Financial Ombudsman Service

The complaint

Mr D is complaining about Blue Motor Finance Ltd (BMF). He says they acted irresponsibly in lending to him as the loan was unaffordable. A representative has brought Mr D's complaint to our service but for ease I've written as if we've dealt directly with him.

What happened

In January 2019, Mr D took out a hire purchase agreement with BMF to finance the purchase of a vehicle. He paid a deposit of £2,339.25 (including a part-exchange) and borrowed £18,159.75 - the cash price of the vehicle was £20,499. The agreement required Mr D to make 84 monthly repayments of £333.77, followed by a final payment of £483.77. The total amount payable including the deposit was £30,869.70. Many of Mr D's direct debit payments bounced and Mr D was later declared bankrupt, in November 2020. He was allowed to keep the vehicle but surrendered it in December 2021.

In January 2022, Mr D complained to BMF, saying his credit file at the time of lending showed that he was already struggling financially. He didn't think BMF had carried out proportionate checks and said if they had they shouldn't have lent to him.

BMF replied to the complaint, saying they'd checked Mr D's credit data obtained from one of the credit reference agencies (CRAs). They added that Mr D had told them he was a company director and had a monthly income of £5,000. BMF also said Mr D was married so not responsible for all household expenses. They felt that at less than 10% of Mr D's stated monthly income the loan repayments weren't excessive and were expected to be sustainable.

BMF also said they'd warned Mr D that the information he provided about his income and likely future financial circumstances needed to be accurate. They didn't uphold his complaint.

Mr D remained unhappy and brought his complaint to our service. Two different investigators looked into the matter and neither of them thought the complaint should be upheld. They didn't think BMF had done proportionate checks, but thought that if they had it's likely they'd have still concluded the loan was affordable for Mr D.

Mr D wasn't happy and asked for an ombudsman's decision. He said that when he'd been asked what his income was he'd said he'd need to refer to his accountant but was told that wouldn't be necessary. Mr D said he'd suffered from ill health after that and his income was significantly reduced by the time of the loan, instead he was receiving benefits as well as a small income from his business. He added that his credit file showed repeated missed payments in the months preceding the loan and that his bank statements showed multiple bounced direct debits and support from his wife as he couldn't cover his outgoings otherwise. The complaint came to me and I issued a provisional decision on 30 November 2023. In that I said:

> "*The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other*

obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did BMF carry out proportionate checks?

BMF said they asked Mr D what his income was and they looked at his credit file. They said they'd looked for indicators of over-indebtedness, financial stress and affordability issues. BMF haven't given any detail as to what they found but they said Mr D's application was manually underwritten based on his stated income of £5,000 per month and their assumption that he wouldn't be responsible for all household expenses because he was married.

Mr D told us that the £5,000 net monthly income figure was based on a conversation he had in which he was asked for his income. He said he would need to refer to his accountant and was told that wouldn't be necessary and he could just let them know how he'd done in his best year.

CONC 5.2A.15R requires a firm to take reasonable steps to determine or make a reasonable estimate of the customer's current income unless the firm is able to demonstrate that it's obvious in the circumstances that the customer is able to make the repayments. It goes on to say that the firm must take account of that income when making an assessment of affordability. And CONC 5.2A.16G says it's not generally sufficient to rely on a customer's own statement of their income – checking independent evidence is advised.

BMF haven't demonstrated that it was obvious in the circumstances that Mr D would be able to make the repayments. And from Mr D's credit file I can see he had several missed payments on various credit and utilities accounts during 2018 and had total debts of over £220,000. So I don't think it was obvious that Mr D would be able to make the necessary repayments. And I haven't seen that they sought any independent verification of Mr D's income. So it follows that I'm not satisfied they carried out reasonable and proportionate checks.

When our service concludes that a business should have done something different, we think about what would have happened if they had. So I'll go on to think about what BMF would have found and what they could have fairly decided if they had done proportionate checks.

If BMF had done proportionate checks, what would they have found?

A proportionate check would have involved BMF finding out more about Mr D's income and expenditure to determine whether he'd be able to make the repayments in a sustainable way.

