

The complaint

Ms A complains about the outstanding balance owed under a hire purchase agreement taken out with BMW Financial Services (GB) Limited.

What happened

In October 2021, Ms A says her former partner, who I'll call 'R', took her to a car dealership to get a brand new vehicle. The car had a cash price of £107,791. Ms A says R had a poor credit history and coerced her into signing a hire purchase agreement with BMW to acquire the car.

Following the approval of the finance Ms A was required to make 47 payments of around £1,300, with a final payment of around £48,000. Ms A says she hasn't ever driven the car and R had sole use of it.

About a year later, Ms A says her relationship with R ended. She says R continued to use the car and make the repayments due under the agreement. However, in November 2023 the agreement entered into arrears and BMW held Ms A responsible for the outstanding balance. Over the months that followed, Ms A says she tried to sort things out with R. And in April 2024, the car was returned to the dealership. But, the agreement remained in arrears, so BMW continued to ask Ms A for repayment.

Ms A wasn't happy with that and said she had an arrangement with R, in that he would be responsible for the balance of the agreement. So, Ms A complained to BMW and said she was coerced into signing the agreement in the first place. She also complained that BMW had provided the loan, without checking that she could afford to repay it.

BMW didn't respond to Ms A's concerns, so she brought her case to us. One of our investigators looked into Ms A's complaint and although he didn't find that Ms A was coerced into taking out the hire purchase agreement, he said BMW should have seen that she couldn't afford the repayments.

To put things right, the investigator asked BMW to remove all the interest applied to the loan and to reduce the balance by the value of the car. The investigator also asked BMW to remove any adverse information from Ms A's credit file and to write off the remaining balance of the agreement. The investigator found that BMW had caused distress and inconvenience to Ms A, so he asked them to pay £600 to Ms A in recognition of that.

Ms A accepted the investigator's findings, but BMW didn't respond. The investigator didn't see any reason to change his conclusions, so Ms A's complaint has now been passed to me to make 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.

This case is about a hire purchase agreement in Ms A's name taken out with BMW, which is a regulated financial product. As such, we are able to consider complaints about it.

The signing of the agreement

Ms A's complaint to BMW is that R put her under significant pressure, to sign the agreement for the car. She also suggests R was well known to the dealer and that made it easier for him to coerce her into entering into the finance deal. Furthermore, Ms A says that she didn't have anything to do with the car, as it was only ever used by R and insured in his name. So, I've thought about what both Ms A and BMW have told us about what happened when the agreement was taken out.

During our investigation, Ms A told us about the very difficult personal and financial circumstances she experienced at the time of the application and in the years that followed. She has also sent us evidence of what she says shows the very distressing environment of her relationship with R. Ms A says the application was started online by R and BMW used her driving licence as identification. She says the licence wasn't valid because it was out of date.

BMW have shown us where R and Ms A had taken out several other finance agreements with them, in the years prior to 2021. They say the staff members and the sales team are still employed at that dealership and remember Ms A and R as frequent customers. Because of this, they say the identification was not necessary to the success of the application. BMW also says the application needed to be signed at the dealership and Ms A was present when it was completed.

On the day the agreement was signed, Ms A says she was aware that R was having his own financial difficulties and that he asked her to join him at the dealership. Ms A says R's credit rating was poor, so he asked her to take the agreement out in her name instead. Subsequently, Ms A says she signed the agreement forms, knowing the car was intended for her husband.

Having thought carefully about everything, I empathise with the circumstances Ms A found herself in. At the time, I think it's likely Ms A did what she thought was right. I say this because R was looking to change his car with a dealer, which she says, he had a good relationship with.

But, I'm not persuaded this demonstrates that Ms A was coerced into signing the hire purchase agreement with BMW. I accept Ms A felt she was in a difficult position, and I'm persuaded she went on to take action to change her personal circumstances. On balance though, I don't think BMW put Ms A under any pressure to sign the paperwork at the dealership, or that they should have spotted any signs of any possible coercion from R.

Overall, I think the evidence most likely shows that Ms A started the finance agreement with BMW. So, I'm persuaded the most likely thing to have happened is that Ms A gave her authority, or apparent authority for the hire purchase agreement to go ahead with BMW.

However, Ms A also says she didn't have any disposable income at the time she signed the agreement forms. BMW have also told us that R had taken out several agreements with them in the past, but was unable to apply for the vehicle at the heart of this complaint. So, I've considered the responsibility of BMW when looking at Ms A's overall circumstances.

The affordability of the agreement

We've set out our general approach to complaints about unaffordable or irresponsible

lending, including the key rules, guidance and good industry practice, on our website. And I've referred to this when deciding Ms A's complaint.

