

Complaint

Mr W complains that BMW Financial Services (GB) Limited ("BMW FS") unfairly entered into an unaffordable hire purchase agreement with him.

Background

In October 2021, BMW FS provided Mr W with finance for a used motorbike. The purchase price of the vehicle was £12,492.00. Mr W paid a deposit of £2,000.00 and entered into a 48-month personal contract purchase ("PCP") style hire purchase agreement with BMW FS for the remaining £10,492.00.

The loan had interest, fees and charges of £2,545.17 and a 48-month term. This meant that the balance to be repaid of £13,037.17 (not including Mr W's deposit) was due to be repaid in 47 monthly instalments of £149.49 followed by a final payment of £6,011.14 which Mr W had to make if he wished to keep the motorbike. In May 2022, Mr W settled the agreement early.

In June 2024, Mr W complained to BMW FS saying that the finance was unaffordable and so it should never have been provided to him. BMW FS didn't uphold Mr W's complaint. In its view, it carried out proportionate checks and these showed that Mr W could afford to make the payments to this agreement. So it considered that it wasn't unreasonable to lend to him in these circumstances. Mr W remained satisfied at BMW FS' response and referred his complaint to our service.

Mr W's complaint was considered by one of our investigators. She didn't think that BMW FS had done anything wrong or treated Mr W unfairly when lending and didn't recommend that Mr W's complaint should be upheld. Mr W disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

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

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr W's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr W's complaint. I'd like to explain why in a little more detail.

BMW FS needed to make sure that it didn't lend irresponsibly. In practice, what this means is that BMW FS needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less

thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

I've kept this in mind in determining Mr W's complaint.

BMW FS says it agreed to this application after Mr W provided details of his monthly income and bank statements to support this. BMWFS says it also carried out credit searches on Mr W which showed that he didn't have any significant adverse information - such as defaulted accounts or county court judgments ("CCJ") recorded against him. And the existing credit that Mr W did have was being well paid.

In BMW FS' view, when reasonable repayments to Mr W's existing credit commitments were deducted from his monthly income, Mr W had sufficient funds left over to meet his regular living costs as well as make the monthly payments to this agreement.

On the other hand, Mr W says that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr W and BMW FS have said.

In the first instance, it's clear that BMW FS didn't just simply proceed with Mr W on the basis of what he had told it. Indeed, the available evidence suggests that Mr W's application was flagged for a manual review and that he had to provide bank statements in order to for his application to proceed. Therefore, as it requested bank statements from Mr W, I'm satisfied that BMW FS at the very least gathered a significant amount of information from Mr W before lending to him.

Having looked at the information gathered, it appears to show that Mr W's existing credit commitments weren't high in comparison to his income. Furthermore, there were no indicators of any credit problems or payment difficulties in the credit check information obtained either.

So BMW FS had evidence of Mr W's income, as well as his credit commitments and it would also have known that Mr W had paid a deposit totalling more than a years' worth of monthly payments. In these circumstances, there is an argument for saying that it was reasonable for it to conclude that Mr W would have sufficient funds left over (once payments to his existing credit commitments were deducted from his income) to meet the monthly payments to this agreement and his regular living costs.

For the sake of completeness and in any event, even if I were to say that BMW FS ought to have done more here, at best, all I would have expected it to do pick out Mr W's committed living costs from the bank statements it had. And I don't think that doing that here would have made a difference.

I say this because when Mr W's committed living expenses are added to repayments to all of his existing credit commitments (including the payment to the loan he'd recently taken out which didn't show in the credit check but did show in the bank statements), he still had sufficient funds left over to make the repayments to this agreement.

Finally, while I accept that this is not in itself determinative, I do think that it's also worth noting that these monthly payments being affordable for Mr W does appear to be supported by him not only having made all the monthly payments he needed to on time, but he also settled the agreement in seven months. The final payment Mr W made also included the optional final payment. Therefore, it's fair to say that Mr W's payment history doesn't support the argument that the agreement was unaffordable for him in this instance.

Overall I'm satisfied that BMW FS gathered a reasonable amount of information from Mr W as part of its assessment of affordability. There is also a reasonable argument for saying that it carried out a reasonable assessment of this information and made a fair decision to lend to Mr W.

In any event, at the absolute best it could be argued that BMW FS ought to have used the information in the bank statements to work out Mr W's actual expenditure, rather than assume he'd have enough to meet his committed living expenses, his existing living expenses and also have enough left over to make these repayments. However, I'm satisfied that even if BMW FS had done this, this won't have stopped it from providing these funds, or entering into this hire purchase agreement with Mr W.

In reaching my conclusions, I've also considered whether the lending relationship between BMW FS and Mr W might have been unfair to Mr W under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think BMW FS irresponsibly lent to Mr W or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So having carefully considered everything, I've not been persuaded that BMW FS treated Mr W unfairly and I'm not upholding this complaint. I appreciate that this will be disappointing for Mr W. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 February 2025.

Jeshen Narayanan
Ombudsman