

The complaint

Miss M complains that Blue Motor Finance Ltd (Blue Motor) irresponsibly granted her a hire purchase agreement that she couldn't afford to repay.

What happened

My initial conclusions were set out in my provisional decision issued on 24 January 2024. In my provisional decision I explained how I intended to resolve the complaint. I said:

In March 2022 Miss M acquired a vehicle financed by a hire purchase agreement from Blue Motor. Miss M was required to make 51 monthly repayments of £210.10. The total amount repayable under the agreement was £10,716.10. Miss M believes Blue Motor failed to complete adequate affordability checks. Miss M says that if it had it would've been clear the agreement wasn't affordable because she was already struggling financially.

Blue Motor disagreed. It said it carried out an adequate assessment which included a full credit search, confirmed employment status and declared income. It said these searches showed Miss M's existing borrowing levels were within an acceptable level and that her declared income was sufficient.

Our Investigator didn't recommend that the complaint should be upheld. They thought Blue Motor's checks weren't proportionate but that had it completed proportionate checks it would've still found the lending was affordable.

Miss M didn't agree. She felt that further consideration needed to be made around her expenditure and provided her own estimations for her average expenditure at the time – stating that her food, fuel and council tax costs were paid mainly via a credit card. She asked for an Ombudsman to issue a final decision on the matter.

What I've provisionally 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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Miss M's complaint. Blue Motor needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Blue Motor needed to carry out proportionate checks to be able to understand whether any lending was affordable for Miss M before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Miss M's complaint. These two questions are:

1. *Did Blue Motor complete reasonable and proportionate checks to satisfy itself that Miss M would be able to repay his loan without experiencing significant adverse consequences?*
 - *If so, did it make a fair lending decision?*
 - *If not, would those checks have shown that Miss M would've been able to do so?*
2. *Did Blue Motor act unfairly or unreasonably in some other way?*

Did Blue Motor Finance Ltd complete a reasonable and proportionate affordability check?

Blue Motor was required to ensure it carried out adequate checks on Miss M's ability to sustainably afford the agreement. These checks had to be borrower-focused and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

Blue Motor says that Miss M's application underwent credit and underwriting checks, and these didn't raise any concerns. Her income was verified against her employment, and Blue Motor also used statistical data to estimate the level of expenditure Miss M had at the time, combined with an estimate of her ongoing monthly borrowing commitments from her credit file. It felt that these searches were reasonable and proportionate in this scenario.

I'm not satisfied that Blue Motor gathered a reasonable amount of information from Miss M about her expenditure prior to approving the finance. I understand Blue Motor made the decision to lend on the basis that her accounts were being managed well and found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Miss M.

Miss M has provided me with a copy of her credit file that shows the information that was likely available at the time the finance was taken out. This, combined with the bureau data provided by Blue Motor shows several credit cards, unsecured loans and mail order accounts. It also shows a number of accounts opened only shortly before the lending started. The borrowing levels on at least some of the credit cards Miss M held were significant – and I'm satisfied that there was enough information there to indicate that Miss M was frequently and progressively sourcing new credit. I do think this all ought to have indicated Miss M may have been struggling financially and so I would've expected Blue Motor to take further consideration of Miss M's specific financial situation before approving any lending.

I want to be clear that I've considered Blue Motor's position about the number and type of checks that it did complete. And I understand that its searches attempted to approximate Miss M's disposable income. However, considering her financial picture at the time I'm not satisfied that these checks adequately gathered a proportionate amount of information as they failed to answer how much she actually had left to spend after her existing commitments.

Given the size of the lending, the monthly repayments, the length of agreement, and the information in Miss M's credit file, I think it would have been proportionate for Blue Motor to have verified Miss M's expenditure – including costs such as food, petrol and housing. Without knowing what her regular committed expenditure was Blue Motor couldn't have got a reasonable understanding of whether the agreement was affordable for her circumstances.

As Blue Motor don't appear to have sought a reasonable understanding of Miss M's total committed expenditure, I don't think it carried out reasonable and proportionate affordability checks before lending. Blue Motor needed to do more in the circumstances before agreeing to lend. Without knowing what her regular committed expenditure was, Blue Motor wouldn't have got a reasonable understanding of whether the agreement was affordable for her.

I'm satisfied Blue Motor didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

Would reasonable and proportionate checks have shown that Miss M could sustainably repay the borrowing?

