

The complaint

Mr M complains BMW Financial Services (GB) Limited (BMW) irresponsibly entered into a car finance agreement because it didn't complete reasonable and proportionate checks to ensure the agreement was affordable for him.

What happened

Mr M entered into a hire purchase agreement with BMW in May 2014 in order to acquire a used car. The cash price of the vehicle was £25,500 and Mr M didn't pay a deposit. Mr M was to make an initial payment of £661.71 followed by 47 monthly repayments of £487.71. There was an optional final repayment of £8,249.66. The total amount payable under the agreement was £31,833.74.

Mr M settled the agreement and received confirmation of this on 17 January 2019. The car was returned to BMW. Mr M made a complaint about irresponsible lending to BMW. He said BMW hadn't carried out sufficient affordability checks and didn't enter into this agreement fairly or reasonably. He said he was already using bad credit and loans with high interest rates. He said BMW should have verified his income and it would have noted a very low disposable income amount. He also said BMW ignored direct debits and defaults on previous borrowing.

I note Mr M has also complained that the hire purchase agreement was mis-sold because he says the commission was not disclosed. This complaint was responded to in a separate final response by BMW and it is being dealt with separately by our service.

BMW responded to the irresponsible lending complaint on 31 October 2023. It said it completed an initial automated assessment of which creditworthiness and affordability are key considerations. It said it looked at key pieces of information including credit score, other credit commitments, payday loan usage, credit card utilisation and other information. It said it took this information into account to consider whether the agreement would be affordable. It said Mr M's credit file did not raise concerns and previous and existing credit was well maintained. Therefore, it determined the agreement was likely to be affordable for Mr M and approved the application without manual review.

Mr M remained unhappy and asked our service to investigate. Our Investigator issued a view to explain why they felt reasonable and proportionate checks hadn't been carried out. However, our Investigator said he hadn't been provided with sufficient evidence to demonstrate what such checks would have shown had they been carried out at the time. So, our Investigator felt unable to uphold the complaint. Mr M didn't accept our Investigator's view.

In summary, Mr M said:

- The complaint should be upheld as he had to surrender the car because BMW threatened him and demanded payment of more than £8,000. Therefore, he said the decision was incorrect.

- The agreement caused him to go into great debts.
- An automated decision should not have been made in terms of what was affordable, and BMW did not carry out due process. BMW failed in its ethics.
- BMW have provided no evidence that they took proper care in checking the affordability and the payments were missed at times. BMW should have monthly payment reports.

Mr M also said he would try and provide statements to support his complaint.

As Mr M didn't accept our Investigator's view, 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.

I appreciate Mr M is concerned because our Investigator's outcome already sided with BMW. He feels I will lean on the previous outcome in order to reach a decision. I want to assure him I have reviewed the case independently to our Investigator and reached my own decision on the matter. In doing so, I have decided not to uphold this complaint. I've set out the key reasons for the decision I have reached based on the individual circumstances of Mr M's complaint.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr M's complaint. BMW needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that BMW needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr M before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr M's complaint. These two questions are:

1. Did BMW complete reasonable and proportionate checks to satisfy itself that Mr M would be able to sustainably repay the agreement without experiencing adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr M would've been able to do so?
2. Did BMW act unfairly or unreasonably in some other way?

BMW outlined in its final response that the agreement was automatically approved with no manual underwriting. This is confirmed in its system notes and submission to our service. It said the automatic approval took into account various pieces of information about Mr M's financial situation including (amongst other things) credit commitments, payday lending and credit card utilisation. It said based on the information the agreement was auto approved and there was no need for manual underwriting.

Our service requested a copy of the information which would have been considered during the application process and which BMW said the auto approval would have relied on. For example, a copy of the credit search or credit information which was assessed at the time.

BMW told us that this information is not available because of the nature of the automatic approval process.

In order to try and piece together some of the information BMW were likely to have taken into account, our service asked for Mr M's credit file and bank statements. However, the credit file does not now go back far enough to show what Mr M's credit commitments were at the time of the lending and we have not received statements.

Having reviewed the information I do have, I'm unable to say the checks completed by BMW were reasonable and proportionate. Whilst I understand the automatic approval process took into account information about Mr M, I've not seen the results of this and evidence of the information which was actually taken into account. So, I can't say the checks BMW did complete were sufficient to ensure the lending was affordable for Mr M.

Whilst I appreciate I have concluded the checks carried out by BMW weren't reasonable and proportionate, it doesn't automatically follow the complaint should be upheld. In order for me to uphold this complaint, I'd need to be satisfied that had reasonable and proportionate checks been carried out, then they would have shown the agreement wasn't affordable or sustainable for Mr M.

I have very little information to say what reasonable and proportionate checks would have been in the circumstances of this complaint. For example, the need for more thorough checks can sometimes be prompted by some initial application data such as income declaration and results from a credit check. Nevertheless, the amount repayable under this agreement was significant and I think it would have been reasonable for BMW to rely on information about Mr M's income and expenditure, including how he was maintaining his credit commitments.

To reconstruct what BMW might have seen at the time had it carried out proportionate checks, our service asked Mr M for a copy of his bank statements. I'm not saying BMW needed to get bank statements on this occasion in order to have completed reasonable and proportionate checks. But usually statements will give a reasonable indication of what was likely to have been found out about a consumer's circumstances at the time of the lending. I have already explained the credit file does not show Mr M's commitments at the time.

However, Mr M told us the statements weren't available because the account is now closed. He has since requested additional time in order to obtain the bank statements and although some extra time has been provided, the statements have not been forthcoming. We've also asked Mr M if he has any other information which would demonstrate his income and expenditure at the time, as well as some of the adverse credit information he has described. Mr M did not confirm he had anything further he could provide.

I'm satisfied a reasonable amount of time has now passed for information to be provided. So, I've proceeded to issue a final decision on the matter. In doing so, I'm unable to conclude reasonable and proportionate checks were likely to have shown the agreement was unaffordable for Mr M. So, I can't conclude BMW shouldn't have entered into this credit agreement with Mr M and I won't be asking BMW to do anything to resolve this complaint.

Did BMW act unfairly or unreasonably in some other way?

I appreciate Mr M was disappointed that he had to return the car because he couldn't afford to pay the balloon payment. I have reviewed the system notes and I also have some corresponding letters about the settlement of the agreement and the collection of the car. I can also see the agreement clearly set out the optional final payment (also called a balloon

payment) and Mr M signed the customer acknowledgement to say he had received an explanation of the credit agreement, periodic repayments and the total payable.

Having reviewed this information, on balance, I'm not persuaded BMW acted unfairly here. As the final payment was optional, I'm also satisfied this payment itself didn't mean the agreement was unaffordable. I would also note it's not unusual for consumers to opt for an agreement with a balloon payment because it can reduce the cost of the monthly repayments.

I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think BMW lent irresponsibly to Mr M or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 February 2025.

Laura Dean
Ombudsman