

The complaint

Mr B has complained about a hire-purchase agreement which BMW Financial Services (GB) Limited, trading as BMW Financial Services ("BMW") provided to him. Mr B says he couldn't afford to repay the agreement, and BMW would've known this if it had carried out a sufficient affordability checks.

Mr B's letter of complaint also contained a number of other strands including the lack of help and support from BMW when the account entered arrears. And Mr B says that the complaint process took too long, and he felt that BMW had ignored his complaint. Mr B says that it took advantage of the complaints system in order to obtain a County Court Judgment (CCJ).

What happened

In September 2017, Mr B entered into a hire purchase agreement for a brand-new car. The purchase price was £35,674. A total deposit was paid of £6,250 (but only a £3,000 cash deposit from Mr B) with the remaining balance - £29,424.23 to be financed. Mr B was due to make 47 monthly payments of £364.61 followed by an optional final payment of £15,756.74. If Mr B repaid the hire purchase agreement in line with the credit agreement, he would've paid a total of £39,152.41.

Mr B made his payments as expected until September 2019, when the payment was returned as unpaid. After that date Mr B had difficulties managing the agreement and the statement of account shows the agreement was terminated in April 2022 with the vehicle being returned to BMW in June 2022.

The car was then sold at auction and then the remaining balance was requested to be paid by a third party acting on BMW's behalf who subsequently sought and was granted a CCJ for the remaining balance in January 2023. The court paperwork shows that Mr B's outstanding balance at this time was just under £6,000.

BMW didn't uphold Mr B's complaint. It said based on the information given to it by Mr B and the results of the creditworthiness and affordability assessment he would be able to afford the payments.

The complaint was then considered by one of our investigators. She didn't think BMW's checks before providing the finance were reasonable or proportionate. However, she said that had BMW carried out further checks into Mr B's finances before granting the agreement it would've likely thought the loan was affordable.

Mr B didn't agree with the investigator's findings and the complaint was passed to me. I then issued my provisional decision explaining the reasons why I was intending to not uphold Mr B's complaint.

Both parties were given a chance to provide further information – BMW didn't have anything further to add. Mr B provided detailed responses, which I've read in full even though the

entirety of the document isn't reproduced here. I also acknowledge that the responses covered a number of themes which I've thought about.

- BMW failed to address Mr B's first complaint – which was raised in November 2022.
- Mr B clarified the deposit that was made – was £3,000 cash with the remainder being a dealer contribution.
- Mr B says that no employment checks were carried by BMW – he was a self-employed sole trader at the time and so wasn't a '*traditional*' applicant. This is further evidence, that BMW has harmful and inadequate lending practices.
- It wasn't right that I had tried to reconstruct what a proportionate check may show and Mr B provided some examples as to what says BMW ought to have done to carry out a proportionate check.
- Mr B asked questions as to what the Financial Ombudsman considers to be a proportionate check into a non-standard application – for example how much information ought to be obtained about their self-employment income.
- Mr B meets the criteria for enhanced affordability checks – which ought to have gone beyond looking at three months' worth of bank statements. A review ought to have been carried out for the entire time that Mr B had been self-employed.
- The review of Mr B's income and expenditure provided an inaccurate picture of his actual financial position.
- BMW has delayed the resolution of the complaint but failed to engage with the Financial Ombudsman as part of the investigation.
- Which is in contrary to Mr B who has already responded and provided information that has been requested. Mr B has said that he has been held to a higher standard than BMW.
- Mr B has questioned why the bank statements were used for the income and expenditure checks rather than using other sources of information.
- Mr B also queried why bank statements were used yet the provisional decision said BMW didn't need to see them or use them. Mr B also says the use of bank statements, doesn't provide a complete picture when information was provided in the tax returns.
- The lack of response and engagement from BMW ought to lead me to request all of the information that it has on Mr B – including the credit search results which would show multiple '*red flags*'.
- Mr B confirms he can't provide a copy of his credit report, because of the time that has passed it won't show information that BMW may have seen in 2017.
- Mr B says if he can't have been treated fairly, then he would withdraw access to his bank statements as part of the determination – which would then lead to the only information being would be his tax return.

