

The complaint

Mr S complains that Blue Motor Finance Ltd (BMF) didn't sufficiently check he could afford to sustain the repayments of a hire purchase agreement he entered into with them.

In bringing his complaint Mr S is represented by a third party. For ease of reading I will only refer to Mr S in my decision.

What happened

In February 2018 Mr S acquired a car when he entered into a hire purchase agreement with BMF. The cash price of the car was £16,084.58, after interest and charges were applied the total amount repayable over 77 months was £23,257.69. This was to be repaid by 76 monthly payments of £299.97 with a final payment of £449.97. Mr S settled the agreement in February 2020. Mr S said he was already indebted, having several credit cards, which should have been seen by BMF. And by them agreeing to the lending he'd struggled to maintain his other financial commitments. He complained to BMF.

BMF said they'd checked Mr S' credit worthiness using credit reference agencies (CRA), and they'd looked for signs of financial stress and affordability issues. They said this included consideration of Mr S' credit card utilisation and his debt over income ratio. Based on the information they saw they decided that Mr S could afford the lending.

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

Our investigator said he hadn't seen any evidence that BMF had looked at Mr S' expenditure other than his credit commitments. And given the lending was over 77 months they should have done this. After reviewing Mr S' bank statements he found that Mr S didn't have sufficient income to maintain the repayments. He said as the lending wasn't affordable BMF should:

- Refund any payments Mr S had made in excess of £16,084.58, representing the original cash price of the car. And add 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr S' credit file regarding the agreement.

As BMF hasn't said whether they accept or reject our investigator's finding the complaint has been referred to 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 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?

Regulations in place at the time BMF lent to Mr S required them to carry out a reasonable assessment of whether he could afford to repay the loan in a sustainable manner.

This is sometimes referred to as an "affordability assessment" or "affordability check". The affordability checks should be "borrower-focused", meaning BMF needs to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr S. In other words, it wasn't enough for BMF to think only about the likelihood that they would get their money back without considering the impact of repayment on Mr S himself.

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty. Consideration should also be given to the amount, type and cost of credit being applied for. We take the view that a reasonable and proportionate check would usually need to be more thorough, the lower a consumer's income, the higher the amount due to be repaid, the longer the term of the loan and the greater the number and frequency of loans.

The Financial Conduct Authority's Consumer Credit Sourcebook (CONC) sets out the relevant rules and guidance. 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)."

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."

BMF has shown they checked Mr S' credit history and the information he provided on his application. That being his income was £22,000 per annum and that he was single living with parents.

From the credit history that BMF saw, not considering the existing car loan of around £174 a month as this was settled as part of the new agreement. Mr S had four credit cards, a fixed sum loan, two mail order accounts and three current accounts. He'd an overdraft facility of

£1,000 for one of his current accounts and his credit file showed he was using £937 of this.

I haven't seen any independent income check or a reasonable estimate being made as to Mr S' non-discretionary expenditure other than a credit check that showed his credit commitments. So, I don't think the checks BMF were proportionate or reasonable especially given the term of the lending.

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 to Mr S – 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. 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.

I've looked at Mr S' bank statements from three months prior to the loan being approved. His average income across the three months was around £1,185. His credit commitments based on full utilisation of his credit limits (as this is credit he can draw down from) totalled around £420 a month. Non-discretionary expenditure for rent (paid to parents), food, petrol, transport costs including insurance was around £505 a month. This would have left Mr S with around £260 a month before the new lending of £299.97 was factored in. So if BMF had seen Mr S' financial situation I think as a responsible lender they would have seen as I have that the lending wasn't affordable for him.

Putting things right

Mr S settled the loan agreement with BMF in February 2020 and has since acquired another car. Our approach in situations such as these is to put the consumer back into the position they'd have been in if the loan agreement hadn't been taken out.

The original cash price of the car was £16,084.58, to put things right, Mr S shouldn't have had to pay any more than this. So, BMF should refund Mr S any amount he'd paid in excess of the cash price, adding 8% simple interest. And remove any adverse information recorded about the agreement to Mr S' credit file.

My final decision

I uphold this complaint. And ask Blue Motor Finance Ltd to:

- Refund Mr S any payments he'd made above the cash price of £16,084.58 adding *8% simple interest from date of payment to date of settlement.
- Remove any adverse information recorded on Mr S' credit file with regard to the agreement.

*HM Revenue & Customs requires Blue Motor Finance Ltd to take off tax from this interest they must give Mr S a certificate showing how much tax they've taken off should he ask for one

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 9 July 2024.

Anne Scarr
Ombudsman