

## **The complaint**

Mr G complains about a hire purchase agreement administered and managed by BMW Financial Services(GB) Limited ("BMWFS"). He says the agreement was mis-sold and unaffordable.

## **What happened**

On 14 August 2019 Mr G entered into an agreement with BMWFS for a used car costing £85,000. Under the terms of the agreement, everything else being equal, Mr G undertook to make an advance payment of £5,000 followed by 47 monthly payments of £1,231.94 plus 1 monthly payment of £35,546.21 making a total repayable of £98,447.39 at an APR of 5.9%.

Due to one or more missed payments BMWFS took the decision to terminate Mr G's agreement and to seek from him the full sum due under it of £93,447.39 (£98,447.39 less £5,000.00).

On 7 June 2022 the balance outstanding, and being sought by BMWFS from Mr G, was £32,032.67 broken down as follows:

• sum on termination	£93,447.39
• payments made by Mr G	(£1,314.72)
• net sale proceeds	(£60,100.00)
• balance outstanding	£32,032.67

Mr G's complaint was considered by one of our investigators. He came to the view that:

- BMWFS didn't complete reasonable and proportionate checks to satisfy itself that Mr G would be able to repay the agreement in a sustainable way
- reasonable and proportionate checks would have shown that Mr G would be able to repay the agreement in a sustainable way, so BMWFS didn't act unfairly in lending to Mr G
- BMWFS had failed to treat Mr G, once in default and arrears, with forbearance and due consideration, particularly given his personal and financial circumstances
- BMWFS should treat the net sale proceeds received as part repayment of the agreement and give Mr G the interest rebate benefit this treatment will result in
- going forward BMWFS should agree a repayment plan with Mr G that, having regards to his financial and personal circumstances, is affordable

As a result of neither party confirming acceptance or rejection of the investigator's view, Mr G's complaint has been passed to me for review and 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'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

I would also add that I'm satisfied that both Mr G and BMWFS have been given ample time to submit all the comments and evidence they would like me to take into consideration when deciding this complaint.

Finally, I would like to make it clear that in deciding this case I've taken into account everything that Mr G has shared with BMWFS and our service about his health and wellbeing.

#### representation of the agreement

Mr G says he understood he was entering into a bridging facility with BMWFS rather than a hire purchase agreement. And as a result of entering the latter, rather than the former, he was unable to secure a remortgage or any other form of borrowing.

Now I accept I can't say for certain what was discussed between Mr G and the dealership, but ultimately Mr G has signed a hire purchase agreement so I'm not persuaded that I can reasonably uphold this aspect of Mr G's complaint.

#### BMWFS' lending decision

Mr G says BMWFS acted irresponsibly in agreeing to lend to him.

BMWFS will be familiar with all the rules, regulations, and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

In cases involving irresponsible and/or unaffordable lending there are two overarching questions I need to consider when deciding what's fair and reasonable in all the circumstances of the complaint. These are:

- Did BMWFS complete reasonable and proportionate checks to satisfy itself that Mr G would be able to repay the credit in a sustainable way?
  - if so, did BMWFS make a fair lending decision?
  - if not, would reasonable and proportionate checks have shown that Mr G could sustainably repay the borrowing?
- Did BMWFS act unfairly or unreasonably in some other way?

At the time BMWFS lent to Mr G it was required to carry out a reasonable assessment of whether he could afford to repay the finance in a sustainable manner. This is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The affordability checks should have been 'borrower-focused', meaning BMWFS needed to think about whether repaying the finance sustainably would cause difficulties or adverse consequences for Mr G. In other words, it wasn't enough for BMWFS to think only about the likelihood that they would get their money back without considering the impact of repayment on Mr G 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 finance 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 finance 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 BMWFS in lending to Mr G had been thorough in the checks it made. And whether they've taken all these factors into account in deciding to lend to him.

BMWFS said that in agreeing to lend to Mr G it relied on what he had declared on his application form and what a credit check it undertook returned.