Mr B then provided a supplementary document – again, I've read this in the entirety, and in addition to what I've summarised above, Mr B says;

- The dealer took the vehicle back and arranged the early termination with BMW – this caused Mr B to be financially disadvantaged.
- At the time of finance Mr B had another vehicle on finance and so only a few conclusions could be drawn, he was taking on another agreement and so was in breach of the terms and conditions. Or, the first agreement would be terminated showing difficulty in maintaining contractual repayments with the need to end the agreement early. Finally, he would keep the first car and that would lead to two sets of payments – which causes into question the sustainability of the BMW agreement.

An extract of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Taking into account the relevant rules, guidance and law, and considering the main reason for Mr B's complaint, I think there are two overarching questions that I needed to consider in order to provisionally decide what is fair and reasonable in the circumstances of this complaint. The regulations in place when BMW lent to Mr B required it to carry out a reasonable assessment of whether Mr B could afford to make his repayments in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

Any affordability checks should have been "borrower-focused" – so BMW had to think about whether making the payments sustainably would cause difficulties or adverse consequences for Mr B. In other words, it wasn't enough for BMW's lending decision to only consider the likelihood that it would get its money back, or that it had the ability to repossess the vehicle, without considering the impact making these payments would have on Mr B.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications. In light of this, I think that a reasonable and proportionate check generally ought to have been more thorough:

- the lower a customer's income (reflecting that it could be more difficult to repay 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 repayment from a particular level of income);*
- the longer the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for a longer period).*

We asked BMW for further information into exactly the sort of checks it conducted and what those checks demonstrated to it. Unfortunately, the information wasn't provided, so all I have to go on is what it told the investigator and provided as part of its initial file. That being, the application was "...auto-accepted."

This included using information such as Mr B's employment, address history and the financial commitments from a credit search. As a result, it didn't consider there to be any concerns with regards to affordability and so the finance was granted.

I've considered the checks BMW says it carried out in this particular case. It seems to me BMW is relying on its background checks and the declaration Mr B signed as having been sufficient to determine that the monthly payments were affordable for him.

But as far as I can see, all BMW has provided is a Consumer Credit Finance Factsheet which Mr B signed to confirm that he understood that he needed to consider his ability to afford the agreement – taking account of his living costs and his other financial commitments.

Even if this is the case, I don't see how this document absolves BMW of its obligation to conduct a proportionate affordability assessment to determine whether Mr B would likely to be able to afford the finance.

BMW has said that it conducted credit checks but, despite being asked hasn't provided the results it received, or any of the other factors it considered which it outlined in the final response letter to Mr B. I can't be sure exactly what data and factors it considered that led it to conclude Mr B could afford to make the monthly payments approaching £365 a month, or anything else about Mr B's monthly

expenditure. Indeed, it seems to me that BMW simply expects us to accept Mr B's payments were affordable because its systems approved it.

Considering the amount advanced, the monthly payment and the fact the loan was provided relatively recently, BMW hasn't been able to tell us the monthly income it had recorded for Mr B even though this has been requested a number of times and given the size of his monthly repayment is something that at the very least needed to be considered.

For the sake of completeness, I'd also add without any other information from BMW about exactly what information it gathered from Mr B before it granted the finance, or the results of its credit search that it says that it carried out, I can't fairly or reasonably conclude that these checks were either proportionate or gave it results that ought to have led it to do further checks. And I say that notwithstanding that a deposit was paid of over £6,200.

I'm not currently satisfied that the checks BMW carried out before reaching the conclusion the agreement was affordable for Mr B weren't reasonable or proportionate.

As proportionate checks weren't carried out before this agreement was provided, I can't say for sure what they would've shown. So, I need to decide whether it is more likely than not that a proportionate check would have told BMW that it was unfair to enter into this agreement with Mr B.

