

The complaint

Miss C is complaining about Blue Motor Finance Ltd (BMF). She says they shouldn't have lent to her as the loan was unaffordable.

What happened

In February 2019, Miss C took out a hire purchase agreement with BMF to finance the purchase of a car. She paid a deposit of £1,000 and borrowed £15,990 - the cash price of the vehicle was £16,990. The agreement required her to make 60 monthly repayments of £399.61, followed by a final payment of £549.61. She made all her payments on time until February 2020 when the next two direct debits bounced. A court order in February 2022 allowed BMF to repossess the vehicle and they did so in November 2022.

In February 2023, Miss C complained to BMF, saying the lending had been irresponsible – she said she had county court judgments (CCJs) and multiple missed payments on her credit file at the time of her application. She added she'd had to borrow from family and friends to make the repayments and had tried to give the vehicle back on several occasions but was unable to do so. Miss C also complained about how BMF had handled her account since she'd fallen into arrears, saying the car had then been seized and BMF had sold it at a fraction of the price she could have sold it for privately. And she'd lost her private number plate and some possessions as a result.

BMF replied to the complaint, saying that in the finance proposal Miss C had confirmed her income as a manager was £28,000. They said the process included several warnings about the importance of any information provided being accurate. BMF said they'd used a credit reference agency to check Miss C's credit history and they didn't note any indicators of over-indebtedness. They also said there were no CCJs on her credit file at the time. So they accepted Miss C's application in line with their policy.

BMF also said they'd tried to contact Miss C about her arrears before proceeding with a court order for the return of the vehicle and then seizing it. In relation to the private plate – they said this was covered by their terms and conditions – it became their property when she added it to the vehicle without their permission. In summary, BMF didn't uphold Miss C's complaint.

Miss C remained unhappy so one of our investigators looked into her complaint. Our investigator's view was that BMF hadn't done proportionate checks and if they had, they wouldn't have lent to Miss C. BMF accepted the view but Miss C didn't. She continued to be upset about BMF's handling of the repossession and subsequent communications. And she wasn't happy with what our investigator had said about putting things right. Miss C asked for a decision – and the complaint came to me. I issued a provisional decision on 12 March 2024. In that I said:

“BMF have accepted our investigator's view that they didn't carry out proportionate checks, and that they couldn't have fairly decided that the agreement was affordable for Miss C. So I've not looked at this element in any detail. I can't see that BMF verified Miss C's income or looked into her expenditure, and so in the light of the defaults and missed payments on her credit file, I'm satisfied their checks weren't proportionate. Miss C also

had no regular income at the time of her application – so I'm satisfied the agreement wasn't affordable.

The outstanding points of Miss C's complaint focus around how BMF handled the account, in particular around the court order and repossession. Miss C's also complained about the loss of her private number plates and some personal possessions.

I've reviewed BMF's notes of their contact with Miss C. I can see they had difficulty contacting her by telephone on many occasions but wrote to her in March 2020 which prompted Miss C to call them. Miss C told BMF in early April 2020 that she didn't have any income at the time as she was on a zero hours contract so would just pay when she was able to. BMF started termination and repossession proceedings and Miss C paid the amounts needed to stop this in July and August 2020. I can't see that BMF offered a payment holiday or reasonable payment plan – instead putting Miss C under pressure to pay significant amounts at short notice. I'm inclined to say BMF did not treat Miss C with forbearance and due consideration on this occasion and should make a payment to reflect the upset this is likely to have caused her – I've detailed this below.

Between September 2020 and the end of November 2020, BMF again repeatedly tried to contact Miss C, by phone, text message, and email. She eventually phoned them at the end of November, and asked for a payment deferral. When BMF tried to discuss this further with Miss C they couldn't get hold of her until the end of January 2021, at which point Miss C explained that her mobile phone had been cut off so she needed BMF to communicate via email. In March 2021, BMF agreed to defer all of Miss C's arrears and the current month's payment to the end of the agreement. Miss C was still unable to make payments but later arranged a payment plan with BMF, in June 2021. Unfortunately Miss C wasn't able to meet the payments she'd agreed with BMF. I can see Miss C contacted BMF in August 2021 to explain her position but didn't respond to BMF's attempts to discuss the account further and there was then no further contact between the parties until November 2021.

