

The complaint

Mr B has complained through a representative about a hire-purchase agreement which BMW Financial Services (GB) Limited trading as BMW Financial Services ("BMW") provided him. Mr B says BMW didn't complete sufficient affordability checks before providing the finance to him.

What happened

In July 2020, Mr B entered into a hire purchase agreement through a credit intermediary for a used car. The vehicle purchase price was £18,892 and no deposit was paid so the full balance was financed. There were interest and charges of £4,042.35 with a total to repay of £22,394.35. This agreement was to be repaid with 48 monthly repayments of £325.05 followed by a final optional payment of £7,657. The agreement was settled in March 2022.

Following Mr B's complaint, BMW, in a final response letter explained why it wasn't upholding it. Unhappy, with this response Mr B's representatives referred the complaint to the Financial Ombudsman.

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

Mr B's representative didn't agree, saying in summary.

- Due to Mr B receiving a weekly wage he was paid 5 times in July 2020 and so the investigator has mis-calculated his income.
- BMW couldn't be sure that Mr B's other HP agreement would end.
- Mr B's bank statements are produced on or around the 6th of each month and so, had the application process started before the car was received, then the July 2020 statements wouldn't have been available to BMW to review.
- Had April, May and June 2020 statements been viewed then BMW would've concluded the agreement was unaffordable.

These comments didn't change the investigator's mind and so the complaint has been passed to me, 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.

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 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).

There may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I’ve thought about all the relevant factors in this case.

BMW has said when Mr B applied for the loan it carried out an assessment of affordability and creditworthiness using a “...*bespoke credit scoring criteria, internal policies and data from credit reference agencies.*” BMW says that Mr B’s application passed its checks and so it granted the loan.

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, 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 and it has been able to provide a copy of the results that it received. Mr B had a number of active accounts including credit cards, existing loans, mail order and an existing hire purchase agreement. However, all these accounts were up to date with no missed payments and so didn’t suggest Mr B was having problems managing his existing financial commitments. Indeed, the results may have given BMW some confidence that Mr B had successfully been able to manage and repay an existing HP agreement.

I’m not currently satisfied that the checks BMW carried out before reaching the conclusion the agreement was affordable for Mr B were reasonable or proportionate. It didn’t seem to have any idea of what Mr B’s income was or what his day to day living costs were.

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 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 – 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 copies of bills, a full copy of Mr B's credit file 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.

I can see that Mr B was employed and received a weekly salary. Mr B's representative has raised concerns about the income. It says that as Mr B was paid weekly, there were some months where he was paid five times, and other months where he received four payments. For example, in June 2020 Mr B was paid four times and received just over £2,750 whereas in July 2020 – the month the agreement was entered into he was paid five times and received just over £3,126.

I've thought about this, for the purposes of looking at what BMW may have seen when reviewing his bank statements – or indeed his payslips. After all BMW didn't need to obtain the bank statements in order to check Mr B's income.

I think on balance it would've discovered that Mr B received his pay weekly and on average received around £625 per week in the lead up to the loan being granted. I acknowledge that in April 2020, Mr B's salary averaged around £439 per week, but when thinking about what his salary was at the time of the agreement – and this may have been (or not) impacted by the COVID- 19 pandemic.

So, I think an average of £626 is reasonable. Especially, because looking at the statements moving forward, Mr B continued to be paid that until at least October 2020 – which is where the statements end. I'd also add that whether he was paid four times or five times in a month doesn't make a difference to the outcome that I've reached.

Mr B's representative has also queried the statements used by the investigator to consider Mr B's living costs – but whether the statement period (usually around 6th to 6th of the month) or a calendar month doesn't change the outcome that I've reached because overall similar data or information would've likely been captured by BMW.

I want to reiterate that I've used Mr B's bank statements, not because BMW had to use this method, but instead of a way of reviewing what Mr B's monthly living costs likely were. What I've not done is carry out a full forensic income and expenditure analysis of Mr B's finances – because that wouldn't have been proportionate.

I would start by saying that there isn't anything within the bank statements that would've shown obvious indicators of financial difficulties, such as repeated returned payments or other forms of unsustainable spending or a reliance on any form of credit. So superficially there wasn't anything for BMW to have been concerned about.

Mr B says at the time he was on a repayment holiday with both the existing HP agreement and his mortgage. But the mortgage agreement didn't appear in the credit search results that BMW obtained, and the ones that were sent by Mr B's representative shows the current mortgage starting after the start date of this finance. But Mr B has confirmed the mortgage started in 2015 and is in his name – so I don't know why this account didn't appear in BMW's credit search results.

These payments also didn't appear in the statements that I've viewed – due , but I've nonetheless I've considered these payments that Mr B needed to make, and added them to his regular living costs. And had further checks been made into Mr B's living costs, BMW would've seen that these remained broadly similar each month.

Had BMW made proportionate checks it would've thought the loan payments were affordable to Mr B. There are a number of direct debits each month for items such as insurance, council tax, utilities, loans, communication accounts, TV subscription services. I've added those together along with the petrol costs that I can see and the mortgage. Finally, I've also added the existing HP agreement – that BMW knew off from the credit file as well as the payments Mr B was due to make to BMW.

However, given the regular weekly income that Mr B received at the time I think had BMW asked to see bank statements or queried Mr B's income and expenditure more closely, it would've likely discovered that he had sufficient disposable income to take on the finance agreement that he applied for.

Mr B's credit search shows that he had an existing HP agreement – and the investigator discovered that this was paid in the months following this one being entered into. However, reviewing the paperwork provided by BMW there is no mention of Mr B needing to settle the previous HP agreement in order to be granted this one.

I don't know, and I don't need to know why Mr B took steps to settle the existing HP agreement, but for completeness, I did include the existing HP agreement into Mr B's regularly living costs and even taking that into account, doesn't change the outcome.

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.

Finally, I've considered whether the business acted unfairly or unreasonably in any other way 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 set out above, I am 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 28 February 2025.

Robert Walker
Ombudsman