

The complaint

Ms T complains that BMW FINANCIAL SERVICES (GB) LIMITED trading as MINI Financial Services (“BMWFS”) entered into a Hire Purchase agreement with her when it was unaffordable and that it unfairly paid commission to the broker without it being disclosed.

Ms T complained using a professional representative, but for ease I will refer to Ms T throughout this decision.

What happened

In June 2018, Ms T acquired a vehicle, which cost £13,400.00. After paying a deposit of £850.00, Ms T borrowed the remaining £12,550.00 through a Hire Purchase agreement with BMWFS.

The agreement was due to run for 49 months, with 48 payments of £209.49 and a final optional payment of £5,329.36. This meant the total amount payable under the agreement was £16,234.88, of which £2,834.88 was interest.

Ms T complained about the agreement being unaffordable and commission being paid to the broker without it being disclosed. Once more than eight weeks had passed and she hadn't received a response, Ms T referred her complaint to our service. While the complaint was with our service BMWFS issued a final response and didn't uphold her complaint.

An investigator considered Ms T's complaint. They felt that BMWFS hadn't provided enough evidence to show it carried out proportionate checks to ensure that Ms T could afford the repayments under the agreement – and that proportionate checks would've shown she didn't have enough disposable income at the time to do so. They thought that BMWFS needed to put things right as a result.

In response to the investigator's view BMWFS raised a number of arguments, including that Ms T repaid the agreement in full without issue, her credit history showed she had low indebtedness and had been able to maintain her existing credit, the regulations at the time didn't require verifying income, BMWFS's underwriting process was proportionate and reasonable and it had doubts about the investigator's assessment of Ms T's outgoings at the time of the application.

It thought there was more to her financial situation and BMWFS disagreed with the investigator's opinion, so the complaint has 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.

In order to reach my decision, I will first consider whether the checks were proportionate given the circumstances of the lending. If they were, I will go on to consider whether BMWFS

made a fair lending decision. If they weren't, I will consider what proportionate checks would've told BMWFS.

Did BMWFS carry out proportionate checks to ensure Ms T could make the monthly repayments to this agreement?

Before lending, BMWFS needed to ensure it wasn't lending irresponsibly. In doing so, it had to carry out proportionate checks to establish the repayments were affordable for Ms T.

There are no specific checks that lenders must carry out, but they should have been proportionate to the circumstances based on what BMWFS knew about Ms T. You might expect checks to be more thorough for a consumer, for example, with lower income or previous debt issues. But the expectation of more detailed checks being carried out may be lower where, for example, the amount borrowed is low or the borrower has a long history of maintaining credit well. But there's no hard and fast rules and what's proportionate will vary depending on the circumstances.

BMWFS has said its creditworthiness and affordability checks are carried out in line with the requirements under the relevant regulations. It says its automated assessment considers information reported by credit reference agencies, the level of the borrower's existing debt, their employment status, their circumstances at the time of the application and the size of the monthly payment. It said this automated process didn't find any issues and so it was approved without a manual review. But, as the investigator pointed out, there is a limited amount of evidence to substantiate the checks carried out by BMWFS. And in truth it is unclear what BMWFS actually knew about Ms T before it agreed to lend to her.

For example, on the one hand it said that Ms T's income would have been checked by the broker. But, conversely, BMWFS also said that there was no requirement under the regulations in place at the time to obtain proof of income. While BMWFS has said the broker would have checked Ms T's bank statements or payslips during the application process, it hasn't provided any evidence of this. For the avoidance of doubt, as BMWFS was the lender here, the responsibility to check that the repayments were affordable rested upon BMWFS.

If however it was happy to lend based on the broker having checked Ms T's income, and it obtained bank statements or payslips as has been suggested, then the broker would've seen that the monthly repayments took up a relatively large portion of Ms T's income. Nonetheless, I can't see anything to suggest that any further enquiries took place at the point of application in order to account for this.

The only customer-specific information BMWFS has been able to provide is the results from the credit check it carried out. This showed Ms T had a current account and a personal loan with monthly repayment of around £90 which was up to date. While it's fair to say that the results of this check do suggest that Ms T wasn't excessively indebted, BMWFS had to consider Ms T's ability to make repayments over the lifetime of the agreement.

BMWFS said it considered Ms T's employment status which was that she has been employed full time for 27 years. However it hasn't provided any evidence of the origin of this information and even then, given it hasn't been able to show that it had any idea of what Ms T's income or living expenses were, I don't think that the information from the credit check was in itself sufficient to show that Ms T could afford this agreement.

Bearing all of this in mind, I'm not satisfied that BMWFS has satisfactorily evidenced that it carried out proportionate checks before agreeing to enter into this Hire Purchase agreement with Ms T.

What would proportionate checks have shown?

Based on what I've said above, I think that in order for its checks to have been proportionate BMWFS should have at least sought to understand Ms T's income and her non-discretionary expenditure. I've gone on to consider what would've more than likely been found out if it had carried out such checks.