However, the fact BMW didn't in my view conduct a fair or reasonable proportionate check that doesn't on its own mean that the complaint will be upheld. In order for the complaint to be upheld, I have to be satisfied, in the circumstances of this complaint that two conditions are met.

Firstly, whether BMW carried out a proportionate check – and based on the limited information it has provided I've concluded it didn't. But secondly, I also have to be satisfied that had a proportionate check been carried out – that BMW would've likely discovered that Mr B wasn't in a position to afford the finance.

Both of these elements have to be met to be able to make a finding that the agreement was unaffordable for Mr B.

When thinking about a proportionate check, it's also worth saying that while I've used bank statements, BMW could've built a picture of Mr B's finances a number of other ways. It could've for example asked for a copy of his self-assessment accounts, copies of bills or any other documentation it felt it needed to obtain in order to satisfy itself that the agreement was affordable. Mr B has provided us with evidence of his financial circumstances at the time he applied for the finance. Of course, I accept different checks might show different things. And just because something shows up in the information Mr B has provided, it doesn't mean it would've shown up in any checks BMW might've carried out.

But in the absence of anything else from BMW showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr B's financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mr B's bank statements because I think that BMW ought to have obtained them before lending to him. I've consulted Mr B's bank statements because they were readily available at this stage and they contain the information I now need to reconstruct the proportionate check BMW should have made, but failed to carry out. As part of this assessment, I've had to consider that Mr B was self-employed at the time.

Being self-employed does mean Mr B's income may not have been as stable and regular as someone who is an employee. And, any money that is received by Mr B – for works completed will be the total amount due - there will have to be some tax paid and there may be other associated costs. Mr B has also explained that payment is made at the end of a project, which can run over a number of months, even on short term project it can be up to 90 days before he receives the money for his work.

Mr B says that as a result of his self-employment there are times when he may not receive any income at all – for a number of months. Mr B has explained he didn't receive any income for the first three months of the 2017 tax year. Mr B also provided, as part of his complaint here some context to

his self-employment journey being that year two he found success and then there was a decline in work.

And so, a customer in receipt of funds into the account doesn't automatically mean that the full monthly income they would receive. This isn't as straightforward as someone who receives a regularly monthly salary and a payslip.

Mr B also supplied a notarised Statutory Declaration that during the period September 2017 to June 2022 he made on average just under £21,900 per year. However, I also have to consider that is an average spread across a number of years and by Mr B's own admissions he did have better years than others – but this is useful context to his finances.

Nonetheless, I've considered Mr B's tax returns which he has provided, and these do show that in the tax year 2016/2017 – so the most recent fully completed tax year to when the finance was approved that he earned income from self-employment of £13,020. If that were to be broken down into monthly income that would be around £1,000. Indeed, once tax was paid the income was likely to be under £1,000 per month.

Clearly, at an income of this level, it would, subject to what Mr B's living costs were make the monthly repayment potentially unsustainable and unaffordable. And I don't think it would've been unreasonable, if this was all Mr B had provided to BMW that it would've asked further questions about his income in order to assess his affordability.

Indeed, had BMW asked for bank statements – which is just one of the methods it could have gone about verifying Mr B's information than it would've likely seen that the monthly credits to the account were greater than £1,000 per month. The money received into Mr B's accounts – in the three months before the agreement was entered into – was as low as just under £5,400 and as high as £9,800. I accept Mr B has expressed some concern at only using three months' worth of statements, but in a situation where there aren't many years of tax returns, I don't consider reviewing the previous three months to be an unreasonable approach or outside of the regulatory requirements on BMW.

Even taking account of the fact that Mr B would've been required potentially had business expenses and or to pay tax on this income, than the amounts received does suggest at least in the months leading up to the loan that his income was greater than the tax return the year before.

So, while I accept that the previous tax years Mr B's income was fairly low and wouldn't have been large enough, in my view, to sustainably make the monthly repayments that he was committing himself too. The bank statements provided do show a slightly different picture that his self-employment income at the time – albeit it could be unstable would be enough to make the payments under this agreement even during times while he was waiting for payment.