Having carefully thought about everything, I think the key questions to ask here are:

Did BMW complete reasonable and proportionate checks to satisfy themselves that Ms A would be able to make repayments due under the agreement in a sustainable way?

- If so, did it make a fair lending decision?
- If not, would those checks have shown that Ms A would've been able to do so?

BMW provided this agreement under the authorisation and regulation of the Financial Conduct Authority ("FCA"). The rules and regulations in place required BMW to carry out a reasonable and proportionate assessment of Ms A's ability to make the repayments under this agreement.

This assessment is sometimes referred to as an "affordability assessment" or "affordability check". The checks had to be "borrower" focused. So, BMW had to think about whether making repayments sustainably would cause difficulties or adverse consequences for Ms A.

In practice this meant that BMW had to ensure that making the payments under the agreement wouldn't cause Ms A undue difficulty or adverse consequences. In other words, it wasn't enough for BMW to simply think about the likelihood of it getting their money back, they had to consider the impact of the repayments on Ms A.

Checks also had to be "proportionate" to the specific circumstances of the application for the agreement. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors. These factors can include the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they are seeking.

Even for the same customer, a proportionate check could look different for different applications. In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough when:

- the lower a customer's income (reflecting that it could be more difficult to make any repayment amount from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income); and
- the longer the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a hire purchase application. These include (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. So, I've carefully thought about all of the relevant factors in this complaint.

In Ms A's case she was given a loan under a hire purchase agreement for over £100,000 with monthly payments of £1,366.21 over four years. Inclusive of interest and an optional final payment, the total amount payable by Ms A to BMW was £116,550.90.

Having thought about the agreement, I think the level of finance involved can be considered of a high value. So, from the outset, I think this meant BMW was required to look into Ms A's income and expenditure as well as her credit history and employment status.

BMW say Ms A's application was automatically checked, which didn't reveal any concerns about Ms A's ability to repay the borrowing. They say R had told the dealer that Ms A was a legal consultant earning around £87,000 a year. BMW also said that Ms A's other borrowing, including her mortgage, was up to date with minimal use of the overdraft on her bank account.

However, BMW haven't shown us where they gathered proof of Ms A's employment and salary, or where they looked at her income and expenditure details. So, I don't think BMW were aware of the level of disposable income Ms A had at the time of the application. Furthermore, it seems BMW were aware of R's poor credit history and the reasons why Ms A was applying for the finance instead. So, I think this added to the need for BMW to understand Ms A's financial position.

In light of all the evidence, I don't think BMW's affordability checks were proportional to the amount they were looking to lend to Ms A. So, I've considered what BMW would have found, if they had looked further into Ms A's financial circumstances at the time.

Ms A has provided us with evidence of her financial circumstances from when she applied for the hire purchase agreement. Of course, I accept different checks might show different things. And just because something shows in the information Ms A has provided, it doesn't mean it would've shown in any checks BMW might have carried out.

We don't have anything else from BMW showing what this information would have proven. So, I think it's perfectly fair, reasonable and proportionate to place considerable weight on Ms A's evidence as an indication of what her financial circumstances were more likely than not to have been at the time.

I've looked at Ms A's personal bank account statements from June 2021 until October 2021. Having done so, I cannot see that she received any income from any employment. Instead, her account received regular transfers from R. Ms A says R gave her money to pay for housekeeping.

I can then see that Ms A started to receive monthly income from an employer, of around £1,200 after the agreement started. And I can see that the regular payments from R stopped. Ms A had a mortgaged property in her name, which she says provided rental income. But, after the mortgage was paid, Ms A says she was left with a modest remaining amount a month. In light of all the evidence, I think Ms A had a monthly income of about £2,275 after the application with BMW.

The bank statements don't show regular household outgoings, such as payments to utilities, but Ms A says R paid for those from another account. I can see that Ms A had payments to other lenders, including her mortgage. This is consistent with the credit check, carried out by BMW. Looking at Ms A's expenditure, I think she was regularly paying a total of £864 a month, to cover her bills. This doesn't include any living costs, such as food or petrol.

Overall, I think the evidence Ms A has provided shows where she had a disposable monthly income of around £1,400. So, I've thought about the additional requirement on her to make monthly payments under the hire purchase agreement of £1,366 and other living costs.

Having considered everything, I don't think Ms A had any regular income of a level to service the repayments to the hire purchase agreement. Her bank statements reveal that she wasn't

employed at the time the agreement was signed, which contradicts the information BMW relied upon during the information gathering stage of the application.

