

## **Complaint**

Ms M complains that BMW Financial Services (GB) Limited ("BMW FS") unfairly entered into a hire-purchase agreement with her. She's said the agreement was unaffordable and so she shouldn't have been accepted for it.

## **Background**

In November 2014, BMW FS provided Ms M with finance for a used car. The cash price of the vehicle was £15,385.00. Ms M paid a deposit of £3,809.92 and required finance for the remaining £11,575.08 she needed to complete her purchase.

BMW FS accepted her application and as a result she entered into a 36-month hire-purchase agreement with it. The amount lent was £11,575.08 and the loan had total interest, fees and charges of £2,565.71 (made up of interest of £2,166.71, a credit arrangement fee part 1 of £199, a credit arrangement fee part 2 of £190 and an option to purchase fee of £10).

So the balance to be repaid of £14,140.79 (which does not include Ms M's deposit) was due to be repaid in a first repayment of £349, followed by 34 monthly instalments of £150 and then an optional final payment of £8,691.79 which Ms M had to pay if she wished to keep the car.

Ms M settled the finance in full and early in March 2017. In January 2024, she subsequently complained that the agreement was unaffordable and BMW FS shouldn't have entered into it with her.

Ms M's complaint was considered by one of our investigators. He didn't think that BMW FS had done anything wrong or treated Ms M unfairly. So he didn't recommend that Ms M's complaint should be upheld.

Ms M 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 Ms M's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Ms M'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 Ms M could make her payments in a sustainable manner before agreeing to lend to her. And

if the checks BMW FS carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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 Ms M's credit score, what she owed to other lenders, her existing indebtedness; whether she had any credit cards and/or payday loans; her employment status and the amount of the monthly payment to this agreement – were all considered before Ms M's application was accepted. On the other hand, Ms M has said that the payments were unaffordable. I've thought about what Ms M and BMW FS have said.

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

As BMW FS has not provided sufficient information to satisfy me that it did take reasonable steps to understand whether Ms M 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 Ms M.

As proportionate checks weren't carried out before this agreement was entered into, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told BMW FS that it was unfair to enter into this agreement with Ms M on the basis that she wouldn't be able to afford the monthly payments.

Given the amount borrowed, the monthly payments and the length of the agreement, in order for BMW FS' checks to have been proportionate, I think that it would have had to have an understanding of Ms M's income, her payments to existing creditors and her regular living costs. I want to be clear in saying that this isn't the same as saying that BMW FS had to obtain bank statements in order to verify all of this as how it found out about this was down to it.

I've considered the information Ms M has provided on her circumstances at the time. But I don't think that BMW FS attempting to find out further information about Ms M's living costs would have made a difference here. I say this because I've not seen anything that shows me that when Ms M's committed regular living expenses, other non-discretionary expenditure and her existing credit commitments were deducted from what she received each month, she did not have the funds to make the payments to this agreement.

I also say this in the knowledge that BMW FS would not necessarily have seen these statements either, as it didn't have to request bank statements in order to find out more about Ms M's living expenses.

Finally, I also need to keep in mind that this transaction took place at a time where Ms M decided that it was a reasonable time to purchase a vehicle. So, at the time at least, she

wanted the finance she needed to enable her to acquire this vehicle - albeit her complaint makes it clear that she no longer feels that way. However, Ms M's submissions now are being made with a view to obtaining a successful outcome on her complaint.

I have to consider what Ms M is now saying in this light and in these circumstances. It is therefore difficult for me to accept that Ms M would proactively have looked to have shown the monthly payments for the agreement to be unaffordable, in circumstances where the information I've seen suggests proportionate checks would have shown that they were. This is particularly bearing in mind that BMW FS will also have seen that Ms M was paying a deposit that was equivalent to more than two years' worth of the monthly payments that she would have to make under this agreement.

In reaching my conclusions, I've also considered whether the lending relationship between BMW FS and Ms M might have been unfair to Ms M 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 Ms M or otherwise treated her unfairly in relation to this matter. And 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.

Overall and having carefully considered everything, while I don't think that BMW FS' checks before entering into this hire-purchase agreement with Ms M did go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented BMW FS from providing these funds, or entering into this agreement with her.

This means I've not been persuaded that BMW FS acted unfairly towards Ms M and I'm not upholding the complaint. I appreciate that this will be very disappointing for Ms M. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

My final decision is that I'm not upholding Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 6 May 2025.

Jeshen Narayanan  
**Ombudsman**