Had further checks been made into Mr B's bank statements – to ascertain his living costs – which I don't consider to be unreasonable considering none appear to have been taken at the point the agreement was entered into. BMW would've seen that these remained broadly similar each month.

Mr B had costs for rent at £1,250 per month, gas and electric costing £80 per month, gym at £89 per month. A regularly direct debt of £428, mobile phone of around £50 per month as well as other regular payments costing £206 for things like lottery and entertainment subscriptions. Mr B had a credit card at the time and the payments varied between £1,000 per month up to £2,800 per month in the months before the agreement was entered into. On top of this there were also other costs for things such as food, petrol and taxis.

However, given the amount of money being received into the account, I think had BMW asked to see bank statements or queried Mr B's income more closely, it would've likely discovered that he had sufficient disposable income – over a number of months – to take on the finance agreement that he applied for.

Overall and having carefully considered everything, I think that reasonable and proportionate checks would have alerted BMW to the fact that Mr B would likely be able to make the

payments to this agreement without experiencing financial difficulty and/or borrowing further. And so I am not upholding Mr B's complaint about BMW's decision to lend.

Did BMW act unfairly or unreasonably towards Mr B in some other way?

I'll firstly deal with the delay in responding to Mr B's complaint. It's worth saying here that once a complaint is made, an acknowledgement communication is sent and then BMW has a maximum of eight weeks to investigate and issue a final response letter.

If BMW wasn't able to issue a final response within the deadline it is required to send a different letter - letting a customer know that its not finished its investigator but they are free nonetheless to refer the complaint to the Financial Ombudsman.

BMW has part of its file submission provided a copy of the letters it sent to Mr B between February and April 2023. These letters were sent after Mr B sent his email of 27 February 2023. I can see in response to that BMW sent an acknowledgement letter, and then a letter outlining that it hadn't completed the investigation on 26 April 2023 before issuing the final response letter on 27 April 2023. Between February and April 2023 it seems that BMW investigated the complaint as it ought to have.

However, Mr B's complaint wasn't initially raised in February 2023. The first complaint was raised in November 2022. BMW recently provided a copy of the 2022 letter of complaint – so it has a copy of it – but what I can't know for sure is whether the copy it provided is the one it received in November 2022 or the copy of the letter it received when Mr B approached it again in February 2023.

The November 2022 appears correctly addressed but given that BMW doesn't appear to have acknowledged it or started an investigation at this point leads me to think that it may not have been sent correctly or it was received but incorrectly logged. Either way, I'm satisfied that Mr B initially tried to raise a complaint in November 2022.

The impact here, is that the FRL was in effect issued later than it otherwise would've been. But the issuing of a final response letter, isn't a covered activity within the issues that I can investigate. So even if I agreed with Mr B that BMW took too long to investigate his complaint I wouldn't – given that I'm not upholding the other parts of his complaint – be in a position to make an award. In any event, there isn't a direct financial loss for not investigating the complaint within the time frames.

I appreciate that this is before the CCJ was granted as well. But I can see from the recent notes provided by BMW that Mr B had been in contact with the third party before November 2022. It's also worth saying here that as a CCJ has been granted it's not really appropriate for me to comment on the motivations that led it to be granted. Ultimately, due to non-payment a third party sought and was awarded a judgment. Any concerns with that will or would've needed to have been raised with the courts at the time.

So, while I acknowledge that Mr B feels that his original complaint was disregarded and then BMW took advantage of the situation in order to obtain a CCJ. But I'm not going to comment on that further beyond saying that there was a debt that needed to be repaid or a plan put in place. This wasn't done and so a CCJ was sought and granted.

Repayment of the account

The payment history shows that Mr B made the payments as expected for over two years up until August 2019, when the payment was returned. However, Mr B brought the account up to date within a day.

Payments were then made as expected until November 2019 when payments were then missed and the account was only brought up to date on 7 January 2020. Payments then continued as expected. However, due to the COVID-19 pandemic Mr B requested – as was his right - a three-month payment holiday in May 2020. This plan was agreed but as a result of the plan Mr B's repayments would increase.

