

Complaint

Mr E complains that BMW Financial Services (GB) Limited ("BMW FS") unfairly entered into a hire-purchase agreement with him. He's said that the finance was unaffordable and this resulted in him having to borrow from family, friends or loan providers in order to satisfy a proportion of the agreement.

Background

In July 2017, BMW FS provided Mr E with finance for a brand-new car. The total cash price was £28,954.95. Mr E didn't pay a deposit and entered into a hire-purchase agreement with BMW FS for the entire amount.

The loan had total interest, fees and charges of £3,302.62 (made up of interest of £3,301.62, and an option to purchase fee of £1) and a 48-month term. This meant that the balance to be repaid of £31,257.54 was due to be repaid in 47 monthly instalments of £438.89 and then an optional final payment of £10,629.71 which Mr E had to pay if he wished to keep the car. The agreement was settled in full in August 2018.

In November 2023, Mr E complained to BMW FS saying that it shouldn't have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this resulted in an unfair lending relationship.

BMW FS did not uphold Mr E's complaint. It believed that the checks it carried out showed the monthly payments to this agreement were affordable and that it was reasonable to lend. Mr E remained dissatisfied at BMW FS' final response and referred his complaint to our service.

Mr E's complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown BMW FS that it shouldn't have entered into the hire-purchase agreement with Mr E. So he didn't think that Mr E's complaint should be upheld.

Mr E 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. BMW FS has argued that Mr E's complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr E's complaint as being one alleging that the relationship between him and BMW FS was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr E's complaint. Given the reasons for this, I'm satisfied that whether Mr E's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr E's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr E has not only complained not about the decision to lend but has also alleged that this unfairly impacted him going forward and he alleges that he had to borrow from family, friends or loan providers in order to satisfy a proportion of the agreement.

I'm therefore satisfied that Mr E's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and BMW FS. I acknowledge BMW FS still doesn't agree we can look Mr E's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr E's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr E's complaint is about the fairness of the lending relationship between him and BMW FS, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (BMW FS) and the debtor (Mr E), 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 his 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. S140B 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 Mr E's complaint, I therefore need to think about whether BMW FS' decision to lend to Mr E, or its later actions resulted in the lending relationship between Mr E and BMW FS being unfair to Mr E, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr E's relationship with BMW FS is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr E's ability to repay in circumstances where doing so would have revealed the repayments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, BMW FS didn't then somehow remove the unfairness this created.

I'll now turn to whether BMW FS acted fairly and reasonably when entering into the hire-purchase agreement with Mr E.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 E 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.

Did BMW FS act fairly and reasonably when agreeing to lend to Mr E?

BMW FS suggests that various factors - such as Mr E's credit score, what he owed to other lenders, his existing indebtedness; whether he had any credit cards and/or payday loans; his employment status and the amount of the monthly payment to this agreement – were all considered before Mr E's application was accepted. This may well have been the case.

However, BMW FS hasn't provided us with the output of what it was that it learnt about Mr E or the actual data which it relied upon to determine that the payments to this agreement were affordable for him. So I don't actually know what it was that BMW FS relied upon to reach the conclusion that this agreement was affordable for Mr E.

As BMW FS has not provided sufficient information to satisfy me that it did take reasonable steps to understand whether Mr E could afford the monthly payments, I'm not satisfied that it did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mr E.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, Mr E says he is unable to provide us with the information we've asked him for in order to be able to assess what BMW FS finding out more about his circumstances is likely to have shown. So I've not been provided with sufficient evidence to reasonably conclude that the monthly payments to this agreement were as a matter of fact unaffordable for Mr E.

I appreciate that Mr E has said it is unreasonable and unfair to expect him to provide information which he doesn't have and cannot reasonably be expected to have. But I also have to take into account that BMW FS isn't required to have retained all of this information either. This is particularly as the agreement was settled in 2018 and it was Mr E that chose to make his complaint a number of years after this in November 2023. As this is the case, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence which corroborates what Mr E has said about not being able to make

the monthly payments and that he was required to borrow from friends, family and other lenders in order to make his payments.

For the sake of completeness, I would also add that while this isn't in itself determinative, it's worth noting that Mr E not only made all of his payments when they fell due for the period he had the agreement, he also settled the agreement early. In these circumstances, Mr E's repayment record does tend to support the fact that the agreement was affordable for him.

Finally, I've note what Mr E has said about the potential for other cheaper finance. It's unclear what Mr E is referring to as he hasn't complained about commission. As Mr E hasn't complained about commission, I'm unable to consider a complaint about this matter in this decision. Furthermore, I've noted that the APR for Mr E's agreement was 2.9%. This is objectively a low rate of interest and Mr E has not provided anything at all to support that there were better options available to him.

In any event, Mr E has made this complaint about BMW FS which was his lender. It did not broker his finance and it certainly wasn't in a position to consider what other lenders may have been able to offer Mr E, or source other deals with other providers for him. If Mr E is unhappy at the actions of his Broker then this is a matter he will need to take up with it. But I've satisfied that BMW FS didn't act when agreeing to lend to Mr E.

Overall, and based on the available evidence I don't find that the lending relationship between Mr E and BMW FS was unfair to Mr E. I've not been persuaded that BMW FS created unfairness in its relationship with Mr E by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find BMW FS treated Mr E unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr E's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr E. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 14 April 2025.

Jeshen Narayanan
Ombudsman