

complaint

Mr N complains that BMW Financial Services (GB) Limited (BMWFS) held him liable for car finance he says was taken out in his name by a fraudster.

background

In January 2017, Mr N entered into a hire purchase agreement with BMWFS for the purchase of a car at a cash price of £164,995.

Mr N says he did so as part of a business arrangement with a third party, C, whereby he would buy and sell luxury cars for profit, with finance taken out in Mr N's name but arranged by C. Mr N says he gave C his bank statements, pay slips, P60 and a copy of his passport and driving license, in order to obtain the finance.

To gain funds for a deposit, C arranged for three, five figure loans to be completed in Mr N's name, all of which were paid into Mr N's bank account. Mr N transferred the proceeds of those loans to C who subsequently made payments into Mr N's account to cover the monthly payments.

C then arranged to acquire a car on finance, using some of the loan funds as a deposit, as agreed with Mr N. C then exported the car out of the country, but instead of selling it and sharing the profits with Mr N, C has not contacted Mr N nor made any payments towards the finance agreement, or preceding loans since. Mr N says he realised at that point he'd been scammed. Both Mr N and BMWFS reported the matter to the Police.

Mr N complained to BMWFS, saying he shouldn't be held liable for the finance agreement. BMWFS issued a final response letter (FRL) to Mr N on 15 March 2018, rejecting his complaint. It said it hadn't acted incorrectly and that it couldn't discuss the matter further with Mr N while the Police investigation was ongoing.

Mr N remained unhappy, so he brought his complaint to our service. Our adjudicator rejected Mr N's complaint. He said BMWFS had done nothing wrong as Mr N had willingly agreed to C obtaining the finance and had consented to C completing the application on his behalf.

Mr N remained unhappy and asked for an ombudsman to consider the matter afresh.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having reviewed Mr N's complaint, I have decided not to uphold it for the following reasons.

Due diligence checks

Mr N says BMWFS didn't carry out sufficient due diligence checks to protect him. He says it didn't call him during the application process, and that the car was handed over to a stranger, instead of Mr N.

So, I've looked at what checks BMWFS did carry out, whether they were sufficient in the circumstances, and I've thought about what might have happened, had it carried out further checks.

BMWFS carried out an automatic credit check against Mr N's credit file, which it says is based on a fixed set of criteria. But because of the sums involved, it also carried out an enhanced, manual check. As part of that check, it requested his bank statements, P60 end of year certificate and payslips. I've reviewed those documents along with Mr N's credit report to see if there was anything that should have alerted BMWFS.

Mr N's credit report shows no defaults or negative markers before the loan in question was completed. And I haven't seen anything on the credit file that I think should have given BMWFS cause for concern.

So, I've looked at the subsequent manual check carried out. BMWFS has provided me with copies of the P60, bank statements and payslips it looked at as part of its checks. It's also sent me an audit trail showing the underwriting process it followed, as well as a recording of an enhanced security call it made before the sale was completed.

Mr N's P60 shows an annual salary of £125,000 for the tax year ending April 2016. The payslips are dated in the following tax year and show an increased annual salary of £137,000. The bank statements for the same period match the payslips and show the corresponding net payment into Mr N's account on the corresponding day. The bank statements also show a balance of £27,775.77 in Mr N's current account, and £64,028.71 in his savings account, which was enough to cover the £41,500 deposit for the car and leave a significant surplus.

I've compared the income and expenditure on Mr N's statements, which show an increasing balance month on month. And no other significant outgoings that I would expect BMWFS to query.

In the enhanced security call, a member of BMWFS's underwriting team ran through a number of security questions, all of which were answered in full and without hesitation. The answers given included Mr N's date of birth, address, credit card limits, names of his banks and the account limits, and his job title.

In a later interview with the National Vehicle Crime Intelligence Service, Mr N said his true annual salary was approximately £30,000. He said he recognised the above statements to be his but said the payments from his employer had been massively inflated. He also said the payments C had made into his account to cover the loan repayments had been removed from the statements. And that the payslips in his name were not his and were false.

Mr N has also told our service he didn't speak to BMWFS throughout the process. Having listened to the call recordings BMWFS have sent me, and having spoken to Mr N myself, I accept Mr N didn't speak to BMWFS. His voice is different to that in the recordings and Mr N's description of the arrangement with C was that C would deal with the logistics of the transaction, so it makes sense that Mr N wouldn't have any direct contact with BMWFS himself. And I accept Mr N's true salary is not what appeared on the documents seen by BMWFS.

With that being the case, I've thought about whether BMWFS could have identified that the documents it received were doctored. Without carrying out a forensic investigation, I can't say there were any obvious signs that should have alerted BMWFS. There don't appear to be any obvious discrepancies in the dates or account balances. And the formatting doesn't look abnormal, by which I mean the font seems to match and the text size is consistent.

But I've also thought about whether BMWFS should have been alerted that something was amiss by relation to the incomings and outgoings on the statements. Again, I haven't seen anything to persuade me BMWFS should have known the documents were forged. The payments all cross reference accurately between each document, and there's nothing on any of the documents that, in my estimation, ought to have signalled BMWFS to carry out further checks, or decline to provide finance.

Mr N's documents showed an increasing annual salary that was comfortably high enough to meet the loan repayments of £1,906.12, as well as substantial savings, even factoring in the significant deposit required for the vehicle.

Beyond that, I've also thought about what else BMWFS might have done to prevent the fraud from happening. Given what Mr N has said about his relationship with C, I think it's more likely than not that Mr N would have taken steps to ensure that either he provided any information C needed to pass further security, or would have provided any information that was requested of him, had BMWFS contacted him directly.

