

The complaint

Mr S complains that Blue Motor Finance Ltd (BMF) irresponsibly agreed to a hire purchase agreement that he couldn't afford to repay.

What happened

In December 2019 Mr S acquired a car after he entered into a hire purchase agreement with BMF. The cash price of the car was £7,913, Mr S paid a cash deposit of £200, plus £0.25p remaining from the part exchange of another car. After interest and charges were added the total amount repayable was £11,598.25 over 60 months at £189.95 a month. Mr S said he struggled to make the repayments and only did so by borrowing from elsewhere. He said if BMF had properly checked they would have seen he was already heavily financially committed. Mr S complained to BMF.

BMF said they carried out a credit worthiness assessment by checking Mr S' credit commitments through a credit reference agency (CRA). They said they checked for any signs of financial stress and affordability issues. But on the evidence they saw they considered the lending was affordable for Mr S.

Mr S wasn't happy with BMF's response and referred his complaint to us.

Our investigator said BMF hadn't shown they'd checked Mr S' income, there were also signs that Mr S had recently struggled to maintain his credit commitments. And his level of debt-to-income ratio was around 35%. He said BMF should have checked further into Mr S' financial circumstances. And if they had they would have seen that Mr S wouldn't be able to sustain the repayments. The agreement had ended following an insurance payment, so he said BMF should:

- Refund Mr S' deposit of £200.25, adding 8% simple interest per year from the date of the payment to the date of settlement.
- If Mr S has paid more than the cash price, they needed to refund any payments he'd made above this amount, adding 8% simple interest per year from the date the overpayment was made to the date of settlement.
- Remove any adverse information recorded on Mr S' credit file regarding the agreement.

BMF didn't agree they said they'd checked the lending was affordable. They said Mr S had declared his income on his application as being £2,104, and so they'd used this in their lending decision. They also said Mr S' previous car finance agreement had been for £175 a month, as this was settled on entering this agreement, it'd only added £14.95 to his indebtedness. They asked for an ombudsman 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.

Having done so I'm upholding this complaint. I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did BMF complete reasonable and proportionate checks to satisfy themselves that Mr S would be able to repay the credit in a sustainable way?

a. if so, did BMF make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mr S could sustainably repay the borrowing?

2. Did BMF act unfairly or unreasonably in some other way?

The Consumer Credit Conduct of Business sourcebook (CONC) requires BMF to carry out a reasonable assessment of whether Mr S could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check". I've considered BMF's position about the number and type of checks they did to decide whether the lending was affordable for Mr S or not.

CONC 5.2A.16(3) says:

"For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer)."

BMF said they accepted Mr S' income to be £2,104 as this is what he declared on his application. BMF haven't shown they independently checked that this was most likely correct.

BMF said they checked Mr S' financial situation by using a CRA. This included checking his credit card debt and utilisation, the total number of his accounts, his indebtedness, previous searches and applications for credit.

I've looked at the credit information BMF has given us, this shows Mr S had a current account, five credit cards, two loans, a mail order account, an options account, two communications accounts and a hire purchase agreement. It also showed Mr S had recently been behind with his repayments for a credit card account and his mail order account. And he was utilising around 77% of his credit card limits.

CONC 5.2A.17(2) says:

"The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure."

Considering Mr S' financial picture at the time I'm not satisfied that these checks adequately gathered a proportionate amount of information as I think they failed to determine how much Mr S actually had left to spend after his existing commitments. I haven't seen any evidence

that BMF used any data to consider Mr S' non-discretionary spending other than his credit commitments, so no consideration made for housing costs, insurance, utilities or council tax, nor any assessment for his cost-of-living expenses. So I agree with our investigator that BMF haven't shown their checks were reasonable and proportionate.

This doesn't automatically mean BMF shouldn't have lent to Mr S as I need to consider whether these checks would have shown that the repayments were unaffordable for him – or in other words that he lost out because of BMF's failure to complete proportionate checks. I can't be sure exactly what BMF would have found out if they'd asked about Mr S' financial situation. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Mr S' bank statements.

Mr S has provided details of his bank statements for the three months prior to the lending. And I can see his income each month was around £1,662, significantly lower than what he'd stated on his application. His rent was £525, council tax £119, its our approach to use the full utilisation of any credit cards in an assessment which I equate to around £230 a month. Mr S' other monthly credit commitments were £326. I haven't included the hire purchase agreement as the part exchange made on this agreement was used to settle this.

After other non-discretionary spending was considered for food, petrol, transport costs, insurance, communications and media. I determined Mr S' overall expenditure each month was around £1,750, which is more than his monthly salary. But I can also see that Mr S regularly received payments into his account to help cover his bills. Across the three months this was an additional income each month of around £347. Meaning Mr S had an available income of around £2,009, after taking into account his outgoings this meant Mr S had a disposable income of around £259. But this didn't take account of his new lending commitment of around £190, once this is factored in Mr S would have had only £69 a month to cover discretionary and unexpected spending. On balance, I don't think this would have been sufficient to sustain the agreement repayments, especially as the lending was over a five year period.

Putting things right

As I don't think BMF should have lent to Mr S I don't think it's fair for them to charge any interest or other charges under the agreement. But its reasonable for Mr S to pay the cash price of the car. From what I can see Mr S paid a cash deposit of £200, paid 41 repayments of £189.95 and there was an insurance settlement of £3,416.05. So, BMF should refund to Mr S any amount that's been paid over the cash price of the car plus 8% simple interest from date of overpayment to date of settlement. They should also remove any adverse information showing on Mr S' credit file about this agreement.

My final decision

I uphold this complaint. And ask 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 S.
- Add 8% simple Interest per year* to the above amount from the date of the overpayment to the date of settlement.
- Remove any adverse information about the agreement from Mr S's credit file.

*If Blue Motor Finance Limited considers that they're required by HM Revenue & Customs to deduct the income tax from that interest, it should tell Mr S how much they've taken off. They

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 July 2024.

Anne Scarr
Ombudsman