

The complaint

Mr K complains BMW Financial Services (GB) Limited (BMW) irresponsibly entered into two hire purchase agreements because it failed to complete reasonable and proportionate checks to ensure the agreement was affordable for him.

What happened

On 16 August 2019, Mr K entered the first hire purchase agreement with BMW for a used car. The total amount payable under the agreement was £29,634.67 (which includes Mr K's initial deposit of £2,000). The cash price was £24,980. There were 48 monthly repayments for equal amounts of £354.65 and the APR was 6.9%. There was also an optional final repayment of £10,611.47 which included the option to purchase fee. This car was then involved in an accident and written off. Mr K settled the agreement through his insurance company.

Mr K went on to enter a second hire purchase agreement on 29 January 2020 for a used car. The total amount payable under the agreement was £34,678.33 (including Mr K's deposit of £2,000). The cash price was £28,980. There were 48 monthly repayments for equal amounts of £396.65 and the APR was 7%. There was also an optional final repayment of £13,639.13 which included the option to purchase fee. This car was also involved in an accident and written off. Again, the agreement was settled through Mr K's insurers.

Mr K is represented in his complaint but for ease of reading I'll just refer to Mr K throughout this decision. Mr K contacted BMW to complain on 23 March 2022. He complained BMW had been irresponsible in providing the finance because they hadn't carried out appropriate checks to ensure Mr K could make the repayments sustainably.

BMW did not respond to the complaint and Mr K asked our service to investigate. Our investigator issued a view explaining why he felt the complaint should be upheld. He said proportionate checks hadn't been carried out because BMW hadn't done enough to verify Mr K's income and non-discretionary expenditure. Our Investigator also felt that had reasonable and proportionate checks been carried out then it's likely those checks would have shown both agreements weren't affordable and sustainable for Mr K.

Mr K accepted the view. However, BMW didn't. To summarise, it said the following about the first agreement:

- Mr K provided his personal details which were provided to the underwriters where no flags were identified, and the agreement was auto accepted.
- There were no linked addresses for Mr K on electoral roll and it confirmed he had resided at his parents address for nine years.
- There were 3 missed payments on a credit card which were settled in 2017 and this wouldn't have been a cause for concern.
- Mr K had a total available credit limit of £15,000 and his utilisation was only 25%.
- There were no missed payments for this agreement whilst it was active.

- There was a settlement quote of £22,039 and they received a payment of £21,259.21 leaving a shortfall of £779.70.

In respect of the second agreement, BMW said:

- There were no linked addresses for Mr K and the electoral roll showed he had been at his parents address for four years. Mr K said he had lived there for ten years, and no other addresses were provided.
- There were 3 missed payments on a credit card which were settled in 2017 and this wouldn't have been a cause for concern.
- Mr K had £43,000 of total credit available, and his utilisation was 31% at the time the agreement was taken out. The credit card commitments also showed as having increased but based on all the information it was satisfied it could approve the agreement.
- The agreement was auto accepted and there were no missed payments whilst the agreement was active and nothing to indicate financial difficulty.

Therefore, the complaint has been passed to me to decide.

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.

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 BMW complete reasonable and proportionate checks to satisfy itself that Mr K would be able to repay the agreement in a sustainable way?

In respect of the first agreement, BMW said it reviewed the credit history which showed three missed payments on a credit card which had been settled in 2017. It also said all other credit cards were showing as up to date on the credit check and the total amount of credit Mr K was utilising was around 25% of his total available credit of £15,000. BMW said there was no evidence of any linked addresses and Mr K confirmed he had resided at his parents address for nine years.

In respect of the second agreement, BMW said it reviewed the credit history and found Mr K's total amount of available credit increased to £43,000. But he was only utilising 31% of it at the time of the agreement. It confirmed the same information previously obtained about Mr K's living arrangements and the missed payment information from 2017. It also said no payments were missed on the first agreement, which indicated there hadn't been any financial difficulties.

