

The complaint

Mr F complains that Blue Motor Finance Limited (BMF) acted irresponsibly in agreeing to a car loan as he said he couldn't afford the repayments.

Mr F is represented by a third party for ease of reading I will only refer to Mr F in my decision.

What happened

In April 2018 Mr F entered into a Hire Purchase agreement for a car with a cash price of £14,174. Mr F made a deposit by part exchange of £650 and £100 cash, leaving a balance of £13,397. With added interest the total amount repayable was £19,504.60 payable by instalments of £218.76 over 85 months.

Mr F said he'd maintained his monthly repayment but as he'd little disposable income left after making the instalment, he'd struggled to meet his other credit commitments. He complained to BMF as he didn't think the loan should have been agreed as he couldn't afford it.

BMF said they done proportionate and reasonable checks to make sure the loan was affordable for Mr F. This included checks with a credit reference agency, a comparison of Mr F's debt against his income and his exposure to excessive debt. They said none of their checks highlighted any concerns with Mr F's ability to repay the loan. And since it was approved Mr F has maintained his monthly instalments with no missed payments. They also said Mr F hadn't notified them at any time of struggling to meet his credit commitments.

Mr F wasn't happy with BMF's response and referred his complaint to us.

Our investigator said that Mr F didn't have sufficient disposable income after the monthly repayment for the car loan was paid. And said that BMF should:

- End the agreement with nothing further to pay and transfer ownership of the car to Mr F.
- Refund the deposit, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Remove any adverse information recorded on Mr F's credit file regarding the agreement – if applicable
- If there remained any balance outstanding after the settlement had been calculated, BMF should arrange an affordable repayment plan. And to treat Mr F with forbearance and due consideration.

BMF didn't agree they said the income and expenditure presented by the investigator was flawed, and that Mr F did have sufficient disposable income to be able to afford the monthly repayments. They asked for an ombudsman to decide.

A provisional decision was issued in October 2023 that said:

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.

I know this will disappoint Mr F but having done so I'm currently minded to reach a different outcome to that of our investigator, and not to uphold his complaint. I'll explain why.

I've considered the relevant rules, guidance, and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider deciding what's fair and reasonable in all the circumstances of the complaint. These are:

1. Did BMF complete reasonable and proportionate checks to satisfy themselves that Mr F would be able to repay the credit in a sustainable way?

a. if so, did BMF make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mr F could sustainably repay the borrowing?

2. Did BMF act unfairly or unreasonably in some other way?

Regulations in place at the time BMF lent to Mr F required them to carry out a reasonable assessment of whether he could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower-focused", meaning BMF need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr F. In other words, it wasn't enough for BMF to think only about the likelihood that they would get their money back without considering the impact of repayment on Mr F himself.

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

But there are factors which could influence how detailed a proportionate check should be for a given loan application. For example:

- the consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);*
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher amount from a particular level of income); and*
- the longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the consumer is required to make payments for an extended period)*

So, I've considered whether BMF in lending to Mr F had been thorough in the checks they made. And whether they've taken all these factors into account in deciding to lend to him.

BMF said they'd carried out credit, employment, affordability and identity checks. They said Mr F's credit file didn't show he was having any difficulty in repaying his existing financial commitments. BMF has provided the bureau data for Mr F's financial history which showed he'd a current account, a credit card with a £3,500 limit, a communications supplier and a loan for £61 per month. The loan account hadn't been updated for some time. I haven't seen any evidence of any defaulted accounts or county court judgements. BMF's records also show that Mr F was married, an owner/occupier, and was employed with a monthly income around £1,500. BMF said as the repayment for the agreement was £218.76 this equated to 15% of Mr F's income, which they deemed affordable.

While BMF has said their checks didn't highlight any concerns, the information they obtained whilst it showed data about Mr F's circumstances, given the duration (or likely duration) of the lending, this being 85 months I would have expected BMF to look further at Mr F's actual financial situation as the agreement meant Mr F was indebted for an extended period.

This doesn't automatically mean BMF shouldn't have lent to Mr F, as I need to consider whether these checks would have shown that the repayments were unaffordable to Mr F – or in other words that he lost out because of BMF's failure to complete proportionate checks. I can't be sure exactly what BMF would have found out if they'd asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Mr F's bank statements

I've looked at Mr F's bank statements from three months prior to the loan being approved. Mr F's income comprised a monthly salary and monthly benefit payments of around £292. Over the three months I calculate Mr F's average income (inclusive of benefits) to be £1,292, less than the £1,500 used by BMF in their assessment.

I've also considered Mr F's outgoings and have noted BMF's comments that it seems likely Mr F shared some expenses with his partner but as he was solely liable for this credit I don't think it's fair to assume a level of contribution which would render the credit affordable.

BMF also commented about our investigator including £500 for rent as Mr F had said he was an owner occupier. And I agree that the regular monthly expenditure of £500 that Mr F paid each month wasn't "rent", but I'm persuaded it was his contribution towards the household expenditure such as mortgage and utilities.

I can also see that Mr F paid varying amounts, from £100 to £500 towards his credit card use. As the limit of the credit card was £3,500, I've considered a minimum monthly amount - £105, which I think Mr F would have needed to pay if he'd fully utilised his credit card limit, to be a fair assessment of his credit commitment each month. Taking these factors into account I can see Mr F's average outgoings, which included food, petrol, insurance, mobile phone, and subscriptions equated to around £937 each month, which left him with an average disposable income of £355. Mr F in taking on the lending meant he'd a further credit commitment to pay of £218.76 each month which would have reduced his disposable income to around £137, which I'd consider showed the lending to be affordable.

But Mr F's bank statements also show that he regularly made purchases through an online platform from around £73 to £180 each month. And at times was using his overdraft facility near to when he received his salary. But I can also see he'd other sources of income which I think showed he was managing his finances. I haven't seen any evidence that Mr F wasn't able to meet his credit commitments. And having considered everything, I'm satisfied that the available information indicates that Mr F did have sufficient funds left over to make his monthly payments in a sustainable manner.

So while I don't think that BMF's checks before entering into this hire purchase agreement

with Mr F went far enough, I'm satisfied that carrying out reasonable and proportionate checks wouldn't have prevented BMF from providing these funds, or entering into this agreement with him.

So I think BMF would have learnt through a proportionate check that Mr F had enough disposable income to afford the loan repayments and so I can't say they made an irresponsible or unfair lending decision.

Responses to my provisional decision

Mr F said he didn't think that after paying the loan repayment his disposable income was sufficient to cover any unexpected emergencies or for having a social life. He said he'd provide his credit report to evidence this. BMF haven't asked me to consider anything further.

I've considered Mr F's comments. The relevant rules, regulation and guidance all refer to a borrower being able to sustainably repay any credit provided. And being able to sustainably repay credit is described as doing so without undue difficulty, while being able to meet other commitments and without having to borrow further. And from the information I considered I think Mr F was able to sustain his repayments, as having taken into account his income and essential outgoings including the repayment for the new loan he still had I think sufficient disposable income. I've also mentioned in my provisional decision that Mr F seemed to have other sources of income which I didn't take into account within his disposable income. But said that this evidenced Mr F was managing his finances. And so I think he was able to meet his other commitments without having to borrow further.

Mr F has mentioned his credit report but as outlined in my decision BMF had provided this data as this was a check they did at the time of the lending. I considered, in my provisional decision the information this showed about Mr F's financial situation at the time he took out the loan. So, having considered Mr F's comments, I haven't been persuaded to change my thinking.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 20 December 2023.

Anne Scarr

Ombudsman