I've considered what Blue Motor would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Miss M would have told Blue Motor had it asked about her regular expenditure. I don't think Blue Motor necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Miss M's statements from the three months leading up to the application, of which I've only received statements for January and February 2022.

In response to our Investigator's opinion Miss M has also provided further evidence to demonstrate costs she was paying at the time – notably more details concerning her utility payments and council tax. Finally, I've also relied on the available credit report to factor in the many credit card balances Miss M had at the time the finance was taken.

The statements and other evidence show Miss M was receiving an average of around £3,342.85 a month in income from her salary, child benefits and regular contributions from her partner. Her regular committed monthly expenditure the month prior to the finance being approved was around £3,100. In calculating these amounts I've included any applicable payments for her credit commitments, housing costs, utilities, and other ongoing costs. But this figure does not include any costs for food or fuel – as these costs have not been fully evidenced from the information submitted by Miss M to date.

Taking these figures into account, it appears to show the agreement wasn't affordable for Miss M. Altogether her income and expenditure at the time satisfies me that the agreement did not appear to be affordable. Miss M's credit commitments only appeared to be increasing in the run up to the approval of the finance. And in February 2022 Miss M was left with around £200 of disposable income. This did not leave enough to cover the monthly payments of £210.10, let alone leave any amount for food, fuel or emergency costs. For this reason, I'm not persuaded that Blue Motor acted reasonably when approving the finance.

Taking this into account, it's clear that if Blue Motor had completed reasonable and proportionate affordability checks it would most likely have found that Miss M couldn't sustainably afford the hire purchase agreement. I'm satisfied that it now needs to put things right.

Did Blue Motor Finance Ltd act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that Blue Motor acted unfairly or unreasonably in some other way.

Putting things right

As I don't think Blue Motor ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Miss M is still currently in

possession of the car and I understand she doesn't want to return it – but her payments made to date are not close to the cash price of the vehicle, so I don't think a fair resolution for the complaint would be for Miss M to keep the vehicle with nothing further to pay. Instead, I think the fairest outcome is for the vehicle to be returned to Blue Motor, and for Miss M to only pay for the use of the vehicle that she's had to date. I don't think however that the monthly repayments under the agreement are a fair reflection of what fair usage for the vehicle should be. This is because a large proportion of the repayments went towards repaying interest.

There isn't an exact formula for working out what fair usage ought to be. However, in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, the likely use Miss M had of the car and the costs she would likely have incurred to stay mobile if she'd never entered into this agreement. In doing so, I think a fair amount Miss M should pay is £165 for each month she had use of the vehicle up to the point its returned.

To put things right Blue Motor Finance Ltd (Blue Motor) should:

- *Collect the vehicle and end the agreement.*
- *Refund all the monthly payments Miss M made, less £165 per month she had use of the vehicle.*
- *If Miss M has paid more than the fair usage figure, Blue Motor should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or:*
- *If Miss M has paid less than the fair usage figure, Blue Motor should arrange an affordable and sustainable repayment plan for the outstanding balance.*
- *Once Blue Motor has received the vehicle and the fair usage amount, it should remove any adverse information recorded on Miss M's credit file regarding this agreement.*

**HM Revenue and Customs requires Blue Motor to deduct tax from the interest payment referred to above. Blue Motor must give Miss M a certificate showing how much tax it's deducted if she asks for one.*

Did Blue Motor Finance Ltd act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that Blue Motor acted unfairly or unreasonably in some other way.

My provisional decision

For the reasons I've explained, I currently intend to uphold this complaint.

I asked for both parties to provide me with any further submissions they had before I issued my decision. Both parties have now accepted the decision.

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 both parties have accepted my previous outcome, I see no reason to depart from the conclusion I reached in my provisional decision.

Putting things right

As my decision remains unchanged, Blue Motor Finance Ltd should:

- Collect the vehicle and end the agreement.
- Refund all the monthly payments Miss M made, less £165 per month she had use of the vehicle.
- If Miss M has paid more than the fair usage figure, Blue Motor should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or:
- If Miss M has paid less than the fair usage figure, Blue Motor should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Blue Motor has received the vehicle and the fair usage amount, it should remove any adverse information recorded on Miss M's credit file regarding this agreement.

*HM Revenue and Customs requires Blue Motor Finance Ltd to deduct tax from the interest payment referred to above. Blue Motor must give Miss M a certificate showing how much tax it's deducted if she asks for one.

My final decision

My final decision is that this complaint should be upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 5 March 2024.

Paul Clarke
Ombudsman