This is broadly in line with the guidance issued by the regulator. Although payments could be deferred the interest would still be due, so at the end of a repayment holiday Mr B would either need to make a payment to clear any arrears that had built up or BMW would be entitled to adjust the monthly repayments to take account of the deferred interest. BMW appears to have taken the second route – calculating the payments and there wasn't and isn't anything wrong with that.

The regulator updated its guidance in July 2020 allowing another three-month deferral – if needed. I can see from the notes that Mr B requested this in August 2020. Again, as a result of this deferral the monthly repayments would increase to take account of the missed payments.

But at this time BMW's options were either grant the holidays and the impact that it would have on Mr B or as it also would've been entitled to do or conduct other forms of forbearance – as outlined in the regulations, which may or may not have included voluntary termination or surrender.

So, while I understand that Mr B is unhappy that his payments would increase each month this was consistent with the guidance at the time and so I don't think BMW made a mistake with how it handled his payment holidays.

As I'm not upholding Mr B's complaint it therefore follows that I am not directing BMW to make any payment to him to reflect what happened either when the agreement was entered into or what happened later on.

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 would like to thank Mr B for his comprehensive response to the provisional decision and for clearly explaining the reasons why he disagreed with the outcome I had reached. What I've said below should also be read in conjunction with the provisional decision that can be found above, in smaller font.

I also want to reassure Mr B that I've not commented on everything he provided in response to the provisional decision. It's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I'm satisfied that I don't need to do so in order reach what I consider to be a fair and reasonable outcome or that I had already addressed it in the provisional decision. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

Complaint handling

Firstly, I completely understand Mr B's frustration with the process of raising his complaint with BMW. Based on the dates provided by Mr B it doesn't look like, for whatever reason BMW responded to his first complaint – but it did deal with his concerns when these were raised again in February 2023.

But as I said in the provisional decision, complaint handling isn't an FCA regulated activity – so I can't make an award to Mr B for this. And even if I could consider this, I wouldn't recommend and award because BMW did send a holding letter – which it was required to do.

Mr B has also said BMW has delayed the resolution of the complaint because it failed to fully engage with the Financial Ombudsman Service, which is contrary to the way Mr B has engaged with us. Mr B also said that there has been a lack of cooperation. For the avoidance of doubt, Mr B has provided information when requested and if there was going to

be a delay – he updated us with what was happening and when a response may be received.

I would partly agree with Mr B's comments and there have been times where we've waited for information from BMW in order to be able to progress the complaint – such as the information requested about the CCJ which took longer than anticipated to be received. But again, that isn't relevant to the main complaint and would not lead me to come to a conclusion that BMW made an unfair lending decision.

I can understand why Mr B now wants me to ask BMW for all the information it has. But I don't think that would be a good use of time, given the conclusions I've been able to draw from the information that has been made available. To be clear, even if BMW had provided everything that the investigator and I asked for, I still don't think it would've led to a different outcome. I am not going to be making an award for.

The deposit

I also thank Mr B for clarifying the amount of cash deposit that was paid by £3,000 and Mr B has said the rest was a dealer contribution. I'm happy to correct that – and Mr B will see that has been done at the start of the decision in the 'what happened' section.

While I mentioned how much deposit was made in my findings the complaint didn't turn on whether Mr B paid just over £6,000, £3,000 or another amount. While the amount of cash deposit Mr B made wasn't as great as I initially believed, it still nonetheless represented just under 10% of the vehicle asking price. And even if no deposit had been paid, I still would've reached the same outcome that I did in the provisional decision.

Proportionate checks

I also think it's been accepted that the checks BMW carried out were clearly not sufficient in this case – I've not been provided with anything to make me change my mind of this.

It's also worth saying here that just because a conclusion has been reached that a lender's – in this case BMW's - checks didn't go far enough, that doesn't mean the complaint is automatically upheld.

