

The complaint

Mr S complains that Blue Motor Finance Ltd (“BMF”) didn’t conduct sufficient affordability checks before providing him with a hire purchase agreement. Had it done so, it would’ve discovered the agreement wasn’t affordable.

What happened

In February 2019, BMF provided Mr S with a hire purchase agreement for a used car which had a retail price of £15,175. No deposit was paid, and so Mr S financed the entire value of the vehicle, and the agreement had interest, fees and charges totalling £8,089.20. The total amount to repay under the term of the agreement was £23,264.20. This agreement was to be repaid in 60 monthly repayments of £387.22. The statement of account provided by BMF shows that as of May 2024 an outstanding balance remained due of £8,037.71.

BMF considered Mr S’s complaint and didn’t uphold it. BMF concluded adequate checks were conducted which showed the agreement to be affordable. And while Mr S did have some problems making his repayments this occurred due to a change in circumstances after the agreement was entered into.

Mr S’s complaint was considered by an investigator and they upheld the complaint. The investigator said further checks were needed because BMF hadn’t checked the accuracy of his declared income. Had further checks been conducted it’s likely BMF would’ve likely discovered he had outstanding payday loans and when thinking about Mr S’s other living costs the investigator concluded the agreement wasn’t affordable.

Mr S agreed with the investigator’s findings, but BMF disagreed. It said that the income it could see in Mr S’s bank statement of just over £1,860 supported the salary figure given as part of the application and so it was likely accurate. BMF also signposted the investigator back to its final response letter as to why it didn’t consider an error was made when it advanced the hire purchase agreement.

These comments didn’t change the investigator’s assessment and so 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.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr S’s complaint. Having carefully thought about everything I’ve been provided with, I’m upholding Mr S’s complaint. I’d like to explain why in a little more detail.

BMF needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that BMF needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr S before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

As part of the affordability checks BMF asked Mr S to declare his salary and then it spoke to his father who confirmed that Mr S lived at home. A credit search was also carried out and the results of these checks led BMF to conclude Mr S would be in a position to afford the hire purchase agreement.

Mr S declared an annual salary of £30,000 and that he'd worked at his current employer for only four months. But no further checks or verification appear to have been conducted into Mr S's income – and the rules and regulations say that at the time the agreement was entered into “...*it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence*” – as set out in CONC 5.2A.16(3).

I think this would've been needed in the circumstances considering that Mr S had – by his own admission - only recently started working in his current role. BMF didn't need to ask for bank statements, but it could've asked for copy payslips or any other documentation to have confirmed Mr S's income. In relation to the income, I'm satisfied BMF needed to go further than solely relying on what it was told.

A credit search was also conducted that showed Mr S only had two active accounts: one was a current account and one was a credit card with a £250 balance. Both accounts had a good repayment history. The credit checks alone wouldn't been sufficient to have either declined the application.

BMF says it checks information “...*including income and employment status, comparing outgoings with income stated by out [sic] potential customer.*” In the circumstances of this complaint BMF says none of its triggers were activated and so Mr S's application was accepted.

However, I do have concerns about this because there isn't anything in the information provided to show that BMF had any idea of what Mr S's everyday living costs were and while the credit checks didn't show a lot of outstanding debt, in my view, this check wasn't sufficient to enable BMF to make an informed lending decision.

I accept BMF knew that Mr S lived at home with parents and so wouldn't necessarily have the day-to-day bills – such as utilities or council tax that someone with a mortgage or rent may have. But that doesn't mean Mr S wouldn't have had any outgoings at all and so I do think at the very least, BMF ought to have made enquires with Mr S to find out what, if any day to day living costs he had.

Like the investigator, I do think that before the loan was approved, BMF needed to conduct further checks into Mr S's financial situation. It could've gone about doing this a number of ways, it could've asked for bank statements or any other documentation BMF felt was needed to satisfy itself that Mr S wasn't overindebted or continuing to have difficulties.