I say that because Mr N accepts he intended to buy the car, and because he had already authorised C to complete other finance deals as well as additional paperwork on his behalf. And he had handed over his personal data, including financial details and identification details, for that purpose.

Prior to the application to BMWFS, Mr N received £79,000 of unsecured loans into his account, which he transferred to C and arranged for C to send him money sufficient to cover the monthly repayments. He was also aware C would be looking to buy an expensive car in his name: that was central to the arrangement.

Mr N says he didn't authorise C to falsify his documents. But given the sums involved, i.e. £79,000 of unsecured finance and the financing of a luxury car, compared to Mr N's true salary, it seems more likely than not that either Mr N would have been aware that C was not representing Mr N's true financial position, or that he was naive to the situation and ought reasonably to have been aware. Either way, I'm satisfied C was acting with Mr N's full authority throughout the application, and that Mr N would have continued to take steps to fulfil any requirements to obtain the car in question, had BMWFS carried out any further checks.

I've thought about whether BMWFS might have taken any more steps to try to contact Mr N directly. But given the additional security checks it undertook, I'm not persuaded there was a good reason to make further investigations and I haven't seen anything that should have made BMWFS question further whether it was truly speaking with Mr N. C had all of Mr N's identification documents (that Mr N had voluntarily provided to him) and answered the enhanced security questions confidently and in full. So, there was no apparent reason for further suspicion.

So, for the above reasons, I'm satisfied BMWFS carried out reasonable due diligence checks, and didn't fail Mr N in the process of doing so.

Delivery of the vehicle

Beyond the initial security checks, Mr N also complains that BMWFS didn't do enough to protect him when the vehicle was handed over. He says it was given to a complete stranger.

BMWFS has sent me recordings of calls it says were made to Mr N around the time of delivery. The calls were made by a broker, B, on its behalf. It says further security checks were carried out and that Mr N confirmed all was well. Having listened to the call recordings, I accept B spoke with C, not Mr N. So, I agree Mr N didn't himself confirm all was well.

I've also spoken with the dealership that arranged collection of the car. They told me the vehicle was collected by an agent on behalf of the buyer, which they say is not uncommon. The dealer is based approximately 200 miles away from Mr N, so I don't think that arrangement itself is unusual. There was a higher risk given this was a distance transaction, but I'm satisfied the steps I've mentioned above were sufficient in the circumstances, and that BMWFS couldn't reasonably have done anything more to stop the fraud.

B told me it asked Mr N to send his driving license and a credit card statement in for verification. Only of course, B actually spoke to C, who sent in a copy of the requested documents. B was effectively acting as BMWFS's agent in this regard, but I'm satisfied B carried out reasonable checks, and that the checks represented a further enhancement of the checks BMWFS had previously carried out.

With that being said, I've also thought about Mr N's suggestion that BMWFS failed by allowing the car to be handed over to a stranger. So, putting aside the above checks, I've thought about what would have happened had BMWFS insisted Mr N attend the dealership in person, with his identification in order to collect the vehicle.

To help answer that, it's useful to provide further background into Mr N's arrangement with C. In his statement to the National Vehicle Crime Intelligence Service, Mr N described how he met C and gave details of the agreement he had reached. He said he met C at a family event in the middle of 2016, some six months before the car finance deal in question was completed. And that C was friends with others in attendance that day.

Mr N said he met C several times over the coming weeks, during which time they spoke about C's business plan. C said he had a history of trading luxury cars for profit and explained Mr N would need to obtain capital, secure a car finance agreement, then sell the car for profit. Mr N was told the deal would take around six months to complete.

The capital funds Mr N secured began arriving in his account in August 2016. And C made payments to Mr N of almost £20,000 from 26 September 2016 to 14 February 2017. C told Mr N he had a buyer for a car lined up and Mr N agreed for C to purchase a car on Mr N's behalf. He said he received a welcome pack for the car in question sometime in January, and that he wasn't surprised. Mr N said those documents contained his signature, but he said he had not signed them himself.

Despite Mr N seeing that his signature had been forged, Mr N didn't take any action at that point. By which I mean, he didn't contact BMWFS to ask about delivery of the vehicle, or question any of the logistics. Mr N says his final contact with C was in May 2017, shortly before he reported the matter to Action Fraud.

From all of the above, my view is that every action C took up to and including collection of the vehicle was expected or implied as part of the arrangement Mr N had agreed to. That is to say that every step of the transaction would be handled by C, with no input from Mr N. The only step Mr N didn't agree to was C taking the vehicle for his own purposes.

On balance, I think it's fair to suggest it's more likely than not that it was within Mr N's reasonable contemplation that C would collect and did collect the vehicle. The agreed intention was to sell the vehicle for a profit, an action C would carry out as he told Mr N he already had a buyer lined up.

Mr N has described a relationship he built up with C, together with a business venture he had agreed to, all of which involved C carrying out all of the work. So, if BMWFS had insisted Mr N collect the car himself, bringing with him his Passport and Driving License, on balance, my view is that he would have handed the car over to C in any event, to complete the sale. And therefore, the outcome would have been the same.

Mr N was still receiving regular payments into his account at the time and, in fact, received a payment of £10,000 from C within days of the car finance agreement completing, as well as two payments totalling £3,605 over the coming weeks.

Because of what I say above, I take the view that Mr N had authorised C to take possession of the car on his behalf. At which point, the risk of the vehicle no longer sits with BMWFS. So, I can't reasonably hold it responsible for any subsequent actions, and I don't consider it treated Mr N unfairly during the transaction, or failed him such that it should have to compensate him or release him from his liabilities under the finance agreement.

For the reasons I've set out above, I do not uphold Mr N's complaint and I'm not asking BMWFS to do anything to put things right for Mr N.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 May 2021.

Alex Brooke-Smith
ombudsman