There are two parts to any test when thinking about unaffordable lending. Firstly, where the checks carried out were sufficient and I've already explained in the provisional decision why this wasn't the case. But then the Financial Ombudsman has to think about what a proportionate check may have shown BMW at the time and what that would've indicated about Mr B's finances.

So, the fact that I've concluded the checks weren't sufficient and haven't upheld the complaint isn't unusual or out of the ordinary. It just merely reflects the fact that a review of Mr B's income and day to day living costs wouldn't have led BMW to make a different decision. In the provisional decision I have explained that BMW needed to carry out checks that were proportionate. Some of the elements Mr B expected BMW to carry out is disproportionate.

I note what Mr B has said about the lack of credit checks being provided by BMW and Mr B is correct in saying that any credit report he provides now won't cover the relevant period. Indeed, the credit report he previously provided – dated December 2023 also didn't cover the relevant period.

BMW has said the credit report didn't show any cause for concern – to be clear I don't know if this is the case because a copy of the report hasn't been provided. Whereas, Mr B has said there was adverse payment information.

There are two possibilities here. Either the credit check results BMW received did show adverse payment entries (as Mr B suggested they should) or they didn't. But whichever of these was actually the case hasn't made a difference to the outcome that I've reached.

I say this because had the credit search results indicated adverse payment information then I would've expected BMW to have made some further enquires with Mr B before lending – and this is something that I've already concluded ought to have happened. Or, if the credit search results weren't any cause for concern as BMW has suggested, then I still would've concluded more checks were needed.

And while a lack of checks and information from BMW may show harmful lending practices, what I'm being asked to look at in this case is whether BMW's were proportionate for Mr B given the individual circumstances. I don't have the power nor the remit to consider BMW's affordability checks in the wider landscape that would be for the role of the industry regulator.

Mr B has also said that no employment checks were carried out – again I can't be sure given the limited information provided. But I am satisfied that Mr B was working at the time, albeit he was self-employed. Mr B says that as he was self-employed, he didn't have the traditional regular monthly income that someone who works for a company and receives a salary. And I agree with this.

I explained in the provisional decision BMW needed a more thorough understanding of his income and expenditure and the reasons for it. In terms of income it could've asked for bank statements, copies of any contracts Mr B may have had or as part of that process collected tax return documentation. Again there was no set list of what BMW had to gather.

In the provisional decision I did comment on the tax return documents Mr B provided and I refer Mr B to that part. Clearly, with a monthly repayment of £400 than the agreement may well still have been affordable for him depending on his other living costs. But the question of whether it would've been sustainable would've been relevant.

But the tax returns only showed what was Mr B's income within the last tax year, it can't and didn't show what his income was at the time of the application – and BMW was being asked to consider Mr B's affordability at the time of the application – not what it was before.

Had the tax return been collected I do think at the very least this would've prompted a further conversation or investigation about what Mr B's income was at the time – and this is especially so as Mr B approached BMW for the car and the fact that a review of his living costs (which I come on to below) would've shown his rent alone was more than his income.

Which may have suggested to BMW and to anyone else that perhaps that Mr B's finances were more complicated than the tax return suggested – which perhaps is to be expected given he was self-employed.

In terms of outgoings, BMW could've asked for a rental agreement, copy bills or any other documentation that it felt was necessary. Or it may have also been proportionate and within the regulations to have asked Mr B what his outgoings were and then used third party tools to cross reference that data.

Or, as I did, it could've asked to see copy bank statements. This doesn't mean BMW had to ask for them, but it was a convenient method of trying to establish what Mr B's income and outgoings were in the months leading up to the agreement were. And I think looking at the statements (or gathering other information) in the months leading up to the agreement would've been reasonable in the circumstances.

Had BMW obtained bank statements, I don't think it would've needed to have carried out a forensic analysis of what it may or may not have seen. In my view that would've been disproportionate given the circumstances of Mr B's application – even consider he was self-employed. So, I don't agree with Mr B that a full enhanced checks needed to have been carried out to go into the level of detail Mr B may have expected.

