

## **The complaint**

Miss R complains that BMW Financial Services(GB) Limited (“BMWFS”) irresponsibly approved a hire purchase agreement with her that she couldn’t afford.

## **What happened**

In July 2020 Miss R acquired a new car using a hire purchase agreement from BMWFS. The agreement required her to make 47 monthly payments of £369, with an optional final payment of £12,570 to purchase the car at the end of the agreement. The total amount payable for the car and finance was £30,415.

Miss R traded the car in for another car in August 2022 and paid off the agreement. Shortly after, she complained to BMWFS that it had been irresponsible to make the finance agreement with her in 2020.

BMWFS rejected the complaint. They said the lending to Miss R had been approved by an automated process. They said this tested creditworthiness and affordability using some credit scoring criteria, internal policies, and data from credit reference agencies. BMWFS have shown us some of the personal and credit information used.

Miss R didn’t accept this response and brought the complaint to us. One of our investigators felt BMWFS hadn’t carried out reasonable checks before lending to Miss R. But he felt that if they had, they still would have given her the money. A key factor for that view was that he felt that Miss R’s fixed outgoings were well within her monthly salary.

Miss R disagreed with that view. She felt more account needed to be given to repayments she was making to family members for money she’d borrowed to clear previous debts. And she highlighted she’d spent significant amounts on gambling in the months before her application. She felt BMWFS should have seen this before lending to her, and declined her borrowing application.

Unresolved, the case has come to me for a formal 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.

I’ll explain below why I’ve decided BMWFS don’t need to do anything more to resolve this complaint. That means I’m not upholding it, even though I’ve found BMWFS should have done more to check Miss R could afford to repay the money she borrowed.

The rules that apply to credit agreements are set out in the consumer credit sourcebook (“CONC”) of the Financial Conduct Authority’s handbook. Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like BMWFS to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

I'm going to consider these rules in the following stages:

1. *Did BMWFS complete reasonable and proportionate checks to satisfy itself that Miss R would be able to sustainably repay the borrowing?*
  - a. *If they did, was their decision to then lend to Miss R fair?*
  - b. *If they didn't, would reasonable and proportionate checks have shown that Miss R could sustainably repay the borrowing?*
2. *Did BMWFS act unfairly or unreasonably in some other way?*

Did BMWFS complete reasonable and proportionate checks to satisfy itself that Miss R would be able to sustainably repay the borrowing?

What's considered reasonable and proportionate will vary depending on the details of the borrowing and the borrower's individual circumstances.

Here, the amount borrowed was relatively large. Miss R was agreeing to pay £369 each month for four years. And there was a significant final payment needed to purchase the car. So I'd expect to see a thorough check being completed.

BMWFS did check Miss R's historic use of credit. But I haven't seen evidence of this being assessed in detail alongside Miss R's income and expenditure. BMWFS needed to satisfy themselves that Miss R could afford and sustain the repayments needed under this agreement, not just that she'd satisfied other credit agreements in the recent past.

So for the first stage of my decision, I find BMWFS didn't complete reasonable and proportionate checks in the circumstances of this case. I find they should have asked Miss R for more information about her income and expenditure to get a better understanding of her committed spending and her disposable income.

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

I've thought about whether BMWFS would still have chosen to lend money to Miss R if they'd carried out a reasonable and proportionate check.

I can't be certain what evidence BMWFS would have asked Miss R to provide, or what questions they would have asked her. But I've seen some bank statements that show Miss R's salary and her spending at the time she took out this loan. I view the information these statements give me as indicative of what BMWFS would have found if they'd completed a reasonable check.

Miss R's monthly salary varied slightly each month – between £1,700 and £2,000. But she didn't have a lot of fixed living costs. I can't see she paid regular energy bills, council tax, or mortgage or rent costs from her salary. That's consistent with information BMWFS had that she lived with her parents.

I can see Miss R was regularly making payments to family members. She's told us this was to repay money she'd borrowed from them over the years. But the amount she paid doesn't look to be fixed. It seems Miss R could vary what she paid, depending how much money she had at the time.

I can also see Miss R had some credit cards she was repaying. But details in the checks BMWFS did tell me Miss R's had met her commitments to these for some years without repayment issues. And again, the amount she repaid could vary – although there would be a minimum payment to make each month.

Similarly, I can see Miss R was using her overdraft. But I can also see she was repaying this too at times, when she had the money to. At the time of BMWFS's credit check, Miss R only seems to have owed £18 towards this overdraft, which I can appreciate wouldn't have appeared too difficult to repay.

So with no fixed living costs to meet from her salary, Miss R would have appeared to have a relatively high amount of disposable income available to her. I find it likely that further checks showing this information would have led BMWFS to conclude Miss R could sustainably afford the £369 monthly repayment here.

Miss R's bank statements show she spent a lot of her disposable income with online gambling companies. I appreciate Miss R has indicated to us that this was a problem for her. But the question for me is whether BMWFS would have been able to find that out if they'd completed more reasonable affordability checks.

I'm of the view the checks here could have been completed to a reasonable level without Miss R needing to show BMWFS her bank statements. She could have used a payslip to demonstrate her income. And she could have confirmed she didn't have fixed living expenses, which would have been somewhat supported by her having no bills in her name.

Without those bank statements, it would have been hard for BMWFS to see the scale of Miss R's spending on gambling.

It's possible that if asked about regular monthly commitments Miss R might have told BMWFS she spent a lot gambling. But I can't see she mentioned this during the two years she had the loan, even when she was having issues affording it. So I consider it unlikely she'd have mentioned it when applying for the finance in 2020.

I can appreciate Miss R feels her spending on gambling was a factor in finding this agreement unaffordable. But I don't see that a reasonable and proportionate check would necessarily have found that Miss R had this sort of issue before agreeing to lend to her.

#### Did BMWFS act unfairly or unreasonably in some other way?

Miss R's problems meeting her commitment started shortly after the agreement began. But her contact with BMWFS at the time tells me that reflects that she lost her job in late 2020. And I can see she then moved for a new job, which altered her committed living expenses.

But I can't see these sorts of changes in circumstances could have been foreseen when BMWFS did their checks. So I find it reasonable the lending decision didn't account for these later events.

Overall I find that while BMWFS should have done more to complete a reasonable and proportionate creditworthiness assessment of Miss R, it's more likely than not that the decision they'd have made if they had would still have been to lend her this money.

#### **My final decision**

For the reasons above, I've decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 2 August 2023.

Paul Mellor  
**Ombudsman**