

complaint

Mr V complains he was coerced into taking out a hire purchase agreement with Blue Motor Finance Ltd (BMF) in his name.

background

In August 2016, Mr V took out a hire purchase agreement to acquire a car. The total amount payable on the agreement was £30,771.34 and a deposit of £5,295 was made towards this. The agreement was to be repaid by 49 monthly instalments of £516.66.

Mr V says he was coerced into taking out this agreement for someone else, who I'll refer to as "R". Mr V says R asked him to carry out some building works at his property in return for helping Mr V get a mortgage. R said he would speak to a mortgage broker on Mr V's behalf.

Mr V says the mortgage was never arranged so he asked R to pay him for the building work that he carried out. It was at this point Mr V says R forced him to take out the hire purchase agreement in his name. When Mr V initially declined this, he says R threatened him and said something like "*don't be stupid, because people who have been stupid have paid dearly*".

Mr V says R drove him to the dealership where R chose the car and the agreement was taken out. Mr V says he inflated his salary significantly on the application in the hope that BMF would notice Mr V was being coerced into taking out the agreement. Unfortunately, Mr V hasn't been able to provide us with any messages between him and R as he says R often communicated with him in person.

Mr V says R has threatened him and his family on more than one occasion and that Mr V moved house to avoid feeling threatened. After he moved, Mr V says he reported matters to the police and Action Fraud - this was around two years after the agreement was taken out. Mr V has provided us with crime reference numbers for both reports. Mr V says he has never had the car and that as a result of BMF defaulting the account, he isn't able to get a mortgage. So, Mr V wants the default removed and the outstanding amount on the agreement to be written off.

BMF say their records show Mr V entered the dealership, signed the documents in the dealership and provided personal details such as his bank account details. BMF also say the police didn't register Mr V's concerns as a crime and that Action Fraud said there wasn't enough evidence to prosecute R. So, they didn't think there was enough information to show Mr V entered into the agreement under coercion.

BMF say Mr V took the car to a third-party garage for repairs in October 2016 and that it remained there until BMF reclaimed it. The invoices provided by the third-party garage show Mr V's address details. BMF have explained that the third-party garage say it was Mr V who dropped the car off to them for the repairs. The third-party garage say they had undertaken approximately £8,000 worth of repairs. And that the car was never collected.

Mr V says he never went to the third-party garage and that R had previously brought some documents to him which he was forced to sign. Mr V also says R knew a lot of his personal details as he said he would help him get a mortgage. So, it didn't surprise Mr V that his address details were on the invoices.

BMF say they sold the car at an auction and used the money to reduce the outstanding amount owed on the finance. BMF say the remaining amount on the agreement is £7,486.38. BMF say they defaulted the account because Mr V wasn't in possession of the car.

Our investigator looked into Mr V's concerns. In summary, he said there wasn't enough evidence to suggest Mr V was coerced into taking out the hire purchase agreement. And that the checks carried out by BMF at the time of the application weren't reasonable. However, even if BMF had carried out further checks, they would have likely still accepted the application. So, he didn't think BMF did anything wrong.

Mr V disagreed. He reiterated that he reported matters to the police once he moved to a different address as he'd felt safe to do so. So, the complaint has been passed to me to decide.

I issued my provisional findings on this complaint setting out the below:

The agreement in this case is a regulated consumer credit agreement. As such, this service can consider complaints relating to it. Our investigator focused mainly on whether the finance was affordable for Mr V and about BMF's decision to lend to him. However, that doesn't appear to be the complaint Mr V has made - I don't think affordability is the crux of this complaint. And instead I think it's that Mr V felt coerced into entering into the agreement, and that it's not fair BMF is holding him liable for the debt.

Affordability

I've first thought about whether BMF completed reasonable and proportionate checks on Mr V to satisfy themselves that he was in a position to repay the finance in a sustainable way. And to do this, a few things I've thought about is the amount of credit, the total repayable and size of monthly repayments as well as the duration of the agreement and Mr V's individual circumstances.