I've seen a copy of the credit search which took place for each agreement. However, I also note there was a default recorded on the search at the time of entering the second agreement. Whilst the search showed the credit utilisation was fairly low at the time of the

lending, it also showed prior to the lending it had been higher. For the first agreement, credit utilisation had reached 51% and for the second it had been 98% at its highest. This represented a fair amount of credit usage which was increasing.

I note our Investigator found BMW should have verified income and expenditure. BMW don't seem to have done much beyond the credit search to estimate or consider Mr K's non-discretionary spend. BMW has said no flags were identified by the underwriters regarding the information Mr K provided about his income, employment and living arrangements.

Whilst a credit search does provide information about current credit commitments, it tells lenders little about what other non-discretionary spend a consumer might have. Additionally, it doesn't seem to have taken steps to verify Mr K's income. I can't see how BMW could have made a fair assessment about whether this agreement could be sustainably repaid without carrying out further checks in respect of income and expenditure. I'm also mindful that affordability checks should be borrower-focussed. So, I'm unable to conclude they were in the circumstances here.

Having considered the circumstances, I'm not satisfied reasonable or proportionate checks were carried out for either agreement. I appreciate BMW undertook a credit search. However, I don't think this was sufficient to show the agreement could be repaid sustainably. I note the total amount payable was significant and the duration of the agreement was also fairly long. Additionally, BMW did have some adverse information about Mr K's financial circumstances. In particular, there was a default recorded at the time of entering the second agreement. I'm also mindful of Mr K's other credit commitments and the total amount of available credit. Although I appreciate Mr K didn't have very high utilisation at the time of the lending, the search does show it had been higher.

With these factors in mind, I'm of the view BMW should have done more to check Mr K's specific financial circumstances. I think in the circumstances outlined above, it would have been proportionate to carry out further checks in respect of income and expenditure. This would have been proportionate as it would have enabled BMW to make a fair assessment about whether Mr K could sustainably repay the agreements.

Would reasonable and proportionate checks have shown Mr K would be able to repay the agreement sustainably?

As I don't think reasonable and proportionate checks were carried out for these agreements, I need to consider what such checks would likely have shown. To do this, I've considered the bank statements Mr K has provided for the period leading up to each lending decision. This includes statements covering July to December 2019, as well as a statement covering May 2019. For clarity, I'm not saying BMW needed to obtain the bank statements in order for its checks to be proportionate. However, I'm satisfied these bank statements and the period they cover contain information BMW would likely have seen had it carried out reasonable and proportionate checks.

I note BMW have said Mr K should have disclosed information about his financial circumstances at the time. I do understand what BMW says here, however it doesn't mean BMW shouldn't have carried out the appropriate checks.

I'll take each agreement in turn.

August 2019

Having considered the bank statements, I can see Mr K received an average income of around £2,243. I can see he received a large payment into his account of around £14,469 in

May 2019. Mr K has confirmed this was a loan and I can see he used it to reduce the balances on some of his credit cards.

I've also thought about his non-discretionary spending. This included things such as gym membership, vehicle tax and phone bill. Having thought about these expenses, I've calculated his non-discretionary spend for living expenses as around £912.

I've also thought about Mr K's credit commitments at the time of the lending decision. I acknowledge some of the credit commitments which are shown on Mr K's statements aren't on the search obtained by BMW. However, I have already explained why I think further checks were necessary and I'm satisfied had reasonable and proportionate checks been carried out then it's likely such checks would have highlighted just how much Mr K was paying towards his credit commitments.

The bank statements show Mr K paid varying amounts towards his credit cards. So, I've excluded May 2019 when considering Mr K's credit commitments because he made significantly higher repayments after he took out a loan. I also understand what BMW have said about Mr K's living arrangements. However, I'm satisfied proportionate checks were likely to have highlighted Mr K's payments towards his own home as well as other credit commitments.

Overall, it seems Mr K had credit commitments of around £1,413. This included things like overdraft fees, loan repayments, mortgage and credit card payments. I do have some information about Mr K's credit card balances. I've considered what Mr K was paying towards the balances and what was likely to be a sustainable monthly repayment amount. In any event, a large proportion of his credit commitments went towards repaying loans. For example, he had loan repayments of £402, £281 and £185 and this was on top of his mortgage payments of £356.

