

## **The complaint**

Miss T, who is represented by a third party, complains that BMW Financial Services (GB) Limited ('BMW') irresponsibly granted her two hire purchase agreements she couldn't afford to repay.

## **What happened**

In August 2016 Miss T acquired a new car financed by a hire purchase agreement from BMW. Miss T borrowed £18,862.15 and was required to make 48 monthly repayments of £270. The total repayable under the agreement was £25,977.00

In October 2020, having settled the first agreement, Miss T acquired another new car financed by a new hire purchase agreement from BMW. The amount borrowed was £28,169.89 and this required Miss T to make 48 monthly repayments of £375. The total repayable under the agreement was £31,599.69.

Miss T says she struggled to meet the repayments with each agreement. She fell into arrears with the second agreement, leading to the car being sold at auction, with Miss T being required to pay off the outstanding balance by way of agreed instalments.

In May 2024 Miss T complained to BMW about the fairness of each agreement, essentially saying that it had agreed to provide her with finance without carrying out reasonable and proportionate checks to ensure she could afford to repay each agreement sustainably. As a result, she says they worsened her overall financial situation.

BMW doesn't agree, saying that it carried out checks that included credit and affordability checks before agreeing to provide the finance by way of its auto-approval process. BMW also said that in any event this service couldn't look into the part of the complaint about the first agreement because it had been made too late under the time limit rules we must apply.

The investigator handling the complaint agreed that, looking purely at the complaint as being about the lending decisions, the first agreement – but not the second one - would be out of time under the time limit rules. But she thought Miss T's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140) which is in time under the rules. However, having considered the merits of the complaint for each agreement she went on to make a non-uphold finding.

As Miss T doesn't agree, her complaint has been passed to me for a final decision.

## **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.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Miss T's complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service. Our investigator found that Miss T's complaint about the first agreement had been brought too late under the rules that set out those time limits. That's because the decision to provide finance took place more than six years before she started her complaint and she was or ought to have been aware of having reason to complain more than three years before she actually did so. However, our investigator then went on to explain why it was reasonable to interpret Miss T's complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why on that basis both lending decisions were about an allegedly unfair lending relationship and had been referred to us in time.

Seeing as I've decided not to uphold Miss T's complaint and given the reasons for this (which I will shortly explain), whether Miss T referred her complaint about the second lending decision in time or not under the time limit rules has no impact on that outcome. I agree that Miss T's complaint should be considered more broadly than just the decision to provide the finance, given that she has complained not just about the decision to lend but also the impact this had on her over the course of her relationship with BMW. Miss T's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with BMW.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Miss T's complaint can be reasonably interpreted as being about the fairness of her relationship with BMW, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (BMW) and the debtor (Miss T), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of their rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Miss T has complained about, I therefore need to think about whether BMW's decisions to lend to Miss T or its later actions created unfairness in the relationship between her and BMW, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss T's relationship with BMW is therefore likely to be unfair if it didn't carry out proportionate affordability checks for each agreement, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

Dealing with each agreement in turn, I will therefore first look at the checks BMW carried out. Given that I consider BMW ought to have done more before agreeing the finance for each agreement, I'll go on to look at what reasonable and proportionate checks would likely have shown.

### *First agreement*

When assessing affordability, there isn't a set list of checks that BMW needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and the period of time over which Miss T would need to make repayments.

BMW used an automated process to look at Miss T's application. It says this included looking at her credit history and working out whether she could afford the new repayments. But it hasn't provided us with details of what it found when carrying out its checks. So I can't say for sure what it did to verify her income and assure itself she had a good enough credit record and could afford to meet the repayments out of her monthly income, once she'd paid for any other credit and her other committed expenditure.

We've seen a copy of Miss T's credit report which doesn't show any adverse markings on her credit file, such as arrears, defaults or county court judgments. As it's a recent credit report, it only shows lending decisions from the past six years, so I can't say what Miss T's credit position actually was at the time BMW agreed to provide the finance.

