

The complaint

Miss D complains that BMW Financial Services (GB) Limited ('BMW') irresponsibly granted her finance for a new car that she couldn't afford to repay.

What happened

In May 2023, Miss D acquired a new car financed by way of a hire purchase agreement from BMW. The purchase price was £117,120.94. Miss D was required to make a total of 48 monthly payments of £1,750.91. She made an advance payment of £6,757.78. There was also an optional final repayment of £49,863.60 to be made at the end of the agreement. The total repayable under the terms of the agreement was £138,871.85, including the advance payment.

In September 2023, after contacting BMW to say she was having difficulties meeting the repayments required under the agreement, Miss D sold the car back to the dealer she'd purchased it from. As the sum the dealer paid her selling the car back to them wasn't enough to settle the agreement with BMW, Miss D found it necessary to borrow money from relatives to be able to do so.

Miss D says BMW didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable. BMW didn't agree. It said it carried out the necessary checks before agreeing to provide the finance.

In my provisional decision dated 22 May 2024, I explained why I was still upholding the complaint but was proposing a different method of redress. This was because after our investigator wrote his view upholding the complaint, Miss D said that she'd settled the whole of the agreement after selling the car back to the dealership
. I set out an extract below from my provisional decision below:

"Did BMW carry out proportionate checks?"

Before the finance was provided, BMW has explained that the checks it carried out were limited to an automated assessment. This would typically include looking at a Miss D's credit score and their payments to lenders. BMW would also check the Miss D's age and employment status. All of this would be considered against the proposed monthly payment. I've seen BMW also checked the time Miss D had been living at the same address and identified she was a homeowner. BMW said it also asked Miss D if she expected any change in her financial circumstances over the life of the agreement. Other than that, I've not seen much other evidence about the checks BMW carried out.

I think it's important when looking at whether checks were proportionate to have particular regard to the size and length of this loan, in the context of what BMW found out about Miss D's financial circumstances. Under the terms of the loan agreement, Miss D had to pay back around £82,000. So her monthly repayments were going to be very large - and she would have to keep up with them for almost a five-year period. I think that argues strongly for

more thorough checks being made as part of the lending process. From what I've seen, though, I don't consider BMW did enough checks. I can't see that it took steps to verify her monthly income. Nor can I see that it looked further into her financial circumstances to better understand what she had to pay for each month in terms of necessary expenditure and living costs, in addition to paying back credit.

BMW says Miss D's credit file showed no recent adverse markings that might be a concern. The copy of her credit report I've seen supports this. But I do have other concerns about it. I can see that Miss D took out at least four unsecured loans in 2023, before applying for this finance, borrowing a total of around £40,000. She also took out a second mortgage in January 2023 for around £54,000. Taking on borrowing debt approaching £100,000 so close to the agreement ought to have immediately prompted BMW to do better checks. Miss D told us that she used money from credit cards to fund the payments she made during the time she had the car.

It follows that, given that BMW made its lending decision based chiefly on automated checks, I don't consider they could in any way be enough to give a good enough indication of Miss D's financial situation at the time. I'm therefore not satisfied that the checks BMW carried out were reasonable or proportionate.

If BMW had carried out proportionate checks, what would they have found?

A proportionate check would also have involved BMW finding out more about Miss D's income and non-credit expenditure, such as her regular living costs. I can't say for sure what BMW would have found out if it had asked Miss D for more information about her expenditure. But in the absence of anything else, I think it would be reasonable to place significant weight on the information contained in her bank statements as to what would most likely have been disclosed.

I've looked at bank statements covering the three months before Miss D took out the agreement. These show the credit debt and mortgage she was repaying plus non-credit expenses including utilities, food, travel costs and insurance. I can also see, as was also noted by our investigator, that Miss D's income fluctuated from month to month between £2,800 and £3,000.

Given the high level of credit commitments Miss D already had to pay alongside her day-to-day outgoings, I agree that on even the most optimistic analysis Miss D was likely to have been left with no or minimal disposable income each month with which to fund the new finance as she appears to have been unable to meet her existing commitments and had become increasingly reliant on borrowing.

So I think it's clear that had BMW carried out better checks it would have seen the finance wasn't affordable or sustainable and that taking it on would very likely lead to deterioration in Miss D's financial circumstances."

Responses to my provisional findings

Miss D asked for some further details about how the redress set out in my provisional decision would work. She also provided some further clarification about the communication she had with BMW before returning the car. I see our investigator has responded to Miss D.

I am grateful for the further details provided by Miss D. This doesn't affect my uphold finding and what I am asking BMW to do to put things right

BMW didn't come back with any further evidence or information.

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.

BMW 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.

Having not been provided with any new evidence or information that affects my provisional finding, my finding remains that BMW didn't carry out reasonable and proportionate checks. Had it done so it would likely have seen that the agreement wasn't affordable to Miss D and that she would be unable to repay it on a sustainable basis.

I therefore uphold this complaint. BMW needs to put things right for Miss D.

Putting things right – what BMW needs to do

Miss D sold her car back to the dealer she'd purchased it from in September 2023 – only four months after she'd acquired it - receiving £70,505.42. This obviously wasn't enough to meet the settlement figure of £108,505.42 that BMW gave her. She therefore had to borrow the £38,000 difference from relatives, who in turn had to arrange finance to help fund it.

As I don't think BMW ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or other fees due under the agreement. Miss D should therefore only have to pay the original cash price of the car. However, there was a substantial difference in value between the original cash price and what the dealer paid Miss D when it bought the car back from her. From the general valuation sources I've seen it looks as if the car was undervalued. This led to Miss D having to borrow almost a third of the cash price value of the car under the terms of the agreement in order to settle it.

This unfortunately means that Miss D will still have lost out financially. But the complaint she brought to us is against BMW, and not the dealer. So I cannot reasonably expect BMW to do anything more by way of compensating Miss D, who decided to sell the car back to a third party – the dealer – rather than look at options to terminate the agreement with BMW directly. This might possibly have led to a lower outstanding amount on the agreement. I realise this will be a source of frustration to Miss D.

To settle Miss D's complaint with BMW I therefore require that it does the following:

- Refund any payments made in excess of the original amount that Miss D borrowed. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Miss D's credit file regarding the agreement.

*HM Revenue & Customs requires BMW to take off tax from this interest. BMW must give Miss D a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold this complaint and direct BMW Financial Services (GB) Limited to put things right in the manner I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 8 July 2024.

Michael Goldberg

Ombudsman