I can't guarantee what information BMWFS would have been provided with or what would have been evidenced if it had been requested, at the time. However we've been provided with a copy of Ms T's bank statements which cover the months leading up to the application.

I wish to be clear in saying that BMWFS was not required to request this specific information before it lent to Ms T. Nonetheless, I consider this information to be a reliable resource as it contains all I now need and is information I can reasonably consider in order to recreate what a proportionate check would more likely than not have shown at the time.

In the months leading up to the application Ms T's average salary is around £1,186 per month. BMWFS has sought to question the accuracy of this information, however it has only suggested further investigation is required without saying what further investigation is necessary, or what effect this is likely to have. For example, there is no suggestion that Ms T may have had an additional job or any other further source of income. Most importantly of all it has not provided any evidence or information to suggest that Ms T's salary was different to that set out by the investigator.

Bearing in mind what's in the bank statements provided, I'm satisfied that Ms T's monthly income was around the £1,200 mark. So I'm satisfied that BMWFS carrying out further enquiries into Ms T's income is likely to have seen it reach a similar conclusion.

Ms T bank statements in the lead up to the application also show her non-discretionary expenditure averaged around £1,124 per month. This doesn't quite outstrip her income, however when this amount is deducted from her income she clearly doesn't have sufficient funds left over to make the monthly repayment for this agreement.

The information in Ms T's bank statements is relatively straightforward and I don't think BMWFS has necessarily sought to challenge this information in and of itself. It has instead pointed to a number of surrounding factors and made the argument that these factors must mean there's more to Ms T's financial situation than what's depicted in her bank statements, for example that she may have had savings accounts she was able to use. But if this were the case, I would expect to see payments going to and from other accounts in Ms T's name. And I can't see anything to indicate that this was the case here.

BMWFS's challenge to the investigator's assessment included arguing that Ms T's ability to make the optional final repayment to the agreement four years after is indicative of a positive financial situation. It also argues that her having repaid credit taken five years prior is of some relevance to her financial position at the point of applying for her agreement with BMWFS.

In considering this complaint I'm deciding on the reasonableness of BMWFS's lending decision in the context of what it knew, or ought to have known, about Ms T at the point of application. Her financial position some years prior is of limited relevance. And it's too simplistic to say that because repayments had been made under the agreement, it automatically meant it was affordable at the outset. For example, making the repayments to an agreement might have an impact on other commitments.

Ms T confirmed that she didn't have any savings accounts when she applied for this agreement and was responsible for all of her household bills. So I'm satisfied the evidence we've been provided with is sufficiently reliable and I have no reason to doubt what's presented there. In reaching my conclusions, I accept that Ms T being able to make the optional final repayment isn't entirely irrelevant. However, it seems Ms T's situation changed some years later which meant she started sharing her bills with her partner. And this may well be what led to her eventually being in a position where she could later take ownership of the car. But I've not seen anything persuasive to indicate that Ms T had these funds available at the time of her application or that she could sustainably afford the repayments to this agreement.

In summary, I'm satisfied that BMWFS's affordability checks were not proportionate in the circumstances. Had BMWFS carried out proportionate checks and considered Ms T's actual income and committed expenditure, I think it would more likely than not have shown that Ms T had insufficient funds to be able to sustainably repay this agreement.

In reaching my conclusions, I've also considered whether the lending relationship between BMWFS and Ms T might have been unfair to Ms T under s140A of the Consumer Credit Act 1974. However, I'm satisfied that what I direct BMWFS to do below results in a fair award for Ms T given the overall circumstances of her complaint.

Finally, and for the sake of completeness, I should explain that I've noted that Ms T has also complained about the commission BMWFS paid to the broker. She says that this was not disclosed to her and in breach of the rules, regulations as well as BMWFS's obligations.

However, I'm satisfied that what I am directing BMWFS to do to put things right for Ms T (in the section below) effectively places her in the position she would now be in had her Hire Purchase agreement never existed. I'm therefore satisfied that this unwinds the impact of any commission that BMWFS might have paid to the broker for introducing Ms T.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't, in any event, make a difference to the overall outcome.

Putting things right

Ms T's agreement ran its full term and so has been settled in full. Because of this, I'm satisfied it would be fair and reasonable in all the circumstances of the complaint for BMWFS to put things right for Ms T by:

- refunding any and all interest, fees and charges she paid as a result of this agreement
- adding interest at 8% per year simple on any refunded payments from the date they were originally made by Ms T to the date of settlement†
- removing any and all adverse information it may have recorded on Ms T's credit file as a result of this agreement

† HM Revenue & Customs requires BMWFS to take off tax from this interest. BMWFS must give Ms T a certificate showing how much tax it has taken off if she asks for one.

My final decision

My final decision is that I uphold Ms T's complaint against BMW FINANCIAL SERVICES (GB) LIMITED trading as MINI Financial Services. It must now settle the complaint in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 15 April 2026.

Scott Walker
Ombudsman