

The complaint

Mrs S has complained that BMW FINANCIAL SERVICES (GB) LIMITED gave her car finance without carrying out sufficient checks. Had better checks been made it would've seen the agreement was unaffordable.

What happened

In April 2023, Mrs S entered into a hire purchase agreement for a brand-new car. The purchase price of the vehicle was £76,185. Mrs S paid a £10,000 deposit and applied for finance for the remaining £66,185. BMW accepted Mrs S's application and agreed to provide her with a hire purchase agreement on Personal Contract Purchase ("PCP") terms.

This agreement was due to be repaid in 47 monthly repayments of £907.88 followed by a final optional payment, which Mrs S had to pay if she wished to keep the car, of £37,530.88. If Mrs S made all the payments in line with the agreement, she would've repaid a total of £90,200.70.

Mrs S has had some difficulties making her repayments and BMW terminated the agreement, the car was collected on 24 April 2025 and then it was sold at auction.

BMW subsequently has said Mrs S still owes it £33,404.44, which included arrears, at the point it was terminated of £9,986.68. BMW also said that Mrs S had covered more than the pro rata number of miles that she agreed to travel as part of the agreement.

Following Mrs S's complaint, BMW in a final response letter didn't uphold it. Unhappy, with this response Mrs S referred the complaint to the Financial Ombudsman.

I issued a provisional decision setting out my reasons for upholding the complaint and setting out what BMW needed to do in order to put things right.

Both parties were asked to provide any further information as soon as possible, but in any event, no later than 5 January 2026. Both parties responded and I sought further information from BMW, which has now been received so I can proceed to issue the final decision.

I've summarised the responses we've had from the parties below. Mrs S said;

- That she tried to return the vehicle at the point when she stopped paying for it.
- She provided details of her personal situation which included that her husband was using the vehicle at the time and she had no way to stop that use.
- Had BMW collected the vehicle sooner – it would've mitigated its loss.
- Mrs S provided a copy of her email complaint she sent to BMW in June 2024 and Mrs S said she had contacted BMW before June 2024 but wasn't able to evidence this because her account on the complaint platform has been closed.

BMW said that it was difficult for it to work out the fair usage cost of the vehicle for Mrs S because of the number of factors that are taken into account, and it confirmed the excess mileage charge is currently £2,486.42.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

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

The regulations in place when BMW lent to Mrs S required it to carry out reasonable assessment of whether Mrs S could afford to make her repayments in a sustainable manner.

BMW had to think about whether making the payments would cause difficulties or adverse consequences for Mrs S. In other words, it wasn't enough for BMW's lending decision to only consider the likelihood that it would get its money back, or that it had the ability to repossess the vehicle, without considering the impact making these payments would have on Mrs S.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower.

There may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I've thought about all the relevant factors in this case.

BMW has told the Financial Ombudsman that Mrs S's application was "auto accepted". BMW has explained this means no manual underwriting was performed and it didn't seek verification of income because the application was "...passed automatically..." BMW says this occurred as a result of the credit check results which showed Mrs S's credit utilisation as well as the fact this agreement was replacing an existing agreement Mrs S had with BMW.

And while I've thought about what BMW has said about the existing agreement – taken in 2021 that Mrs S that was due to end – Mrs S was paying around £259 per month for it. But Mrs S was moving onto a new agreement where the payments were significantly more – at over £900 per month. While she may have made her payments as expected on the £250 agreement, I'm not persuaded that this in itself is a plausible reason for concluding that she could pay close to four times this much each month.

BMW has provided a copy of the credit check results that it carried out and it knew Mrs S had around £32,000 of existing debt – but some of that was connected to the existing hire- purchase agreement she had with BMW that was going to be replaced with this one.

It also knew that Mrs S was connected to a mortgage and what looks like a further advance as well. There were also two other loans but Mrs S all appeared to have been paying these without any difficulties – there were no missed payments or defaults evidenced.

Beyond this credit search, it's unclear to me what data and factors – BMW relied on, and which led it to consider that Mrs S could afford to make monthly payments of over £900 per month. Indeed, it seems to me that BMW submissions here amount to an argument that Mrs S's payments were affordable, because its systems approved this agreement.

Thinking about what checks BMW did do – taking account of the size of the agreement and the monthly payment Mrs S was committing to, I can't fairly, in the circumstances conclude that the checks BMW did do were proportionate and therefore have made a reasonable decision to lend.

In my view, I think BMW needed to understand what Mrs S's actual monthly income was – and check this – as well as obtaining a decent understanding of what her existing committed monthly expenditure was. This sort of information ought to have been reviewed considering the amount of credit as well as the sizeable monthly payment Mrs S was going to have to pay.