BMF say they carried out a credit check on Mr V at the time, but they no longer have the results of that check. BMF explained they didn't do any affordability checks as their system accepts proposals automatically unless any irregularities flag up. However, BMF say Mr V's credit file showed no adverse entries. BMF say in addition to this, Mr V declared an income of around £79,000 on the application and a deposit of £5,295 was paid. BMF also say Mr V had normal utility outgoings which were relatively low. So, they felt the lending wasn't unaffordable for Mr V.

Whilst I appreciate BMF have said their systems accept proposals automatically, I think they ought to have looked into Mr V's financial situation further than they did. I say this because Mr V provided us with a copy of his payslip from around the time the finance agreement was taken out. And I can see it shows he earns £800 a month - which is far less than the amount BMF say Mr V declared on the application form. The monthly repayments on this agreement were also £516.66 which I think were quite high. With this in mind I think BMF should've taken further steps to verify if Mr V could sustainably meet the repayments and I think they should've done more to verify his income and outgoings. I've therefore gone on to consider whether I think further checks would have shown Mr V would have been able to meet the repayments.

I can see from the bank statements provided that Mr V had a lot of income from a variety of sources - these included payments from third parties but I can also see money was being transferred from Mr V's other bank accounts. Based on the evidence we've got, it's not really clear what BMF would've seen had they done proportionate checks. And I don't feel I can come to the conclusion that it wasn't responsible for BMF to allow Mr V to take out this finance. However, I think there is another reason Mr V shouldn't be held liable for this agreement which I'll go on to.

Coercion

There's no doubt that Mr V took out the hire purchase agreement - the details on the agreement are Mr V's and he has acknowledged this. However, Mr V has consistently told us he was pressured and coerced into taking this agreement out by R. And I'm persuaded by his testimony. I'll explain why.

Mr V says he has never used the car and that he was never in possession of it - he saw the car once when he went with R to the dealership. Mr V says he was coached by R into what to say before they approached the dealership. I can see from the information provided that the registered keeper and owner of the car details changed to R's details five days after the agreement was taken out. Mr V says he vaguely remembers the make of the car but that is all. So, I believe Mr V when he says the car has never been in his possession and he didn't use it.

I understand the third-party garage believe it was Mr V who dropped the car off to them for significant repairs in October 2016 - just two months after the agreement was taken out. Mr V says he has never heard of this garage and has reiterated that he never had the car to be able to drop off. I can see Mr V also told BMF he had no knowledge of the dealership during a conversation in June 2017. Mr V says he first heard that the car was with this garage when BMF told him about it. I've carefully thought about this and I find it unlikely that it was Mr V who dropped the car off to the third-party garage. I say this because as I've already explained, Mr V wasn't the registered keeper and owner of the car at the time and he's been consistent in telling us he never had the car.

Mr V says R forced him to sign some paperwork and he now believes the paperwork was to endorse the repairs the garage said the car needed. The invoice provided by the third-party garage quoted over £8,000 worth of repairs - this amount was paid by BMF. Mr V says R knew his address and contact details, so I don't think it's unreasonable the repair invoice had Mr V's details on it as R could have passed these on to the garage. In any case, I can see from BMF's internal notes that when they sent an independent inspector to look at the car which was still at the garage, it was noted that all the repairs the garage were charging didn't appear to have been carried out. The inspector specifically says: "No evidence of engine being taken out - bolts not touched – oil is relatively old and no evidence of rear diff being changed - housing would have shown some cleaning". And it's also noted that the car drives very well but that there is a slight problem when changing from reverse to first gear. I can see BMF then challenged this with the garage. I can see the internal notes confirm that in January 2018, BMF received the difference in what they paid for the repairs and what they thought the repairs ought to have cost which was around £6,000. So, having thought about this, I find the third-party garage's testimony to be unreliable. I can see from BMF's internal notes that when Mr V contacted them in December 2017, he was told that they wouldn't pursue him for the repair bill and I think this is fair.

