

## **Complaint**

Ms C complains that BMW Financial Services (GB) Limited (“BMW FS”) unfairly entered into hire-purchase agreements with her.

Ms C complaint has been made by a representative who I’ll refer to as the representative in this decision.

The representative said the payments to these agreements were unaffordable for Ms C and in its view she shouldn’t have been accepted for any of them.

## **Background**

BMW FS entered into four separate hire-purchase agreements with Ms C between October 2016 and April 2022.

The details of these agreements are as follows:

### Agreement 1

In October 2016, BMW FS provided Ms C with finance for a used car. The cash price of the vehicle was £29,995.00. Ms C paid a cash deposit of £500 and applied for finance for the remaining £29,495.00 she required. BMW FS accepted Ms C’s application and entered into a hire-purchase agreement with her for this amount.

The loan had interest, fees and total charges of £4,616.61 (comprising of interest of £4,615.61 and an option to purchase fee of £1) and the balance to be repaid of £34,111.61 (which does not include Ms C’s deposit) was due to be repaid in 47 monthly instalments of £515.14 and an optional final payment of £9,900.03 which Ms C had to pay if she wished to keep the car.

This agreement appears to have been settled at the end of its intended term in October 2020.

### Agreement 2

In August 2020, BMW FS provided Ms C with finance for another used car. The cash price of the vehicle was £32,000.00. Ms C paid a cash deposit of £1,000.00 and applied for finance for the remaining £31,000.00 she required. BMW FS accepted Ms C’s application and entered into a hire-purchase agreement with her for this amount.

The loan had interest, fees and total charges of £6,089.19 (comprising of interest of £6,088.19 and an option to purchase fee of £1) and the balance to be repaid of £37,089.19 (which does not include Ms C’s deposit) was due to be repaid in 47 monthly instalments of £494.50 and an optional final payment of £13,847.69 which Ms C had to pay if she wished to keep the car.

Ms C settled this agreement in full in April 2022 as part of agreement 4.

### Agreement 3

In November 2021, BMW FS provided Ms C with finance for another used car. The cash price of this vehicle was £25,000.00. Ms C paid a deposit of £2,000.00 and applied for finance to cover the remaining £23,000.00 she required. Once again, BMW FS accepted Ms C's application and entered into a 48-month hire-purchase agreement with her.

The loan had interest, fees and total charges of £5,380.01 and the balance to be repaid of £28,380.01 (which does not include Ms C's deposit) was due to be repaid in 47 monthly instalments of £440.97 and an optional final payment of £7,654.42 which Ms C had to pay if she wished to keep the car.

Ms C settled this agreement in full in June 2023.

### Agreement 4

In April 2022, BMW FS provided Ms C with finance for a brand-new car. The cash price of the vehicle was £44,533.20. Ms C paid a cash deposit of £2,000.00, used a part-exchange amount of £514.51 for the car from agreement 2 after the finance agreement on that car had been settled and applied for finance for the remaining £41,018.69 she required. Once again BMW FS accepted Ms C's application and entered into a hire-purchase agreement with her for this amount.

The loan had interest, fees and total charges of £3,369.71 and the balance to be repaid of £37,089.19 (which does not include Ms C's deposit) was due to be repaid in 47 monthly instalments of £573.00 and an optional final payment of £17,457.40 which Ms C had to pay if she wished to keep the car.

This agreement was still running at the time of Ms C's complaint.

In July 2024, the representative, on Ms C's behalf, complained that all four agreements were unaffordable for her and so should never have been provided. BMW FS didn't uphold Ms C's complaint. As the representative remained dissatisfied, it, on Ms C's behalf, referred the complaint to our service.

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

The representative, on Ms C's behalf, 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 C's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Ms C'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 C 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 says it agreed to these applications after it completed income and expenditure assessments on Ms C on each occasion. During these assessments, Ms C provided details of her employment. BMW FS says it also carried out credit searches on Ms C which showed up some existing credit but that each time this was being well maintained.

Furthermore, BMW FS says that Ms C would have had enough left over to meet her regular living costs once her payments to her creditors were deducted from what it believed to be her income.

On the other hand, Ms C says that she couldn't afford the monthly payments to these agreements and therefore BMW FS shouldn't have entered into any of them with her.

I've thought about what Ms C and BMW FS have said.

The first thing for me to say is that BMW FS has only been able to provide the output of the credit checks it carried out before agreeing to enter into agreement 2 with Ms C. This shows that there was no significant adverse information such as defaulted accounts or County Court Judgments ("CCJ") recorded against Ms C at the time of this application.

I don't know why BMW FS has only provided the credit searches from the time of application for agreement 2. Nonetheless, the copy of Ms C's full credit report that the representative has provided in support of the complaint, indicates that a similar position credit position existed at the time of all of Ms C's applications.

