

Complaint

Miss B complains that Blue Motor Finance Ltd ("BMF") unfairly entered into a hire-purchase agreement with her. She's said that the proper checks weren't carried out which led to her being provided with finance that was unaffordable and this created an unfair lending relationship.

Background

In February 2018, BMF provided Miss B with finance for a used car. The purchase price of the vehicle was £9,000.00. Miss B didn't pay a deposit and entered into a 61-month hire-purchase agreement with BMF for the entire amount she required.

The loan had interest, fees and total charges of £4,422.62, which was made up of interest of £4,045.20, a credit acceptance fee part A of £217.42, a credit acceptance fee part B of £150 and an option to purchase fee of £10. So the total amount to be repaid of £13,422.62 was due to be repaid in 60 monthly instalments of £217.42 followed by a final monthly payment of £367.42.

In March 2024, Miss B complained to BMF saying that the agreement was unaffordable and therefore BMF shouldn't have entered into it with her. BMF didn't uphold Miss B's complaint. Miss B remained dissatisfied at matters and referred her complaint to our service.

When responding to our request for its file on Miss B's complaint, BMF told us that it believed that Miss B complained too late. Miss B's complaint was subsequently considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown BMF that it shouldn't have provided Miss B with the finance. So she didn't think that Miss B's complaint should be upheld.

Miss B disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. BMF has argued that Miss B's complaint was made too late because she complained more than six years after its decision to provide the finance as well as more than three years after Miss B ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why Miss B's complaint was one alleging that the relationship between her and BMF was unfair to her as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Miss B's complaint. Given the reasons for this, I'm satisfied that whether Miss B's complaint about the hire-purchase agreement was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss B's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Miss B has not only complained not about the decision to lend but has also alleged that this resulted in an allegedly unfair lending relationship between herself and BMF.

I'm therefore satisfied that Miss B's complaint is one about the overall fairness of the lending relationship between her and BMF. I acknowledge BMF may still disagree that we can look at Miss B's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss B's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss B's complaint can be reasonably interpreted as being about the fairness of the lending relationship between her and BMF, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (BMF) and the debtor (Miss B), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Miss B's complaint, I therefore need to think about whether BMF's decision to lend to Miss B, or its later actions resulted in the lending relationship between Miss B and BMF being unfair to Miss B, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss B's relationship with BMF is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Miss B's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, BMF didn't then somehow remove the unfairness this created.

I'll now turn to whether BMF acted fairly and reasonably when entering into the hire-purchase agreement with Miss B.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 Miss B's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to credit were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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 it needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that a lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own mean that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Miss B's complaint.

Was BMF's decision to enter into the hire-purchase agreement with Miss B fair and reasonable?

BMF says it agreed to Miss B's application after Miss B provided details of her employer and her income. It says it also carried out credit searches on Miss B which showed that she didn't have any significant adverse information – such as county court judgments ("CCJ") or defaulted accounts recorded against her. Although it does accept that it is likely to have seen some missed payment information recorded against her.

On the other hand, Miss B has said that the repayments were unaffordable for her and this created an unfair lending relationship.

I've thought about what BMF and Miss B have said.

The first thing for me to say is that while I accept that BMF carried out a credit check, I'm not persuaded that BMF's checks went far enough. In my view, given the amount of the monthly payment, the fact that there were missed payments on the credit check and the length of time the agreement was due to run for, I think that BMF needed to take further steps to ascertain Miss B's living costs for its checks to have been proportionate here.

I can't see that BMF did this. So I'm not satisfied that its checks before lending were proportionate in this instance.

As I've explained, given the circumstances here, I would have expected BMF to have had a reasonable understanding about Miss B's regular living expenses as well as her income and existing credit commitments.

While I've looked at the bank statements Miss B has provided in order to do this, I've done this because I'm having to retrospectively determine what a proportionate check is likely to have looked like a number of years after this should have been done. And bank statements have all the information I now need to do this. However, I wish to make it clear that BMF was not required to review Miss B's bank statements prior to lending.

In any event, the bank statements provided do appear to show that when Miss B's committed regular living expenses are added to what BMF knew about her existing credit commitments and then deducted from the funds going into her account, there were sufficient funds left over, at the time at least, for her to sustainably make the repayments due under this agreement.

I appreciate that Miss B says that she didn't have the disposable income to make the payments to this agreement. However, the figures being put forward now are from an expenditure assessment conducted from bank statements. This is a more granular assessment capturing Miss B's total expenditure rather than a likely indication of what Miss B is likely to have declared about her living expenses. Furthermore, this includes all of Miss B's expenditure not just what she was committed to paying.

I'm also mindful that Miss B's most recent submissions are being made in support of a claim for compensation and at the time of the application at least, Miss B would have wanted the car. So, in my view, any explanations she would likely have provided to BMF at the time are more likely to have been with a view to persuading it to lend her, whereas now she's trying to show that the agreement was unaffordable.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any credit provided was unaffordable. I'm satisfied that the available information does not clearly show me that proportionate checks would have shown that Miss B could not make the monthly payments to this agreement in a sustainable manner.

As this is the case, I've not been sufficiently persuaded that BMF would have declined to lend if it had found out the further information that I think it needed to here. So I've not been persuaded that it was unfair for BMF to lend to Miss B.

In these circumstances, I don't find that the lending relationship between Miss B and BMF was unfair to Miss B. I've not been persuaded that BMF created unfairness in its relationship with Miss B by irresponsibly lending to her when it entered into this hire-purchase agreement with her. And based on what I've seen, I don't find BMF treated Miss B unfairly in any other way either.

Overall and having considered everything, while I can understand Miss B's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Miss B. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 12 May 2025.

Jeshen Narayanan
Ombudsman