As this is the case, I'm not currently satisfied that the checks BMW carried out before reaching the conclusion the agreement was affordable for Mrs S were reasonable or proportionate.

As proportionate checks weren't carried out before this agreement was provided, 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 shown BMW that it was unfair to enter into this agreement with Mrs S.

As I've explained, I think that in order to make a fair evaluation of whether Mrs S could afford the monthly payments on this agreement, BMW needed to have an understanding of Mrs S's monthly income as well as committed non-discretionary expenditure. I've therefore considered the bank statements Mrs S has provided with a view to determining whether it would have been reasonable for BMW to lend had it obtained this information.

To be clear, I've only used the bank statements to get an idea of what Mrs S's income and actual living costs are likely to have been like at the time. I've not done this because I think that BMW ought to have requested this information as part of underwriting this loan. After all, BMW could've built a picture of Mrs S's finances a number of other ways

I accept that had BMW conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of BMW conducting a proportionate check I do think it's fair and reasonable to consider the bank statements that I now have access to.

The information provided show that Mrs S was in receipt of a total income (from benefits and her job) of around £2,900 per month – so I think it's fair to say that solely the payment to BMW would be taking up nearly a third of her monthly income.

The bank statements show that Mrs S had a number of active credit agreements – as well as number of loans that may not all have been visible to BMW as part of their credit search – I can see £25,000 of new loans being advanced to Mrs S within the months before the agreement started.

But had proportionate checks been made to check her outgoings than I think it would've likely discovered Mrs S's repayments to these loans and her other commitments including a mortgage and further advance. Just the credit commitments that I can see each month total almost £2,200 per month. On top of this there are also other costs that Mrs S had such as food, transport, and other bills such as the council tax, utilities and TV subscriptions services.

Given the bank statements show that Mrs S was supporting a family, I'm not persuaded that had BMW made further checks into her income and monthly outgoings that it could've reasonably concluded the agreement was affordable for her.

Overall, had BMW taken a closer look at Mrs S's income and outgoings it would've seen she wasn't in a position to on finance with payments over £900 per month.

I am therefore intending to uphold the complaint.

Other considerations

Mrs S has made some comments about the price of the vehicle, but as I set out in the background section of this decision, the price of the car, which was based on the manufacturer's list price as it was brand new, was £76,150. I've not seen anything to indicate that the price, which Mrs S agreed to at the time, resulted in any unfairness.

Mrs S is correct in saying that she would owe pay BMW over £90,000 if she made all of her payments (including the optional final payment) and took ownership of the car at the end of the term. But she was purchasing the car on credit. And it isn't unusual for customers to pay interest, fees and charges as a result of paying for goods on credit. So, I don't think that the total amount Mrs S had to pay in itself means that BMW failed to treat her fairly and reasonably.

Mrs S has provided the Financial Ombudsman with details of her vulnerability and she said at the time her judgement was impaired. As my final decision will be published, while I've read everything that she's said, I've not said set out the detail in order to protect Mrs S's privacy.

I do sympathise with what she has said and I hope things have improved for her. But I've not seen anything in the notes provided by BMW that they were aware of what Mrs S has now told us about at the time she entered into this agreement. In any event, I've already explained why I'm already satisfied that BMW shouldn't have entered into this agreement with Mrs S.

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.

I've thought about all the comments that have been made in response to the provisional decision and having done so I'm coming to the same conclusions that I reached in the provisional decision for broadly the same reasons. This final decision should be read in conjunction with the provisional decision that can be found above.

I think it's fair to say the main concerns Mrs S has with the outcome is around BMW's actions and the time it took to collect the vehicle. She has in short said BMW didn't mitigate its own loss by letting her keep the vehicle for as long as it did. She has also said that at the time she may not have had such a large balance to repay.

I'm sorry to hear about Mrs S has gone through – this was clearly a very difficult and challenging time for her. But I can't see that she made BMW aware of what was going on and I don't think given the contact notes I've seen that BMW could've concluded that her husband was the one who was using the vehicle and increasing the mileage.

Initially, it looked like the first time BMW was aware that Mrs S had a problem with the agreement was when it logged and started to review her complaint in August 2024. However, a review of the notes that have been supplied showed that it was aware of Mrs S's concerns in June 2024.

BMW did seem to respond to this first complaint at the start of July and explained why for security reasons it couldn't proceed – as the email address she had used didn't match. I don't think that was unreasonable. It asked Mrs S to contact BMW, but I can't see from the notes that she did until she raised her complaint.

But in saying the above I can see that BMW sent several emails about the outstanding balance as well as attempting to make a number of phone calls – but it wasn't successful in speaking to Mrs S.