As things stand, without knowing what BMW saw about Miss T's credit history and wider financial situation, I can't fairly say it got a reasonable understanding of whether the agreement was affordable or not. In my opinion, it therefore didn't complete proportionate checks.

I next need to consider what better checks would likely have shown. We can't be certain what Miss T would have told BMW had it asked about her income and regular expenditure. To help, our investigator reviewed some bank statements Miss T sent us from the period before she made the application. I can see that Miss T was receiving around £1,550-£1,600 each month by way of income from her earnings and benefits. There were also variable amounts of income coming in from different sources with good regularity, so I'm satisfied that the actual figure was probably a bit higher.

I've also seen that Miss T was managing her bank account well and wasn't finding it necessary to dip into her overdraft.

The statements also provide a good indication about Miss T's regular committed monthly expenditure at the time. I'm in broad agreement with our investigator that this was around £950. This includes payments for existing credit, food shopping, insurance and utilities. I've also disregarded the existing car finance which was due to be paid off. Overall, the statements show the new agreement was likely to be affordable to Miss T. I agree, broadly speaking, that she would end up with around £500 in disposable income each month. Out of that, she would be able to fund the monthly repayments of £270 that were due under the agreement.

I'm therefore not persuaded that BMW acted unfairly in approving the finance for the first agreement.

Finally, I agree with our investigator that there's insufficient evidence to show or suggest that Miss T was in need of help or support when paying this agreement. Nor can I see that she reached out to BMW to let them know she was experiencing difficulties.

### *Second agreement*

BMW carried out similar checks for this agreement. But again, we haven't seen evidence of those checks, even in summary form. BMW was obviously already aware of Miss T's good payment record for her previous agreement. But given that she was taking on another four-year commitment, I think BMW still needed to gain a better idea of her typical monthly spending. At the same time I think it needed to check how, if at all, her credit history might have changed. I can see from her credit report that Miss T had at least seven active credit accounts. One of them – a mail order account - showed evidence of four missed payments in the four months leading up to the new agreement. A further account had a default logged against it by early October 2020, so was likely to have been showing arrears in the run-up to the agreement.

I therefore think it would have been proportionate for BMW to have gained a more thorough understanding of Miss T's financial circumstances before lending to her. In other words, it should have done more than it did.

Miss T has again provided us with bank statements. So we can have some indication of what BMW So I next need to consider what better checks would likely have shown. I can see that in the three months leading up to the agreement, Miss T was continuing to receive a total monthly income of around £1,600. She was still paying her existing BMW finance agreement so the figure of £270 would no longer be an ongoing expense, though it would be followed by the increased monthly payment of £375 – so Miss T would have to find extra money.

Having deducted her existing car finance repayment, I agree that Miss T was likely to have around £900 left by way of disposable income. So she would be able to adjust to paying the new payment of £375 without being overly stretched financially. After deducting her monthly committed spending of around £600, Ms T would have had around £1,000 left. I've seen that those representing Miss T have queried whether food purchasing was taken into consideration by our investigator. I've noted some supermarket purchases on the bank statements but also a notable amount of non-discretionary spending, including regular takeaway food orders. So, although Miss T may well have had to rein in some of those items, the new agreement still looked to be comfortably affordable. For this reason, I'm not persuaded that BMW can be said to have acted unfairly in approving the finance.

Miss T got into arrears with this agreement and ended up voluntarily returning the car to BMW, where it was sold at auction. Whilst this was not a good course of events, from the evidence and information I've seen, I'm unable to say that BMW failed to provide her with a reasonable level of help and support to deal with her difficult financial situation. On that basis I am again unable to make a finding that BMW ought to have done more to support her when she was having payment difficulties.

So, based on the evidence and information I've seen, I'm not persuaded that BMW acted unfairly in approving the finance for the first agreement and I don't think Miss T's relationship with BMW for the second agreement is currently unfair. That's because it's not clear enough to me that BMW created unfairness in its relationship with Miss T by lending to her irresponsibly. And I don't find BMW treated Miss T unfairly in any other way either based on what I've seen.

**My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 22 May 2025.

Michael Goldberg

**Ombudsman**