

Complaint

Mrs W complains that Blue Motor Finance Ltd (“BMF”) unfairly entered into a hire-purchase agreement with her. She’s effectively said that the payments to the agreement were unaffordable and so it shouldn’t have been provided to her.

Background

In October 2019, BMF provided Mrs W with finance for a used car. The cash price of the vehicle was £4,650.00, Mrs W paid a deposit of £250 and applied for finance to cover the remaining £4,400.00.

As a result she entered into a 49-month hire-purchase agreement with BMF. The loan had interest, fees and total charges of £1,005.94 (comprising of interest of £738.88, a credit acceptance fee (A) of £107.06, a credit acceptance fee (B) of £150 and an option to purchase fee of £10), and the total amount to be repaid of £5,405.95 (not including Mrs W’s deposit) was due to be repaid in 47 monthly instalments of £107.06 followed by a final payment of £257.06.

Mrs W’s complaint was considered by one of our investigators. He didn’t think that BMF had done anything wrong or treated Mrs W unfairly. So he didn’t recommend that Mrs W’s complaint should be upheld. Mrs W 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.

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 Mrs W’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mrs W’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 Mrs W could make her payments in a sustainable manner before agreeing to lend to her. And if the checks BMF carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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.

BMF says it agreed to this application after it completed an income and expenditure assessment on Mrs W. During this assessment, Mrs W provided details of her monthly income which it cross checked against information received from credit reference agencies on the amount of funds she received in her main bank account each month.

BMF says it also carried out credit searches on Mrs W which didn't show any significant adverse credit information. And when reasonable repayments to the amount Mrs W already owed plus the monthly repayment for this agreement were deducted from her income she still had enough left to meet her living expenses and other reasonable expenses as well as the payments to this agreement. On the other hand, Mrs W says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Mrs W and BMF have said.

The first thing for me to say is that I don't think that the checks BMF carried out did go far enough. In my view, bearing in mind the circumstances here, BMF needed to take further steps to find more about Mrs W's actual living costs, rather than assuming she'd have enough to make her payments after her payments to credit were subtracted from her income.

As BMF didn't carry out sufficient checks, I've gone on to decide what I think BMF is more likely than not to have seen had it obtained further information from Mrs W. I've considered the information Mrs W has provided us with. And having done so, this information does appear to show that when Mrs W's committed regular living expenses and existing credit commitments are deducted from her monthly income at the time, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

While I don't wish to get into a discussion over what a forensic analysis of what Mrs W's bank statements is likely to have shown, given BMF was not required to review Mrs W's bank statements in the first place, I'm satisfied that it wouldn't have been unreasonable for BMF to conclude that Mrs W would have sufficient funds to make the repayments to this agreement. In my view, Mrs W would have had sufficient funds left over after the payment to this agreement in order for BMF to conclude that she could sustainably make her repayments.

So overall and having carefully considered everything, while I don't think that BMF's checks before entering into this hire-purchase agreement with Mrs W did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented BMF from providing these funds, or entering into this agreement with her.

I've also thought about what Mrs W has said about the language barrier that was in place for her at the time. I don't know what Mrs W was able to discuss with the car dealer (be it in relation to the car or the finance she was taking out) at the time she purchased her vehicle. I don't discount the possibility she may not have understood everything that she needed to about the finance at least.

However, what I can see is that she made all of her repayments, which I've concluded were affordable, on time until the agreement was completed and also appears to have taken ownership of the vehicle. This suggests that, at the very least, she did understand what she needed to in order to complete her main obligations. So while I don't know what happened at the time of the sale, I'm satisfied that Mrs W hasn't lost out as a result of the language barrier she says she experienced.

For these reasons, I don't think that BMF lent irresponsibly to Mrs W or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A Consumer Credit Act 1974 would, given the facts of this complaint, lead to a different outcome here. And I'm therefore not upholding this complaint.

I appreciate that this will be disappointing for Mrs W. But I hope she'll understand the reasons for my decision and at least consider that her concerns have been listened to.

I've also seen that in response to our investigator's assessment, Mrs W has referred to commission and BMF failing to provide information she's asked about since her complaint, which she feels she's entitled to. However, under our rules, a respondent firm is entitled to consider a complaint before we are able to get involved in matters.

As the matters Mrs W is now referring to didn't form part of her original complaint to BMF and BMF hasn't had the opportunity to consider them, she will need to refer them to BMF in the first instance. If Mrs W remains dissatisfied at any response she may receive from BMF she may – subject to our jurisdiction criteria being met – be able to ask us to consider matters at that point.

My final decision

My final decision is that I'm not upholding Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 6 August 2024.

Jeshen Narayanan
Ombudsman