

The complaint

Mr H complains that BMW Financial Services(GB) Limited didn't carry out sufficient affordability checks before lending to him.

What happened

In November 2019 Mr H acquired a car through a Hire Purchase agreement with BMW. The cash price of the car was £58,193.87, no advance payment was made, and with added interest the total repayable was £67,925.26. With monthly instalments of £839.88 over 48 months.

Mr H said he'd had previous agreements with BMW but the repayments for this car were double what he'd previously paid. Mr H said BMW didn't check whether he could afford the loan. And he struggled to maintain his instalments. He also said he was persuaded to take on optional extras, and that the dealer was paid a high level of commission. Mr H said he'd had to sell the car at a greatly depreciated value and borrowed from family to settle the loan agreement. He complained to BMW.

BMW said that Mr H had two previous agreements, prior to the lending complained about with them. They said Mr H hadn't made them aware of any difficulties in repaying the loan and that he'd maintained his repayments under the agreement which was settled in August 2022. In checking the affordability of the lending BMW said they carried out an automated credit worthiness assessment using credit scoring criteria, internal policies, and data from credit reference agencies. And from the information they'd obtained they deemed the lending was affordable for Mr H. They said the commission and optional extras had been made clear to Mr H at the time he acquired the car.

Mr H wasn't happy with BMW's response and referred his complaint to us.

Our investigator said that BMW should have done more to check whether the loan was affordable. And if they had they'd have seen that the loan wasn't affordable as Mr H had insufficient disposable income to meet the monthly repayments. He said BMW should:

- Refund any payments Mr H has made in excess of £58,193.87, representing the original cash price of the car. Adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr H's credit file regarding the agreement.

He also said that as this put Mr H back into the position he would have been in if the finance agreement hadn't been taken out. There wasn't any detriment for Mr H in respect of any commission that had been paid.

BMW responded to the part of Mr H's complaint about commission. But didn't respond to the affordability outcome. So, the complaint has been referred to an ombudsman 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.

Having done so I'm upholding this 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 in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

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

Regulations in place at the time BMW lent to Mr H 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 BMW needs to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr H. In other words, it wasn't enough for BMW to think only about the likelihood that they would get their money back without considering the impact of repayment on Mr H 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. Consideration should also be given to the amount, type and cost of credit being applied for. We take the view that a reasonable and proportionate check would usually need to be more thorough:

- the lower a 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)
- 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), and
- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

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

I can see BMW's affordability assessment was an automated process and they based their decision to lend on known data. They said they'd measures in place to highlight any

concerns found within the data and that this would have prompted a manual underwriting review. BMW said none of the measures were triggered that indicated there was anything in Mr H's credit history to indicate current or potential difficulties in affording the loan and being able to maintain the repayments. BMW also said that Mr H had two previous agreements with them that he'd maintained his repayments. I can see from his credit file that Mr H had at the time a loan payable by instalments of £452 over 48 months.

But given Mr H's indebtedness would be increased by over £65,000, and his monthly repayment would go up from £452 to around £840, I don't think the checks carried out by BMW went far enough as I think they should have looked to see what Mr H's actual financial situation was.

From the credit history that BMW saw, not taking into account the existing car loan of £452 a month as this would be replaced by the new agreement. Mr H had an unsecured loan payable at £226 per month over 60 months, a credit card with a limit of £2,000, an annual insurance of £750 and a communications contract. The loan application showed Mr H was employed full time in the construction industry.

As previously mentioned, there isn't a set list of checks that a lender should do. And I'm not saying BMW needed to ask for bank statements to verify Mr H's income and expenditure. But for us it's probably the most efficient way to work out whether the lending was affordable. I've looked at Mr H's bank statements for the three months prior to the loan being taken out. And I can see that Mr H's employment income varied, ranging from around £1,100 up to around £4,550 a month. On average Mr H's income was around £2,794 across the three months. And his non-discretionary expenditure was on average £2,429. This includes rent, credit card, existing loan, insurance, phones, bank fees, food, petrol and other motoring costs. Leaving Mr H with a disposable income of around £365.

I have considered other items on Mr H's bank statement showing transactions in and out of the account. These transactions seem to be related to family and friends. And I can see a correlation between the transactions. In the three months leading up to the loan on average Mr H had a further £364 available income. Which I think gave him a potential disposable income of £729. I can see there was other non-essential spending which I haven't taken account of as Mr H had the choice whether to spend this money or not.

As Mr H's disposable income, at most around £729 would have been less than the monthly instalment of around £840, I think if BMW had seen the same information, they wouldn't have agreed to lend to Mr H.

Mr H also complained about the level of commission paid when the loan was agreed. As I've already found that BMW shouldn't have entered into this agreement with Mr H as it ought to have realised that it was unaffordable for him. I'm satisfied that my proposed method of putting things right for Mr H as a result of this, effectively places him in the position he would now be in had his agreement never existed. I think that this also unwinds the impact of any commission that BMW might have paid to the broker for introducing Mr H. As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't make a difference to the overall outcome

Putting things right

Mr H has settled the loan agreement with BMW in August 2022 and has since sold the car. Our approach in situations such as these is to put the consumer back into the position they'd have been in if the loan agreement hadn't been taken out.

The original cash price of the car was £58,193.87, to put things right, Mr H shouldn't have to pay any more than this. So, BMW should refund Mr H any amount he'd paid in excess of the cash price, adding 8% simple interest. And remove any adverse information recorded about the agreement to Mr H's credit file.

My final decision

I uphold this complaint. And ask BMW Financial Services (GB) Limited to:

- Refund Mr H any payments he'd made above the cash price of £58,193.87 adding *8% simple interest from date of payment to date of settlement.
- Remove any adverse information recorded on Mr H's credit file with regard to the agreement.

*HM Revenue & Customs requires BMW Financial Services (GB) Limited to take off tax from this interest. BMW Financial Services (GB) Limited must give Mr H a certificate showing how much tax they've taken off should Mr H ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 November 2023.

Anne Scarr
Ombudsman