Furthermore, the notes from BMW FS' records indicate that the only time that it considered Ms C would have a relatively high amount of total debt was when she was provided with agreement 3. This was because agreement 2 was still running at this stage and the expectation was that Ms C would continue having to make payments to two agreements during this period.

Although I have noted that Ms C mortgage appears to have been in arrears at this stage too. That said, given this was during a period when mortgage payment holidays were being routinely granted as a result of the pandemic, it seems that this is likely to have been down to an oversight, rather than because of any ongoing difficulty. I've also noted that the notes suggest that agreements 3 and 4 were manually underwritten, although I've not been provided with the detail of what this consisted of, or what this manual underwriting concluded about Ms C's financial position – other than BMW FS was prepared to lend.

Furthermore, while BMW FS has suggested that Ms C declared the details of her employment, I've not seen anything to support the fact that the amount of her income was recorded at this time, or indeed that BMW FS took steps to validate this. As this is the case, I've not been persuaded that BMW FS did know enough about Ms C's actual income at the time of either of her applications.

I think that this is important because while BMW FS' may believe that the credit searches did not provide it with any reason to suspect that Ms C may have been in difficulty, it's unclear to me how BMW FS could reasonably have understood that any additional finance was affordable for Ms C without knowing how much she earned. And, in these circumstances, I'm not persuaded that the checks BMW FS carried out were reasonable and proportionate.

That said, I do think that even if BMW FS' checks had gone further and extended into finding out more about Ms C's income as well as her actual living expenses, I don't think this would have made a difference to its decisions to lend. I say this because the information Ms C has provided us with appears to show that when her committed regular living expenses are added to her credit commitments and then deducted from her income, Ms C could sustainably make the repayments due under all four of these agreements.

I note that the representative is unhappy that the investigator included grants Her Majesty's Revenue and Customs ("HMRC") paid to her company when assessing Ms C's income at the time of agreement 2. However, these payments, which were being made to Ms C's company, are entitled '*HMRC JRS GRANT*'. The JRS part of the title refers to Job Retention Scheme. This is important because the purpose of the Job Retention Scheme and any payments made through it was for businesses to retain employees by paying them.

Ms C was the main employee of her business and therefore it is reasonable to include these payments in determining Ms C's income at the time. Particularly as Ms C chose to change her car at this time and presumably considered that she was receiving an income sufficient enough to enable her to do so.

Furthermore, as these payments weren't to be used for any purpose, other than to pay employees a proportion of their salary, I'm satisfied that BMW FS would have been entitled to conclude that Ms C would use these grants in this way and I don't think that it was required to conduct an income and expenditure assessment on Ms C's business taking account of its expenses – including its non-employee ones – in the way that the representative is suggesting.

Equally, I have to consider Ms C's submissions now in the context that they are now being made in support of a claim for compensation. Whereas at the respective times of sale, at least, Ms C clearly wanted the vehicles she had chosen and it's fair to say that any explanations she would have provided would have been with a view to persuading BMW FS to lend rather than highlighting the agreement was unaffordable.

In these circumstances, I find it extremely difficult to accept that if Ms C was further questioned about her situation at the time of agreement 2, she would have said that she was intending to use the HMRC JRS Grants for purposes other than those allowed by the scheme in the first place.

I would also add that it's only fair and reasonable for me to uphold a complaint in circumstances where proportionate checks will have shown a lender that the payments were unaffordable. It is not sufficient for me to uphold a complaint simply because more should have done more. I have to be satisfied that doing more would have resulted in the lender taking a different course of action – in this case, declining Ms C's application for finance.

Given the circumstances here, while I don't think that BMW FS' checks before entering into these hire purchase agreements with Ms C didn't go far enough, I'm not persuaded that BMW FS carrying out further checks in this instance would have resulted in it reaching different decisions on lending to Ms C, on either of the three occasions it did.

For the sake of completeness, I would also add that while this isn't in itself determinative, it's also worth noting that Ms C made all of her payments as and when they fell due for the period she had these agreements, she also settled agreement 3 in full just over 18 months into the term.

I've focused on agreement 2 as while agreements 1 and 3 were also settled early this was settled by Ms C entering into later agreements. However, when Ms C settled agreement 3, I can't see that she entered into a replacement agreement with BMW FS at this time. In my view, Ms C's overall repayment record and actions tend to support the fact that these agreements were affordable for her.

In reaching this conclusion I've also considered whether the lending relationship between BMW FS and Ms C might have been unfair to Ms C 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 C on either occasion or otherwise treated her unfairly in relation to these matters. 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.

I'm therefore satisfied that BMW FS didn't act unfairly towards Ms C when it agreed to lend to her and I'm not upholding Ms C's complaint. I appreciate that this will be very disappointing for Ms C. But I hope she'll understand the reasons 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 C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 16 October 2025.

Jeshen Narayanan  
**Ombudsman**