I accept that had BMF conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of BMF conducting a proportionate check I do think it's entirely fair and reasonable to consider the bank statement that I now have access to.

Having looked at the bank statements, I can see just over a week before the hire purchase agreement was entered into Mr S received a salary of just over £1,630 – which would equate to less than the £30,000 salary he declared. In January 2019 he received just over £1,130 – which would be significantly less than the declared salary.

I do agree with BMF at this point that it's likely his January 2019 salary was lower than he may otherwise have received and this is probably due to the fact that Mr S had only recently started working for his employer. But nonetheless, the apparent first full month's salary Mr S received was lower than perhaps BMF may have expected given the declared annual income.

I also made some enquiries with Mr S about this and he told us, at the time he was on a zero-hour contract, and so his salary would fluctuate as he would only be required to work as and when he was needed. I think this is a plausible explanation as to why Mr S's salary appeared to fluctuate month on month. Had BMF carried out a proportionate check I think it's likely that this would've been discovered.

In addition, I can see that shortly after Mr S received his income he made a number of payments to family members – these appear in both in the January and February 2019 statements. Again, BMF would've likely seen this, and had it carried out proportionate checks and Mr S has confirmed these payments were for rent, food and for paying back money for a previous car repair – so a loan. These payments total more than £600 per month.

Indeed, moving forward, Mr S received just over £1,000 when he was paid in March 2019 – which again is a further reflection that he was on a zero-hour contract, BMF may not have known that the salary would drop at this point but it does reinforce that Mr S's salary wasn't as stable as BMF thought. With his payment due to BMF that already brings Mr S's outgoings to around £1,000 per month before his other costs are paid.

And in the weeks before the agreement was taken out Mr S had started to use payday loans, these loans didn't show in the credit report produced by BMF – which isn't unusual given the start dates of these loans. But, I do think it would've likely known about them had it conducted what I consider to be a proportionate check.

In the weeks before the loan was approved, Mr S had borrowed at least £400 in such loans. While one had been repaid he then immediately returned to the same company for a loan the day after it was repaid – and so was still outstanding at the time the finance was granted.

The bank statements provided by Mr S do show that he was already showing signs of being in financial difficulties, he had two direct debits that were due to be paid to an insurance company. One was for £25 per month, and one was for nearly £36 per month. And I can see from the bank statements Mr S had problems paying those payments in November 2018 and in both January 2019 and February 2019. The payments were direct debits and so were returned as unpaid – indeed in January 2019 there were two failed payments. CONC 1.3(5) says failing to meet payments when due is a likely sign that a customer is likely already experiencing financial difficulties.

So, with Mr S's fluctuating monthly income due to his zero hours contract, his use of payday loans, the fact he had living costs that don't appear to have been accounted for, the cost of

the loan and his apparent difficulties meeting his existing outstanding payments has led me to conclude that BMF ought to have realised this agreement was unaffordable and not lent to him.

Finally, I've also thought about whether BMF acted unfairly or unreasonably in any other way and I've considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have set out below results in fair compensation for Mr S in the circumstances of the complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

I've set out below what BMF needs to do in order to put things right.

Putting things right

To settle Mr S's complaint BMF should do the following:

- End the agreement with no further payments and transfer ownership of the vehicle to Mr S because he appears to have already repaid the cash value of the vehicle - £15,175.
- BMF should then calculate how much Mr S has paid to it in total and then from this it should deduct the cash price of the vehicle.
- If Mr S has paid more to BMF than the vehicle cash price then these overpayments should be refunded with 8% simple* interest per year from the date the overpayment arose to the date of settlement.
- Remove any adverse information recorded on Mr S's credit file regarding the agreement.

*HM Revenue & Customs requires BMF to take off tax from this interest. BMF must give Mr S a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've outlined above, I am upholding Mr S's complaint and Blue Motor Finance Ltd should put things right for Mr S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 October 2024.

Robert Walker
Ombudsman