

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 2017, BMW FS provided Mr W with finance in order to repay the optional final payment on a car, that it had originally finance for Mr W in September 2013. The amount of the finance was £6,437.64 and it was due to be repaid in 60 months. Even though this was effectively a loan to finance the last payment on Mr W's existing agreement, this new agreement was still on hire-purchase terms.

The loan had interest, fees and total charges of £973.36 (which was made up of interest of £973.36 and an option to purchase fee of £1). So the total amount to be repaid of £7,411.00 was due to be repaid in 59 monthly payments of £123.50 followed by a final monthly payment of £124.50.

The account ledger shows that Mr W settled the agreement in full and early in March 2021. In June 2023, Mr W complained that BMW FS shouldn't have entered into this finance agreement with him.

Mr W's complaint was considered by one of our investigators. He thought that BMW FS shouldn't have agreed to provide this finance to Mr W. 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, what was effectively the refinanced optional final payment on Mr W's existing agreement, 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.
- The investigator correctly pointed out that as Mr W's original agreement shouldn't have gone ahead this agreement also shouldn't have gone ahead.

Although, I've summarised the representative's response to my provisional decision, I've read and considered everything it has said. Furthermore, while the representative has commented on the provisional decision reached on Mr W's other complaint, I've simply considered the parts of its response that are relevant to this particular complaint.

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.

Our investigator reached the conclusion that this complaint should be upheld as he believed that BMW FS shouldn't have agreed to enter into the original hire-purchase agreement with Mr W in 2013. In his view, had BMW FS not entered into the original agreement with Mr W then there wouldn't have been an optional final repayment that needed refinancing with this new agreement.

However, I've already separately explained why I'm not persuaded that BMW FS didn't act unfairly or unreasonably when entering into the original agreement with Mr W. So I don't think that this complaint should be upheld simply because of what happened on the first agreement and I need to determine whether BMW FS acted fairly and reasonably at the time it agreed to lend to Mr W in September 2017.

I've gone on to consider BMW FS' actions in September 2017 and now turn to my thoughts on this.

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 I'm satisfied that BMW FS failed to carry out proportionate checks before agreeing to enter into this 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 relatively low amount of the monthly payment and Mr W had made all of the payments on the original agreement on time, I think BMW FS would reasonably have been entitled to conduct a reasonably light touch assessment of affordability.

I've kept this in mind when considering the information Mr W has provided. And having considered this information, I think that it does appear to show that when Mr W's 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 Mr W has said that he had difficulty making his payments. And having looked at Mr W's bank statements, I do have some idea why this may have been the case. I also accept that 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 an agreement to refinance the final payment on Mr W's existing agreement and Mr W had made all of the payments to the original agreement on time, despite the monthly payment being almost three times the amount of this one.

Equally 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.

Furthermore, having read Mr W's submissions, it seems to me that it became difficult for Mr W to make the repayments to this agreement, when the car broke down a couple of months after the agreement started. However, BMW FS will not have been in a position to know that this would happen.

Indeed, as the car had been in Mr W's custody for the previous four years, there is a reasonable argument for saying that Mr W was better placed to make an assessment of this. So I don't think that BMW FS could have factored in that the car would break down when deciding whether to lend to Mr W.

For the sake of completeness, I would also add that as Mr W has complained about the affordability of the agreement, rather than the quality of the car, I'm not in a position to assess whether the car was of satisfactory quality at the time it was resupplied to him either.

Finally, I've also thought about what Mr W has said about having limited options at the end of his previous agreement. I don't know what the motor dealer told Mr W about his options going forward at the end of the previous agreement. But Mr W's original hire-purchase agreement shows that the final repayment was optional. So while I appreciate that Mr W may not have wished to return the car, it's clear that Mr W didn't need to refinance the optional final repayment if he didn't want to.

Overall and having carefully considered everything, 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 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.

I'm therefore satisfied that BMW FS didn't act unfairly 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 that 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