Mr D's told us that he was a director of a company. He's said his health deteriorated significantly in 2018 which had a large impact on his business and meant his income fell dramatically. I can see this from his tax returns – for the financial year 2016 – 17 his income on his personal tax return was £43,100 made up of £8,100 in pay and £35,000 in dividends. But the business tax return for 2017 – 18 shows the business made a loss in that year and Mr D's personal tax return only shows income of £8,200 – with no dividends in that year.

Mr D's also told us he received loan repayments from his business, suggesting that these totalled around £2,500 in October 2018 – December 2018. While I appreciate Mr

D doesn't think these should be treated as income, they were a regular source of funds from which Mr D was paying for his costs of living. Taking these together with the income of £8,200 (around £700 per month), suggests Mr D's net monthly income was around £3,200.

Looking at Mr D's bank statements for October to December 2018 suggests his net monthly income was much higher than this. But I can see that Mr D used his accounts for both business and personal expenditure. Deducting Mr D's business expenses from his income in these bank statements suggests on average his personal income was around £5,000 per month. I appreciate Mr D doesn't think it was that high at the time, but I'm inclined to say BMF would have been able to justify an estimate between £3,200 and £5,000 per month if they had checked Mr D's income.

Moving on to expenditure, I've again looked at Mr D's bank statements for October to December 2018. These show the following monthly averages:

- *Payments to creditors of £1,855*
- *Rent of £2,200*
- *Other committed expenditure of £715*
- *Food and fuel of £465.*

So I'm inclined to say Mr D had committed and non-discretionary expenditure of around £5,235 per month at the time of the loan. Whilst these figures are high, Mr D was accustomed to having a high income and at the time his change in circumstances was relatively recent. By December 2019 Mr D was seeking an Individual Voluntary Arrangement (IVA) which is also consistent with his expenditure exceeding his income.

I'm not saying BMF needed to go through Mr D's bank statements before lending to him. But they did need to do more to understand his income and expenditure, and I think if they had done they'd have realised Mr D's expenditure was higher than his income and it therefore wouldn't be fair and reasonable to lend to him."

BMF said they didn't fully agree with my rationale but accepted my decision. Mr D also accepted my findings. Both parties commented on how to put things right, and I sent a revised suggested redress to both parties on 6 December 2023. Mr D wasn't entirely happy with the revised redress, and I'll address his comments below.

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 neither party had any substantive comments on the findings set out in my provisional decision, I'm upholding Mr D's complaint for the reasons set out above.

Putting things right

In my email to both parties dated 6 December 2023, I revised the structure of my proposed redress to minimise any amounts that might be outstanding to BMF from Mr D.

BMF raised no further comments but Mr D queried the fair usage figure I'd suggested – of £8,750. He suggested it might be fairer to consider depreciation of the vehicle - looking at the change in value between when he acquired it and when he surrendered it. While I appreciate Mr D's view, this calculation would put BMF – not Mr D - in the position they would have been in if they hadn't lent to Mr D. My aim when deciding redress is to think about what position Mr D would likely have been in, including considering the costs of alternative transport instead of the car. It's an estimate rather than an exact calculation, but Mr D hasn't presented any evidence which changes my mind from the figure I originally suggested of £250 per month.

In summary, I think a fair amount Mr D should pay is £250 for each month he had use of the vehicle, so a total of £8,750. To settle Mr D's complaint, BMF should do the following:

- Calculate how much Mr D has paid in total including the cash deposit and part-exchange amount and deduct £8,750 for fair usage.
    - If Mr D has paid more than the fair usage figure, BMF should refund any overpayments, adding 8% simple interest per year from the date of payment to the date of settlement.
    - If Mr D has paid less than the fair usage figure, BMF should set up an affordable repayment plan for any outstanding balance.
- Once Mr D has paid the fair usage figure in full, BMF should remove any adverse information recorded on his credit file regarding the agreement.

If BMF consider tax should be deducted from the interest element of my award they should provide Mr D a certificate showing how much they've taken off so that Mr D can reclaim that amount, assuming he is eligible to do so.

My final decision

I'm upholding Mr D's complaint. Blue Motor Finance Ltd need to take the steps I've outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 February 2024.

Clare King
Ombudsman