of settlement†*
- *Removing any and all adverse information it recorded about this agreement from Ms F's credit file.*

† HM Revenue & Customs requires Blue to take off tax from this interest. Blue must give Ms F a certificate showing how much tax it has taken off if she asks for one."

The time limit to respond has now passed. Neither party had any further evidence and comments 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.

As neither party has provided further comments or evidence, I see no reason to depart from my provisional findings.

Blue lent to Ms F when it shouldn't have, and it needs to put things right.

Putting things right

To put things right, Blue should:

- **Terminate the hire-purchase agreement (if it has not already been) and transferring ownership of the vehicle to Ms F.**
- **Remove all interest, fees and charges applied to the balance from the outset. The payments Ms F made should be deducted from the new starting balance – the £50,000.00 originally lent. Any payments Ms F made after she paid the £50,000.00 Blue lent should be treated as overpayments and refunded.**
- **Add interest at 8% per year simple on any overpayments from the date they were**

- made by Ms F to the date of settlement†
- Remove any and all adverse information it recorded about this agreement from Ms F's credit file.

† HM Revenue & Customs requires Blue to take off tax from this interest. Blue must give Ms F a certificate showing how much tax it has taken off if she asks for one."

My final decision

For the reasons given here and in my provisional decision, I uphold Ms F's complaint and direct Blue Motor Finance Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 6 November 2023.

Oyetola Oduola
Ombudsman