

## **Complaint**

Mr W complains that BMW Financial Services (GB) Limited ("BMW FS") unfairly entered into a hire-purchase agreement with him. He's said that the monthly payments to this agreement were unaffordable for him and so he shouldn't have been lent to.

Mr W is represented in his complaint by a Claims Management Company, who I'll refer to as "the representative".

## **Background**

In September 2013, BMW FS provided Mr W with finance for a used car. The purchase price of the car was £19,391.00. Mr W didn't pay a deposit and applied for finance to cover the entire amount. BMW FS accepted Mr W's application and entered into a 48-month hire-purchase agreement with him for £19,391.00.

The loan had interest, fees and total charges of £4,150.64 (which was made up of interest of £3,826.64, a credit arrangement fee part 1 of £174, a credit arrangement fee part 2 of £140 and an option to purchase fee of £10). So the total amount to be repaid of £23,541.64 was due to be repaid in a first monthly payment of £534, followed by 46 monthly payments of £360 and then an optional final payment of £6,447.64 which Mr W had to pay if he wished to keep the car.

I understand that Mr W took out further finance from BMW FS, in September 2017, in order to make the optional final payment and that finance agreement is subject to a separate complaint.

Mr W's complaint was considered by one of our investigators. He thought that BMW FS hadn't completed reasonable and proportionate checks before entering into this agreement with Mr W and if it had completed such checks it would have seen that it shouldn't have lent to him. So he recommended that Mr W's complaint should be upheld.

BMW FS didn't respond to our investigator. As BMW FS did not formally agree to the investigator's assessment the complaint was passed to an ombudsman for review as per the usual next stage of our dispute resolution process.

## **My provisional decision of 3 March 2025**

I issued a provisional decision – on 3 February 2025 - setting out why I was not intending to uphold Mr W's complaint.

In summary, I wasn't intending to uphold Mr W's complaint because I was satisfied that proportionate checks would have shown the monthly payments to be unaffordable. Therefore, it wasn't unfair or unreasonable for BMW FS to lend to Mr W in these circumstances.

## **BMW FS' response to my provisional decision**

BMW FS didn't respond to my provisional decision or provide anything further that it wished for me to consider ahead of my final decision.

### **Mr W's response to my provisional decision**

The representative, on behalf of Mr W, responded to say that it disagreed with provisional decision. In summary this was because:

- It is unfair that the case was passed to an ombudsman after BMW FS didn't respond. If it hadn't responded to a non-uphold assessment, on Mr W's behalf, the complaint would have been closed not passed to an ombudsman.
- BMW FS' checks were not proportionate and it disputes the view that the investigator's assessment was more granular than what was required from BMW FS.
- BMW FS ought to have realised that Mr W's use of his overdraft suggested financial instability and it was wrong to attribute it solely to Mr W's financial spending.
- Mr W had taken out a loan of £9,000.00 just days before this agreement and this ought to have raised significant flags.

Although, I've summarised the representative's response to my provisional decision, I've read and considered everything it has said.

### **My findings**

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

#### *Preliminary matters*

The representative has questioned why the case was passed to an ombudsman after BMW FS hadn't responded to the investigator's assessment. In the first instance, this shouldn't have come as a surprise to the representative. I say this as the investigator notified the representative that this was the next step for the complaint, as BMW FS hadn't responded to his assessment, on 26 February 2025.

In any event, the reason a complaint is passed to an ombudsman should a firm not respond to an investigator's assessment upholding a complaint, is that an uphold outcome will typically be accompanied by a recommendation that the respondent firm be required to do something to put things right. But this is a recommendation. It is not a requirement as it is only an ombudsman that has the power to make an award or direction, not an investigator.

When a non-uphold assessment is issued to a consumer they aren't required to take any steps, as an investigator cannot make a recommendation that the consumer be required to do something – they can only make such a recommendation against a respondent firm. So there is no need for a consumer to confirm that they will be complying with the outcome proposed.

However, where an investigator recommends a complaint is upheld, without any confirmation that the respondent firm will put things right in the way that the investigator has suggested, a consumer will not know whether it will do this. More importantly an investigator's assessment, whether or not accepted by a consumer, isn't binding on a respondent firm.

Therefore, the consumer has no recourse to escalate matters or take things further should a respondent firm continue not to respond. In contrast, where a final decision is accepted by the consumer, it becomes legally binding upon the parties. In these circumstances, a

respondent firm will have specific obligations in terms of complying with a final decision that has been accepted by the consumer. Furthermore, a consumer has the right to enforce a final decision. A consumer does not have these rights should they accept an investigator's assessment.

It is for these reasons why a complaint is passed to an ombudsman should a respondent firm disagree with, or even fails to respond to, the investigator's assessment. As BMW FS didn't respond to confirm that it accepted the investigator's assessment, the case was passed to me to review.

However, I'm not bound to reaching the outcome as the investigator did on Mr W's case. I was and remain required to consider the facts of Mr W's case and reach my own determination. And without wishing to be blunt, once a complaint is passed to an ombudsman for determination, the investigator's assessment remains of limited relevance moving forward.

I trust that this explains why the complaint was passed to an ombudsman after BMW FS did not respond to the investigator's assessment. I'll now turn to my thoughts on Mr W's complaint.