I don't think BMF treated Miss C unfairly between September 2020 and November 2021 – I think they made many efforts to enable Miss C to keep the car and pay in a way that was sustainable for her. And they tried to assess whether the agreement was affordable for Miss C and whether it was appropriate for her to keep the vehicle. I appreciate this was a very difficult time for Miss C but I can't say BMF did anything wrong. I also haven't seen any evidence that Miss C wanted to return the car to BMF – on the contrary she said she needed it for when she was able to work again.

After months of not being able to contact Miss C, BMF's notes say they sent a Letter before Action to Miss C in November 2021. I'm aware Miss C disputes this, and BMF haven't provided us with a copy of the letter despite my specific request for it. I also haven't seen a copy of the Return of Goods claim, which BMF's notes say was sent on 13 December 2021. But the court order states that the court tried to contact Miss C by email and by phone, receiving no response. So although I can't be sure BMF notified Miss C of the hearing, I think it's reasonable to say she ought to have been aware it was taking place. So even if BMF didn't notify Miss C of the court hearing, I can't say the impact of this would have been significant.

Following the court hearing, BMF used an agent to try to recover the car in March 2022. It's clear from that agent's notes that they tried two different addresses and attempted to contact Miss C by phone and by email and couldn't trace the car. So I can't say BMF acted unreasonably in reporting the car stolen later in the year – they'd tried repeatedly to contact Miss C and recover the car amicably but weren't able to do so.

In relation to Miss C's personal belongings and private number plate, I'm not inclined to uphold this element of the complaint. As I've already noted, BMF tried repeatedly to resolve the account issues amicably with Miss C and weren't able to – it's not reasonable to say they should have made additional efforts to return her personal belongings. And BMF's terms and conditions explicitly state that any private plates added to the car without their written permission become the property of BMF. As the vehicle has been sold, there's nothing further I can suggest in relation to the belongings and private plates.

In summary, BMF have agreed they shouldn't have lent to Miss C, so they need to put this right. And I don't think they acted with forbearance and due consideration in the summer of 2020 – so they also need to put that right. I haven't formed a conclusion on whether or not BMF notified Miss C of the court proceedings – instead I've found that this wouldn't have had a significant impact as I can see the court attempted to notify her. And I don't think BMF have treated Miss C unfairly in taking her to court or in the actions they took subsequently to recover the vehicle."

BMF didn't reply to my provisional decision. Miss C didn't comment specifically on the decision but continued to seek proof that she'd been notified of the court action.

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 had any substantive comments on my provisional decision, my findings are unchanged from those set out above and I'm upholding Miss C's complaint.

Putting things right

As BMF shouldn't have lent to Miss C, it's not fair for her to pay any interest or charges under the agreement. But it is fair that she pays for her use of the car, which was for around 45 months. I appreciate Miss C's said that if she hadn't had the car she'd have had minimal costs of around £50 - £80 per month for a bus pass. But she's told us she needed a large car to transport goods for her business. And I can see from the contact notes how important it was to her to keep the car. So I'm not persuaded by this statement. And Miss C would have travelled with significantly greater convenience and comfort than she would have done on a bus – so it's fair the usage figure reflects this.

Having considered the amount of interest on the agreement and Miss C's overall usage of the car, I think a fair amount she should pay is £245 for each month she had use of the car, so a total of £11,025. BMF should:

- arrange an affordable and sustainable payment plan with Miss C for the outstanding balance;
- remove any adverse markers from her credit file once she's paid this amount in full; and
- pay £150 to Miss C for the trouble and upset caused by their lack of forbearance and due consideration in the summer of 2020.

My final decision

As I've explained, I'm upholding Miss C's complaint. Blue Motor Finance Ltd need to take the steps I've outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept

or reject my decision before 8 May 2024.

Clare King
Ombudsman