Therefore, taking into account everything I've seen about Mr K's financial circumstances at the time I don't think reasonable and proportionate checks would have shown this agreement was affordable for him. The information shows he was paying around £2,325 just to meet his existing commitments and non-discretionary spend. As his income averaged around £2,243, he didn't have sufficient disposable income to meet the repayments under the agreement.

For the reasons outlined above, I'm not persuaded reasonable and proportionate checks were likely to have shown this agreement was affordable. I'll come back to how things should be put right below.

January 2020

Leading up to this agreement, Mr K had an average income of around £2,373. His non-discretionary spend was around £1,017. This included things like petrol, food and car insurance. The amount he was paying towards his credit commitments had increased. I'd reiterate that I think Mr K's financial commitments would have come to light had BMW carried out reasonable and proportionate checks.

According to Mr K's statements, he was putting around £1,612 towards his credit commitments. This includes repayments towards Mr K's credit cards, loans and mortgage. As well as some overdraft fees. I have been provided with information about Mr K's credit balances from BMW and the search completed at the time. I've taken into consideration a sustainable repayment amount, as well as what Mr K was actually paying. Notwithstanding this, a large proportion of his commitments went towards fixed loan repayments and his mortgage repayment. He also incurred overdraft fees.

Therefore, taking everything into account, I'm satisfied reasonable and proportionate checks were likely to have shown this agreement wasn't affordable. Mr K had an average income of around £2,373 and his average outgoings for non-discretionary spend and credit commitments were around £2,629. So, he already had commitments exceeding his income before taking into account the repayments under the agreement. Overall, I think had BMW completed reasonable and proportionate checks its likely such checks would have shown this agreement wasn't affordable and it shouldn't have been entered in to.

Putting things right

There isn't an exact formula for working out what fair usage should be. However, in deciding what's fair and reasonable, I've thought about the amount of interest that was charged under the agreement, the usage Mr K likely had of the car and what his costs to stay mobile might have been if he didn't have his car.

In doing so, I think a fair amount Mr K should pay is £300 for each month he had use of the car for the first agreement and also £300 for each month he had the car for the second agreement. This means BMW can only ask him to repay a total of £1,500 for the first agreement and £5,400 for the second agreement.

BMW have told us there was a shortfall of around £780 between the settlement value and the amount actually paid out by Mr K's insurer under the first agreement. However, it wouldn't now be fair for Mr K to bear the cost of this shortfall. Mr K no longer has possession of the vehicle and had he been, I might have concluded he should return it to BMW. BMW would then need to deduct fair usage from the amount Mr K had paid. BMW would go on to sell the vehicle with no guarantee of it achieving a higher price than the insurance settlement. I'm also mindful Mr K went on to enter into a second agreement without settling the shortfall and as time has now passed it doesn't seem fair to factor the shortfall into the redress calculations. This means BMW should not include the shortfall in the calculations set out below.

BMW have also explained the settlement figure already took into account money paid by Mr K and so it would be at a greater loss if it is asked to refund the deposits for each agreement. However, I'm mindful this is credit which should not have been extended to Mr K. I've taken into consideration what position Mr K would likely now be in had the lending not been granted. I've also taken into account what's fair and reasonable in all the circumstances to decide how things should be put right.

To settle Mr K's complaint BMW Financial Services (GB) Limited should:

1. Refund the deposit for the first agreement, adding 8% simple interest per year* from the date of payment to the date of settlement.
2. Calculate how much Mr K has paid in total for the first agreement and deduct £1,500 for fair usage. If Mr K has paid more than the fair usage figure, BMW should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.
3. Refund the deposit for the second agreement, adding 8% simple interest per year* from the date of payment to the date of settlement.
4. Calculate how much Mr K has paid in total for the second agreement and deduct £5,400 for fair usage. If Mr K has paid more than the fair usage figure, BMW should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.

5. Remove any adverse information recorded on Mr K's credit file regarding the agreement.

*If BMW considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons outlined above, I'm upholding this complaint and BMW Financial Services (GB) Limited should put things right in the way described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 April 2024.

Laura Dean
Ombudsman