I can see that Mrs S spoke to BMW on 15 November 2024 – at this point she told BMW that she was raising her complaint with the Financial Ombudsman. While BMW did say at this point it would pause recovery – there does appear to have been a conversation about the arrears would continue to grow if payments weren't made. So while BMW did allow Mrs S to continue to have access to the vehicle it was clear that Mrs S needed to pay something to BMW. There was no indication from the notes that Mrs S wasn't the one using the vehicle.

BMW's records then show that it received contact from the Financial Ombudsman in December 2024. However, between then and when the car was repossessed while recovery action was on hold, Mrs S didn't make payments or attempt to make payments. I appreciate she said the payments weren't affordable but equally BMW had explained the situation to her about the arrears on the car – and she still maintained access to it.

I have thought about whether BMW mitigated its loss – but overall, taking account of what I can see in the contact notes I'm not amending the compensation I've set out below. Having looked at what has happened, BMW could've perhaps recovered the vehicle slightly more quickly than it did, but equally, Mrs S was aware that she needed to make payments towards the vehicle especially after BMW had not upheld her complaint. I do think the redress that has been proposed is fair and reasonable.

Turning to Mrs S's concerns around the adverse payment information BMW has reported. Ordinary speaking when an unaffordable lending complaint is upheld the Financial Ombudsman will consider whether the adverse payment information which may have been reported ought to be removed.

One of the considerations that we make is whether after compensation is paid whether is still a balance to be paid. Here, based on BMW's calculations – that I come onto below its clear a sizeable balance will still be due to be paid – albeit much smaller than what BMW is currently asking Mrs S to pay.

But our approach to complaints that are upheld and where the lender will still be owed money is to not make an adjustment to the credit file. This is because the outstanding balance is still owed. There is of course also a risk that if adverse information is removed, and then there are problems repaying the balance that adverse information is then re-added to the credit file – which would likely have an equal or greater impact given how recent the information would be.

I think it's also worth saying here that the Financial Ombudsman attempts to as far as practically possible to put consumers back into the position they may have been in had the error – in this case granting finance – hadn't occurred. But that isn't always possible – given a car was given and used and an outstanding balance will still be owed. As this point, it's about doing the best we can to put things right.

Of course, if is possible, that Mrs S can repay the balance if so, she is of course free to raise another complaint with BMW about the adverse payment information at a later date. But for the purposes of this complaint, I am not recommending the adverse information be removed.

Mrs S has also said she's unhappy with the service plan that was given to her at the same time as the finance agreement but she will need to take this up with the dealership.

Finally, I'll deal with BMW's concerns about the fair usage figure. As I explained in the provisional decision there isn't an easy calculation that can be conducted to work out what Mrs S's fair usage figure ought to be given the number of different variables.

But as I explained, the monthly cost of the PCP payments has the effect of allowing Mrs S to in effect hire the car. This is why for the purposes of the refund that will need to be calculated, I think it was reasonable for BMW to levy the monthly costs that Mrs S had – for the length of time she had the car.

In the circumstances of this case, the monthly cost was £907.88 – and so this should be the fair usage figure. Of course, as the redress below sets out Mrs S did make payments for a period of time, and these will need to be accounted for as part of the redress. BMW has set out a provisional calculation in response to the decision, and given what I've said it looks like that is accurate – at least to the point it was made.

Based on what I've seen it's almost certain an outstanding balance will still be owed by Mrs S to BMW – and so I would remind BMW to treat Mrs S fairly and with forbearance. Mrs S has said, that the adverse credit file information ought to be removed from her credit file.

I've set out below what BMW needs to do in order to put things right.

What BMW needs to do in order to put things right

I've thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they would be in now if that wrong hadn't taken place. In essence, in this case, this would mean BMW putting Mrs S in the position she'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't always straightforward or even possible. Mrs S did enter into the agreement and was, at least, given the car in question. She also had considerable use of the vehicle for the around 24 months that it was in her custody. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mrs S back in the position she would be in if she hadn't been given the agreement in the first place.

I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

When an unaffordable lending complaint is upheld, we typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

In this case, this would limit Mrs S to paying back the £66,185 BMW lent her and it transferring ownership of the car to her. As the car would represent the benefit of the amount lent. However, in this case, BMW has already taken possession of the car. In these circumstances, Mrs S hasn't had the benefit of the total amount that BMW lent her. So, I don't think that limiting Mrs S to paying the amount BMW lent her produces a fair and reasonable outcome here.

I've therefore given careful thought to how else it might be fair and reasonable to put things right for Mrs S bearing in mind she was provided with a PCP payment structure agreement; she shouldn't have been provided with.