I'm mindful that Ms A's husband's income would have contributed to the finances of the household. But, I've concluded that BMW already had concerns about that, when they declined an application in his name. Also, from looking at Ms A's bank statements, I don't think they show that her husband was providing her with enough consistent financial support to make the required payments.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Ms A would not have been able to make the repayments due under the agreement. That is to say without Ms A borrowing further, or suffering significant adverse consequences.

Overall, I think reasonable and proportionate checks would more likely than not have alerted BMW to the fact that it shouldn't have provided the hire purchase agreement to Ms A. So, I think Ms A is due a remedy from BMW.

In all the circumstances, I think it's fair for BMW to remove all the interest charged under the hire purchase agreement. This remedy will mean the balance of the agreement will be made up of the cash price of the car, with any repayments made by Ms A or R deducted.

In light of my conclusions about Ms A's awareness and acceptance of the hire purchase agreement, I don't think it would be fair to ask BMW to remove all the information about it. But, I don't think it's fair for Ms A to suffer any negative impact as a result of missing or not being able to make the full repayments due under the agreement. So, I think it's fair and reasonable for BMW to remove any adverse information that's been recorded with credit reference agencies.

The return of the car

Within the complaint, Ms A described how R stopped making payments to the agreement in November 2023. I can see from the loan statements, where Ms A's testimony is correct. R used the car from the start of the agreement until late 2023. And R made the payments to the loan himself.

Because of the usage of the car and where Ms A didn't make the payments herself, I don't think it would be fair to ask BMW to provide a refund of those payments. For similar reasons, I also don't think it would be fair for BMW to refund to Ms A, the deposit paid by R at the start of the agreement.

However, in April 2024, Ms A says R abandoned the car at her house. BMW's records show where the car was then taken back to the dealership, where it was valued. Neither BMW nor Ms A have said that the car has been sold to reduce the balance of the loan, so I think it's likely that the car is still with the dealer.

Ms A would ordinarily be responsible for the remaining balance of the hire purchase agreement, if she started to use of the car in April 2024. But, I think there are very specific circumstances in Ms A's case, which mean BMW should end their pursuit of that balance.

I've concluded that Ms A should not have been given the finance to acquire the car from BMW. I've also found that she didn't use the car, or make payments to the agreement and where the car was handed back to BMW as soon as Ms A was able to. I think it was clear to BMW that Ms A didn't want to use the car herself.

I'm aware that it's been over a year since the car was returned to the dealer. But I think BMW had an opportunity to end the hire purchase agreement and get the most value they could from the car, possibly reducing the balance of the loan. This is something that is still available to BMW.

Against this background, I think BMW should treat the hire purchase agreement as if it were ended in April 2024. I also think BMW should remove Ms A from any responsibility towards the outstanding balance of the agreement, and end their pursuit of her for repayment.

Within BMW's records, I can see they conducted an appraisal of the car in April 2024. Within the appraisal, BMW said there was some cosmetic damage to the car, which needs repair. I cannot see where BMW have sent an invoice to Ms A or R, for the cost of any repairs. So, I make no finding in this decision about the responsibility for the damage to the car. Instead, I leave it to Ms A and BMW to reach an agreement about that if necessary.

Distress and inconvenience

Ms A has told us that due to R's actions, she encountered extreme difficulties with her personal and financial circumstances. But, I agree with the investigator and think Ms A was caused additional trouble, when she tried to return the car and the delays caused by BMW in dealing with her concerns.

I acknowledge all the difficulties Ms A has told us about and I can see where nearly all of her worry and trouble seems to have been caused by R. But, I think the distress Ms A experienced was exacerbated by how BMW treated her. So, I think it's fair for BMW to make a payment to Ms A to reflect the distress they caused. Having considered everything, I think it's fair for BMW to pay Ms A £600 for the distress and inconvenience she experienced.

Putting things right

For these reasons, BMW Financial Services (GB) Limited should:

1. Treat the agreement as ended from when Ms A returned the car to the dealer in April 2024;
2. Refund all interest applied to the balance of the hire purchase agreement from its inception to the date of settlement of this complaint;
3. End the pursuit of Ms A for the repayment of the hire purchase agreement and write off the remaining balance;
4. Remove any adverse information recorded with credit reference agencies about the hire purchase agreement in Ms A's name; and
5. Pay Ms A £600 for the distress and inconvenience she has experienced.

BMW must pay these amounts within 28 days of the date on which we tell them Ms A accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If BMW deducts tax from any interest they pay to Ms A, they should provide Ms A with a tax deduction certificate if she asks for one, so she can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require BMW Financial Services (GB) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 20 June 2025.

Sam Wedderburn
Ombudsman