#### *My thoughts on the merits of Mr W's 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, including the responses to my provisional decision, I'm still 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.

BMW FS suggests that various factors - such as Mr W'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 W's application was accepted. It says that after all of this information was considered it is satisfied that the monthly payments to this agreement were affordable.

On the other hand, Mr W says his existing commitments meant 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.

BMW FS hasn't provided us with the output of what it was that it learnt about Mr W 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 W.

As BMW FS has not provided sufficient information to satisfy me that it did take reasonable steps to understand whether Mr W 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 W. Bearing in mind the representative's response to my provisional decision, I wish to be clear in saying that this means I don't think that BMW FS' checks before it provided the agreement to Mr W were proportionate.

Nonetheless, even though BMW FS didn't carry out proportionate checks before agreeing to enter into the hire-purchase agreement with Mr W, this doesn't on its own mean that a complaint should be upheld. I say this because I would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've therefore gone on to decide what I think BMW FS is more likely than not to have seen had it obtained further information from Mr W. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected BMW FS to have had a reasonable understanding about Mr W's regular living expenses and have used this information to supplement what it would already have had on his income and existing credit commitments.

The information Mr W has provided does appear to show that when his committed regular living expenses are combined with his existing credit commitments, and then deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I appreciate that our investigator believed that Mr W wouldn't be left with sufficient funds to meet his living costs once the payments for this agreement were added to his existing commitments. And he pointed to Mr W's account becoming more overdrawn over time to support this. I note that the representative's response to my provisional decision has agreed with this.

However, I'm not persuaded by the arguments in relation to Mr W's overdraft usage. In the first instance, Mr W does appear to have been left with a reasonable amount of funds bearing in mind the circumstances. I say this particularly as the figure arrived at by the investigator was calculated using an assessment that is far more granular than BMW FS was required to carry out. For example, BMW FS was not required to obtain bank statements from Mr W before lending to him. So it wouldn't have carried out a line by line assessment of Mr W's statements in the way that both the representative and the investigator have done.

Furthermore, I also need to take into account that Mr W was also living at home with parents. So his actual regular living costs were low. I do accept that Mr W did become more overdrawn over time. However, having looked at Mr W's bank statements it's clear that the real reason he became more overdrawn and may have gone on to have difficulty making his payments to this agreement wasn't due to his existing credit commitments or his living expenses. It was due to the additional spending, which I would not categorise as being essential expenditure.

To be clear, I'm not saying that Mr W was overdrawn solely because of his discretionary expenditure. But it's fair to say that this did make a significant contribution to his position.

For the sake of completeness, while I've considered what the representative has said about Mr W taking a loan for £9,000.00 a few days earlier, I don't see how BMW FS would have known about this.

I say this because even today it takes some time before a new loan will show up on a credit search that is carried out. Credit reference agencies themselves say that it can take up to 90 days to do so. Equally when Mr W entered into this agreement in 2013, not all providers reported all loans with all credit reference agencies too. Bearing all of this in mind, I think it is unlikely that BMW FS' credit search, which it is entitled to have relied on, will have shown the loan that Mr W had just taken out.

It is possible – but by no means certain – that BMW FS may have taken a different view on lending to Mr W had it seen his bank statements. However, what I need to think about here is what BMW FS needed to do in order for its checks to be proportionate – in other words, what were Mr W's actual regular living expenses – given this was a first agreement and Mr W was being provided with a car rather than cash.

Bearing in mind checking bank statements wasn't the only way for BMW FS to have found out more about Mr W's actual living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements Mr W has now provided us with. So I don't think that BMW FS could reasonably be expected to have known about the nature and extent of Mr W's additional unsustainable spending.

I also need to keep in mind that, at the time at least, Mr W wanted the vehicle he'd chosen as well as the finance needed to enable him to acquire it - albeit his complaint makes it clear that he no longer feels that way. However, the submissions the representative is now making on the complaint are being made with a view to obtaining a successful outcome on Mr W's complaint.

I have to consider what's now being said in this light and in these circumstances. It is therefore difficult for me to accept that Mr W would proactively have looked to have shown the monthly payments for the agreement to be unaffordable, in circumstances where he did not do so and the information I've seen suggests proportionate checks would have shown that they were.

Finally, I've also considered what the representative has said about there being no reasonable prospect of Mr W being able to make his payments to this agreement. However, while this isn't in itself determinative, it's worth noting that Mr W made all of his payments as and when they fell due. So Mr W's repayment record does not appear to support that there was no reasonable prospect of him making his payments in the way that the representative has argued.

Overall and having carefully considered everything, including the responses to my provisional decision, while I don't think that BMW FS' checks before entering into this hire-purchase agreement with Mr W did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped BMW FS from providing these funds, or entering into this agreement with Mr W.

In reaching this conclusion 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. And I'm not upholding this complaint.

I'm therefore satisfied that BMW FS didn't act unfairly or unreasonably towards Mr W when it agreed to provide the funds. And I'm not upholding this complaint. I appreciate that this will be disappointing for Mr W – particularly as the investigator, albeit erroneously, recommended his complaint should be upheld. But I hope he'll understand the reasons for my final decision and at least consider that his concerns have been listened to.

### **My final decision**

For the reasons I've explained above and in my provisional decision of 3 March 2025, 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 15 April 2025.

Jeshen Narayanan  
**Ombudsman**