BMF recognise Mr V reported matters to the police and Action fraud. But they have said Mr V didn't do this until a year and a half after the agreement was taken out. Mr V says he reported matters in May 2018 and the reason he didn't do this sooner because R knew where he lived, and he often threatened Mr V and his family. Mr V says he finally reported matters when he felt safe to do so as R didn't know the details of his new address. Mr V says he was trying to get help from BMF up until this point as he'd told them about the coercion in a number of conversations he had with BMF.

Whilst the police and Action Fraud may have chosen not to take further steps with the investigation, I don't think that means Mr V didn't feel pressured and coerced into taking out the agreement. I also don't think it's fair to disregard this point due to the length of time Mr V took to report matters. Mr V clearly felt he was a victim, which is why he ultimately went to the police and to Action Fraud. And he'd also already made BMF aware of how he felt on more than one occasion. I don't think it's likely Mr V would've gone to the police or Action Fraud if there wasn't anything to report. And I also don't think the fact that Action Fraud and the police may have decided not to prosecute R means Mr V wasn't coerced into taking out the agreement.

In addition to this, I can see from BMF's internal notes, Mr V called them in January 2017. During this call, Mr V says that he was forced to take out the finance and that his life was in danger if he didn't do this. I appreciate this call was ended abruptly by Mr V and that he didn't provide any of his personal details. But I can see from the notes, BMF were able to identify it was Mr V by linking his phone number to his agreement. However, BMF took no further action at this stage, despite being able to trace the call back to Mr V. So even though Mr V didn't report matters until some time later, BMF were initially aware in January 2017 (five months after the agreement was taken out), that Mr V felt coerced into taking out the agreement.

There's a further call to BMF from Mr V at the beginning of February 2017 where Mr V explains the coercion in further detail. Mr V also provides BMF with R's details - including his full name and address. In this call, BMF ask Mr V why he didn't report matters at the point the agreement was taken out. Mr V says this was because he was fearful of R. So again, Mr V makes BMF aware of being coerced into taking out the agreement and provides them with R's details. I would've expected BMF to further investigate matters at this stage and even look to repossess the car, especially as they had the details of who had the car, but I can't see this happened. Instead, BMF tell Mr V to report it to the police and they give him seven days to do this. In the same call, BMF also explained they would look to send out a section 87 default for being out of possession of the car. So BMF were aware Mr V didn't have the car and they then defaulted the account in July 2017.

Mr V says even though he never had possession of the car, he made the payments towards the finance agreement. Mr V says this was so that his credit file wouldn't be impacted. Mr V says he cancelled the direct debit for the agreement when he moved to a new house and that this happened in 2017. I can see from the statements BMF have provided, that the direct debit was cancelled at the beginning of May 2017. So, I think this resonates with what Mr V has told us.

Having thought about everything, I do believe something has gone wrong. I appreciate a lot has happened, but on balance, I'm persuaded Mr V was coerced into taking out this agreement. And I'm persuaded by Mr V's version of events. So, I don't think it's fair for BMF to pursue him for the outstanding amount.

Putting things right

I understand BMF sold the car at an auction in April 2018 and offset this from the remaining amount under the finance. BMF sold the car for £14,980 and say there is £7,486.38 left outstanding which Mr V is liable for.

As I've explained, BMF were made aware in January 2017 and again in February 2017 that Mr V felt forced to take out this agreement by R. Whilst there isn't much evidence from the point of supply to show Mr V was coerced into taking out the agreement, I think BMF could've done more when they were put on notice that Mr V did feel coerced. And I feel this point was when Mr V provided BMF with further details of the coercion and also provided them with R's details in February 2017. I think BMF ought to have investigated matters further and I don't think it was enough to direct Mr V to report matters to the police. So, what's left for me to decide is who would have been liable for the outstanding amount (if there likely would have been one in February 2017).