In circumstances where a borrower was provided with car finance they shouldn't have been provided with, it's usually appropriate for the car to be returned and the agreement ended. As I've explained, this has already happened so there is no need for the car to be returned at this stage. Although the circumstances in relation to how and why this happened is for reasons I'll return to later on in this decision.

How much of Mrs S's payments it would be fair and reasonable to retain

I know that Mrs S has suggested that she should be refunded all the payments she made. However, I don't agree that this would produce a fair and reasonable outcome here. Mrs S had the use of a brand-new car for nearly two years. I don't see how she would have had

such access to a car without making any payments at all – which is effectively the position she says she should be placed in by asking for all her payments to be refunded. As this is the case, I've therefore considered what it would be fair and reasonable for BMW to keep to account for Mrs S's use of this car.

It's fair to say that there isn't an exact formula for working out fair usage. But generally speaking I need to think about Mrs S's usage of the car and what sort of costs she might have incurred to stay mobile in an equivalent vehicle, had she not had the use of this car. As I've explained, Mrs S had the use of what it can be fairly described as a prestige car for around 24 months and it's fair to say that Mrs S continued using the car despite not making any payments for around 12 months.

In considering what it would be fair and reasonable for Mrs S to pay, I'm mindful that the deposit together with the monthly payments on a PCP arrangement are supposed to be broadly equivalent to the monthly cost of renting a car equivalent to the one financed. Indeed, the monthly payments on such agreements are typically described as rentals as a result of this.

The effect of this is that broadly speaking the customer hires the car for the period of the agreement and they have the option to buy it for the amount of the final payment at the end of the agreement.

So as a starting point I think that it would be fair and reasonable to expect Mrs S to pay the monthly payments for the period she had custody of the car. This includes the period where Mrs S's didn't make repayments but retained custody.

The deposit

I'm conscious that the finance agreement says that Mrs S paid a deposit of £10,000 – and Mrs S has said this came from a loan she had taken out in order to carry out renovations. Ordinarily speaking I would typically direct a business to return a borrower's deposit plus interest, together with any payments that were made, in circumstances where an agreement is ended in this way.

However, Mrs S's deposit had the effect of lowering her monthly payments. If she had paid a lower deposit then her payments would've been considerably higher. In the circumstances of this complaint, I don't think a full refund of the deposit is reasonable – especially taken when Mrs S used the vehicle for a year without making any payments.

As Mrs S kept the car for around half the period of the scheduled term of the agreement, I'm satisfied that Mrs S should receive 50% of the deposit back – so £5,000. However, as Mrs S only made payments for 12 months and kept the car for 24 months, the monthly payments she made aren't enough to cover her usage of the car. In those circumstances, I think it is fair for BMW to offset the portion of Mrs S's deposit that I would typically require it to return, from the amount Mrs S should pay for her usage of the car.

The excess mileage charges

I've also considered that when BMW collected the car in April 2025 the car had covered – according to the collection report 35,537 miles. The reason I've thought about this is because over the term of the agreement which Mrs S signed when she took the car limited her to – covering over a four-year period 32,000 miles before excess charges were applied. By pro rating this figure, Mrs S had in effect agreed to cover 8,000 miles per year before the mileage charge was applied.

In this case, Mrs S has covered more than the permitted total miles of the agreement within two years of having access to the car – whereas under the terms of the agreement she was permitted to have covered 16,000 miles within the two years when she had custody of the car.

As such, BMW can, if it wishes charge Mrs S excess mileage charge at the rate in the agreement – of 21.94 pence per mile on a total of 19,537 excess miles. This is the difference between what Mrs S was contracted to and the total amount when the car was collected. This charge is fair for BMW to charge because not only is explicit in the credit agreement but the mileage would've also likely impacted the auction value of the car – as I think it's fair to say that a car that had covered over 30,000 miles in around two years is more than the average user.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mrs S in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

- refund 50% of the deposit Mrs S paid along with 8% simple interest per year from the date of payment to the date of settlement†
- BMW should work out the total amount that was due to be paid by Mrs S over the two years that she had the vehicle – this is the fair usage figure.
- From this figure it should deduct any payments Mrs S has already made to it and it can if it wishes use the above deposit refund to offset against any balance Mrs S owes BMW.
- BMW can if it wishes add to the total outstanding the excess mileage charge.
- Arrange an affordable repayment plan with Mrs S, while taking into consideration the FCA requirements to treat Mrs S's financial difficulties with forbearance and due consideration – if necessary.

†HM Revenue & Customs requires BMW to take off tax from this interest. BMW must give Mrs S a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mrs S's complaint.

BMW FINANCIAL SERVICES (GB) LIMITED should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 March 2026.

Robert Walker
Ombudsman