I don't think in the circumstances that it would've been reasonable for BMW to have conducted a check covering the entirety of Mr B's self-employment. This would have been wholly disproportionate and not what the regulations expected of BMW.

The bank statements do show in the months leading up to the agreement he was earning more than £1,000 per month – even accounting for tax and national insurance which would've needed to have been paid. More information about this can be found in the provisional decision which can be found above.

I'm also still satisfied, for the reasons given in the provisional decision, that a clearer understanding by BMW of his expenditure would've led it to conclude the agreement was affordable. This is also considering that the account had a healthy balance throughout the period and didn't suggest Mr B was struggling to repay his existing creditors or couldn't afford to take on the car payments. I've not been provided with any new information to make me think that BMW wouldn't have had it take on board Mr B's regular outgoings wouldn't have approved this loan.

I accept Mr B disagrees with the use of bank statements, but as I've said it is a convenient way to see what Mr B's income and living costs were at the time. And as part of the complaint, why alternative information was provided about Mr B's income – I used the bank statements for living costs as there was no other available evidence, and I don't think the tax returns provided either the Financial Ombudsman Service nor BMW a sufficient amount of information about Mr B's overall financial picture at the point the loan was agreed.

Mr B has said my review of his bank statements provided an incomplete and inaccurate picture of his financial position. But the bank statements weren't used and wouldn't have been used for a line-by-line review of what he was spending his money on. There were merely used to understand what Mr B received in terms of an income each month as well as what Mr B likely regularly monthly living costs were.

But to be clear, I didn't add up all the incomes and then from that deduct every payment Mr B made – as I don't think that would've been needed at the time – indeed that is arguably more than what is done when a mortgage is approved which is a much longer term and more expensive product.

And while I've noted what Mr B has said about the mystery shopper exercise which was carried out, I don't think that has any bearing on the complaint. And I say this because there is no set list of checks that needed to be carried out. So, I don't think that BMW doing even more detailed checks for applications today means that it needed to do that at the time.

I also note that Mr B says that he feels he's been treated unfairly and the manner in which the bank statements have been used. And as such, Mr B has suggested that he withdraws them from the investigation.

But by doing so the outcome would still have been same. I say this because I would have had nothing to show what other costs, if any Mr B may have had at the time. As such, had bank statements not been provide, or now subsequently withdrawn. I would've concluded the complaint wasn't to be upheld due to a lack of information from Mr B showing what his likely financial position was at the time.

I haven't been provided anything else to make me think that further checks by BMW would've led to a different lending decision. I am still therefore not upholding Mr B's complaint.

Other car finance

I've reviewed the bank statements, and I can see a monthly payment that could've been towards another car finance company – this was costing Mr B around £428 per month. This payment can be seen in May – July 2017 statements but isn't visible in the August 2017 statement.

Mr B says that either he was terminating the earlier car finance early and that could be a sign that Mr B was having problems. The early ending of a finance agreement doesn't necessarily mean Mr B was having difficulties repaying it because he may well have just wanted a different car – which isn't a reason on its own to carry out further checks.

Again, this may call into question why Mr B would want a second car on finance, but ultimately, if the checks showed the payments were affordable then it wouldn't have been wrong of BMW to have lent.

The CCJ

I've also though about the fact that Mr B says he was financially disadvantaged when the vehicle was returned to BMW. However, it's not appropriate for me to comment on this bearing in mind the value the vehicle received at auction was taken off the liability Mr B had and then BMW sought court action.

Therefore, for the reasons given in the provisional decision, it wouldn't be appropriate for me to look at this aspect of the complaint. Mr B may wish to contact BMW to discuss away forward in repaying the CCJ to see whether there is any other help and support BMW can offer.

I know that Mr B will be disappointed by the outcome that I've reached in his case and I can see he's put a lot of time and effort into his submissions. However, on this occasion I'm not able to uphold the complaint based on the evidence provided by both parties.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think BMW lent irresponsibly to Mr B 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 I've explained above and in the provisional decision, I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 July 2025.

Robert Walker
Ombudsman