I can see from the statements BMF provided that in February 2017, there was around £22,890 outstanding on the agreement. I've looked at two motor valuation guides to get an idea of what the car would've likely have sold for at auction had BMF recovered it in February 2017. One guide shows it likely would've have sold at auction for £22,100. And the other shows it likely would have sold for £22,580. So had BMF repossessed the car in February 2017, its likely it would have sold at auction for somewhere in the region of £22,340. Given Mr V had around £22,890 outstanding on the agreement, it's likely there would've been a shortfall of around £500. Given I think BMF should have recovered the car in February 2017, Mr V wouldn't have needed to make the repayment of £516.66 for this month. So, rather than BMF refund this amount directly to Mr V, I think it's fair for BMF to use this payment to offset what likely would have been owing in February 2017. So, this leaves Mr V with nothing further to pay and I think BMF should stop pursuing him for the outstanding amount.

I won't be recommending BMF refund Mr V the monthly payments he made towards the agreement. I say this because I don't think BMF made a mistake in giving the hire purchase agreement to Mr V when the car was first supplied. As I've explained, I don't think there's enough evidence to show Mr V was coerced at the point of supply by R.

In relation to the deposit, Mr V has told us he didn't pay this and believes it was paid by R. So, I won't be asking BMF to refund the deposit to Mr V as I don't think it's fair he receives a refund for something he didn't pay for.

I can see from Mr V's credit file that BMF defaulted this account in July 2017 as a result of Mr V not being in possession of the car. However, I think the default should be removed and Mr V's credit file should be updated to reflect this. I say this because I've already made the finding that Mr V was coerced into taking out this agreement. So, it's for this reason I think BMF ought to remove any information recorded on Mr V's credit file in relation to this finance agreement.

Responses to my provisional decision

Mr V responded to my provisional decision and had no further comments.

BMF responded and provided me with points to consider. I've summarised below what I consider to be the most relevant elements of their response:

- Mr V didn't raise any concerns about being coerced when he called BMF to make a payment. And that he only raised concerns around four months after the agreement had been taken out.
- If Mr V was coerced, he ought to have reported it to the police sooner. In addition to this, BMF say it's their duty to recommend a customer do this if they raise coercion.
- Despite reporting matters to Action Fraud and the police, neither authority found sufficient evidence that Mr V was a victim of a crime.

- BMF recognise that Mr V had told them he was afraid of R and that they had no knowledge of where the car was. Therefore, they don't think they would've been able to repossess the car as suggested in my provisional decision.
- The car was inspected in BMF's car park after the alleged repairs had been paid for. However, once the engineer confirmed the repairs hadn't been carried out as detailed in the invoice provided by the third-party garage, BMF had to threaten legal action against the garage in order to reclaim costs.

my findings

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

I appreciate Mr V may not have raised any concerns about being coerced when he called BMF to make a payment a few days after the agreement was taken out. However, Mr V has been consistent in telling us that he didn't raise things sooner as he feared R, which BMF have acknowledged. And I think this is a reasonable explanation as to why Mr V may not have raised his concerns sooner. Nevertheless, BMF were made aware of the coercion in January 2017. So, whilst this may have been a few months after the agreement was taken out, I think they could've done more at this point to look into matters further.

BMF have said neither Action Fraud nor the police found Mr V had been the victim of a crime. But I don't think Mr V had to be the victim of a crime for him to have felt pressured and coerced into taking out the agreement. And, ultimately, my remit is to consider all the facts of the information I have and reach a fair and reasonable outcome.

I appreciate BMF say they didn't know where the car was. Therefore, they don't think they would've been able to repossess the car. However, BMF's internal notes show Mr V was able to provide them with R's address details in February 2017. In addition to this, the name and registered keeper details BMF provided our service with shows R's address details as of February 2017. So, I think BMF could've used the details that were provided to them to locate the car. Or at the very least, to contact R.

Having thought about everything further, I think BMF could've done more when they were made aware Mr V felt coerced into taking out the agreement. And my opinion remains that I think Mr V was coerced into taking out this agreement.

my final decision

For the reasons explained above, my decision is that I uphold this complaint. And I order Blue Motor Finance Ltd to:

- Stop pursuing Mr V for the outstanding amount on the agreement.
- Remove any information from Mr V's credit file in relation to this finance agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 27 April 2021.

Leanne McEvoy
ombudsman