On his application form Mr G declared that he was self-employed, had been in employment for 30 years, was an owner occupier and had been residing at his current address for 12 years. He also declared that he had mortgage debt totalling £195,000 and other debt of £14,000.

The credit check undertaken by BMWFS confirmed that Mr G had mortgage debt totalling £195,000 and monthly mortgage repayments of £978 and other credit commitments of £466 a month

BMWFS has said their checks didn't highlight any concerns and Mr G's application was 'auto approved'. But given that BMWFS' credit check showed Mr G had existing credit commitments of £1,444 a month, was applying for new finance of £80,000 at a cost of £1,315 a month for four years, I would have expected it to have looked further into Mr G's actual financial situation.

This doesn't automatically mean BMWFS shouldn't have lent to Mr G, as I need to consider whether these checks would have shown that the repayments were unaffordable to Mr G – or in other words that he lost out because of BMWFS' failure to complete proportionate checks. I can't be sure exactly what BMWFS would have found out if it had looked further into Mr G's actual financial situation. But in the absence of anything else, I think it would be reasonable to place significant weight on the information provided by Mr G to our service including his bank statements and tax return.

Having considered these documents I can confirm that I'm satisfied, like the investigator and for the same reasons, that these don't suggest that the finance would have been unaffordable.

So while I don't think that BMWFS' checks before entering into the agreement with Mr G went far enough, I'm satisfied that carrying out reasonable and proportionate checks wouldn't have prevented BMWFS from providing these funds or entering into this agreement with him.

#### BMWFS' decision to terminate the agreement

Given the agreement arrears position, the various attempts by BMWFS to contact and engage with Mr G and the one or more statutory notices issued by BMWFS (correctly addressed to Mr G) I'm satisfied that BMWFS did nothing wrong in terminating Mr G's agreement.

#### other matters

BMWFS sold the car and has deducted the net sale proceeds of £60,100 from the debt. I think, in the circumstances, given Mr G was in financial difficulties, it ought to have considered counting the net sale proceeds as an early repayment and applying an early settlement rebate to reduce the outstanding balance. BMWFS has, after all, received a lump sum it otherwise wouldn't have done.

The FCA sets out that firms should treat customers in default or in arrears difficulties with forbearance and due consideration. An example of this could be to consider suspending, reducing, waiving or cancelling interest charges. I appreciate Mr G doesn't have an automatic right to a rebate when the car is sold, but like the investigator I find, in the particular circumstances of Mr G's complaint, this would be a fair and reasonable step for BMWFS to take. And of course, should Mr G still be in financial difficulties, BMWFS should continue to treat him with forbearance and due consideration.

For the sake of completeness I would add that in coming to the above finding I've had regard to what appears to be a number of charges that BMWFS could have possibly passed onto Mr G but didn't.

It's my understanding that BMWFS, in concluding that Mr G owed it £32,032.67 as of 7 June 2022, has taken into account 21 payments made by Mr G (all less than £80) between March 2020 and October 2021. But it appears, according to a statement dated 21 February 2019, that Mr G made a payment to BMWFS of £1,231.94 on 4 December 2019.

So as well as reducing the sum owed by Mr G by the interest rebate referred by me above I also find that BMWFS should investigate whether it needs to reduce the sum owed by Mr G by a further £1,231.94 and that it shares the outcome of its investigation in this respect with him as soon as possible. And on this point, if BMWFS decides a reduction of £1,231.94 need not be made and Mr G is of the view that it does, then Mr G is free to raise this as a new and separate complaint.

#### **My final decision**

My final decision is that BMW Financial Services(GB) Limited must:

- treat the net sale proceeds of the car (of £60,100) as an early repayment and apply an early settlement rebate to reduce the outstanding balance due and owing from Mr G

- investigate whether the outstanding balance due and owing from Mr G should be further reduced by £1,231.94 and if so do so

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 December 2023.

Peter Cook  
**Ombudsman**