

complaint

Mr S complains that BMW Financial Services (GB) Limited made him a loan which was unaffordable. He wants to return the vehicle and unwind the loan.

background

Mr S tells us in April 2016 he took out a Personal Contract Purchase loan - a form of hire purchase - with BMW. He says he'd at first been refused finance but about a week later was offered the agreement - with a higher monthly repayment figure. He says he's been struggling to meet the payments from an early stage.

BMW told us it doesn't think it's reasonable to expect it or the retailer to offer financial advice to a customer about whether he can afford the repayments. It said the decision was based on Mr S's credit rating. It felt the loan was affordable. And it had no knowledge of an earlier failed application.

The investigator recommended the complaint should be upheld. She said with such a high value loan she'd have expected BMW to do more than a credit check. And if it had it would have seen he was permanently overdrawn in the three month period leading up to the loan. And that in only one of those months would he have had enough disposable income to make the payment.

my findings

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

I'm sorry to see Mr S is experiencing financial difficulties. This is never an easy situation to deal with.

I'll first explain our approach to complaints about unaffordable lending. It's important to understand that the decision about whether a loan is - or is not - affordable is based on the circumstances at the time the loan was made. So a later change in circumstances won't affect that decision - although it may impact on a customer's ability to repay the loan.

A lender is required to make adequate checks prior to making a loan. There's no set list of checks a business is required to make - it's up to each business to decide what it needs. But it is required to make checks which are sufficient and proportionate taking into account factors including, but not limited to, the amount of the loan and the size of repayments. And where evidence is incomplete - as some of it is here - I'm required to make my decision on the balance of probabilities.

There is very little evidence as to the checks which were made before this loan was granted. I'm aware BMW has undergone a change in its administration and some of the relevant information is no longer available. It appears the checks carried out at the time were limited to credit file data along with some very basic information supplied by Mr S. This simply records that he was in full-time employment and shows details of his living arrangements. There's no evidence of salary or other living expenses. Despite this BMW says it had enough to say the monthly payments were affordable.

I'm in agreement with the investigator in thinking that for a loan of this amount (over £40,000 repayable over a four year period) more than credit file checks were required. And I express some surprise that BMW does not think it needed an income and expenditure check. I've already said it's up to a business to decide what information it needs - but without even the most basic details of income and expenditure it's hard to see how any plausible assessment could be made. Although BMW says the check was automated - I don't know what information was provided. And it's not the method of checking rather the substance of what is checked which is the crucial factor.

But inadequate checks do not mean a loan is automatically unaffordable. If the information which *should* have been obtained had shown Mr S was able to make the repayments on a sustainable basis then the loan would not be unaffordable.

I think the very least that was required was evidence of income and expenditure. This would probably have revealed Mr S was in receipt of a net salary which - in the three months prior to the loan - was around £1,000. I'm not suggesting it's for BMW to advise Mr S whether he can afford the loan or not - or to offer financial advice. But what I am saying is that before it made a loan BMW should have ensured it had sufficient information for it to make an appropriate lending decision.

BMW was also aware Mr S had some other lines of credit. I've not been provided with the exact details but it seems probable this would have included his bank account - which was permanently overdrawn in the three month period up to the date of this agreement. He was also repaying another loan at £127 per month. And it ought to have shown the payments on the new agreement were more than £300 per month in excess of his existing motor finance agreement. I think it should have been apparent to BMW that Mr S could not afford the repayments on the new loan on a sustainable basis.

Mr S told us about a financial check which he said had taken place a few days before BMW's agreement. And which had led to a refusal of credit - despite a monthly payment requirement of under £500. BMW have no record of this check and I've no other evidence apart from what Mr S has told us. But I've no reason not to accept what Mr S has said about this. It could be the retailer referred his application to another lender. But I don't think I can let it affect my final decision - as I don't know what information was asked for or provided.

To summarise, I've reached a conclusion on the balance of probabilities that BMW's affordability checks prior to this loan were inadequate. And I also think it more likely than not that if BMW had carried out adequate checks - taken together with what information it did have - it would have decided Mr S was unable to afford the loan on these terms.

So I'm upholding Mr S's complaint and I think he should be allowed to end the agreement and return the vehicle. I think it's fair and reasonable he should have to pay for the use he has had. So I won't be ordering the refund of any monthly payments.

my final decision

For the reasons given above my final decision is I'm upholding this complaint.

I'm ordering BMW Financial Services (GB) Limited to:

1. Arrange for the vehicle to be collected at no cost to Mr S.

2. End the agreement with nothing further for Mr S to pay from the date of settlement. For clarity this means Mr S should pay all sums due on the agreement, including arrears if any, up to the date of settlement.
3. Refund the advance payment of £750 together with simple interest at the rate of 8% per year from date of payment to date of settlement.
4. Arrange to have the record of the agreement removed from Mr S's credit file. This need not be done until all the payments and arrears, if any, due on the date of settlement are made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 March 2019.

Stephen D Ross
ombudsman