

complaint

Miss H complains that BMW Financial Services(GB) Limited ("BMWFS") gave her an unaffordable hire purchase agreement.

Miss H is represented by her solicitor, but for ease I'll refer to Miss H throughout.

background

In August 2017, Miss H visited a car dealership with her ex-partner. She says her ex-partner was looking to acquire a new car and had asked her to take out a finance agreement in her name for it. She says that this was discussed with the dealership, who agreed that after one month the agreement could be transferred from Miss H's name to her ex-partner.

The finance was approved and Miss H says she continued to make the monthly repayments each month and her ex-partner reimbursed her for those payments. As this arrangement was working, she says they didn't approach the dealership to have the finance agreement put into her ex-partners name. When Miss H and her ex-partner split up in May 2018, she says her ex-partner stopped paying her for the car. She says the car has been off the road since June 2018, she hasn't driven it and has had to get loans from her family to avoid missing any repayments.

Miss H says she should never have been given the finance in her sole name as she couldn't afford it. The agreement was for a brand new car with a cash price of around £70,000. It was for 49 months with monthly repayments of around £920 and a final repayment of around £29,600. Miss H's ex-partner had paid a deposit of £971 and there was a dealer contribution of £5,000.

In summary, she says:

- She told the dealership her monthly salary was around £1,300 and had concerns about being able to afford it. She says she told them she was only on a fixed-term contract which was due to end shortly.
- She offered to show the sales person bank statements but they weren't interested. She couldn't see what had been entered on the computer screen concerning her personal circumstances. She's since found out most of the information that was entered was either incorrect or misleading.
- She was given a copy of the agreement and shown where to sign it, there was no explanation given as to the key features of the finance.
- The sales person at the dealership appears to have had some personal connection with her ex-partner and the application appears to have been deliberately manipulated in order for the finance to be approved.

Miss H sought legal advice and complained to BMWFS. To resolve things she wanted to return the car without charge, end the finance agreement and have all payments she'd made refunded to her (those which her ex-partner hadn't reimbursed her for). She also wanted her legal fees of around £5,500 refunded.

BMWFS didn't think it had done anything wrong. It said there was no evidence to support what Miss H had said and she'd failed to raise any issues until around 14 months after the agreement started. It said she'd signed the agreement and had therefore agreed to be bound by its terms.

Miss H sought ways of limiting her liability under the agreement while she continued to pursue her complaint. She asked BMWFS about the possibility of voluntary termination. It appears BMWFS offered several termination settlement figures over a period of time. Miss H requested if she could arrange a repayment plan for the termination figure as she could not afford to pay it one go. Miss H says BMWFS didn't respond to these requests.

I understand Miss H returned the car to BMWFS in May 2019 and she'd maintained the monthly repayments until April 2019. However, no further payments have been made towards the agreement since.

I sent Miss H and BMWFS my provisional decision on 3 July 2020. I set out the relevant legal and regulatory framework that applied and I explained why I thought the complaint should be upheld. The framework and my provisional findings setting out my reasoning for upholding the complaint are attached and forms part of this final decision.

BMWFS didn't respond to my provisional decision. Miss H accepted the provisional decision but asked me to consider some additional losses. She says that when entering into the finance agreement she was persuaded by the dealership to take out additional linked insurance policies which included GAP insurance, cover for cosmetic repairs and cover for wheels and tyres. Miss H says her ex-partner paid these insurance premiums until May 2018 at which point she was required to make the payments. She has paid £661.56 towards these policies. Miss H isn't seeking reimbursement of the insurance costs but has asked that these policies also be cancelled and removed from her credit file.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As BMWFS hasn't responded, I've seen no reason to change the outcome I reached in my provisional decision. I've thought about the additional losses Miss H has asked me to consider, but these aren't something I have the power to award under this specific complaint. I'll explain why.

What Miss H is asking for is the cancellation of these policies and removal of them from her credit file. The policies are administered by a separate legal entity not party to this complaint. BMWFS don't have any control over the cancellation or inception of those policies so I couldn't reasonably direct it to do something which was impossible for it carry out. Miss H can approach the insurers directly to see if she can cancel the policies early and whether she is entitled to any partial refund. As they are insurance policies, it's unlikely they will be recorded on her credit file.

my final decision

For the reasons given above, I uphold this complaint and direct BMW Financial Services(GB) Limited to:

- End the finance agreement with nothing further to pay.
- Refund £8,185 representing what Miss H has paid towards the agreement.
- Remove the agreement entirely from Miss H's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 21 October 2020.

Tero Hiltunen
ombudsman

the regulatory and legal framework

BMWFS lent to Miss H while it was authorised and regulated by the Financial Conduct Authority (FCA).

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

The Principles themselves are set out in PRIN 2.1.1R. The most relevant principles here are PRIN 2.1.1R(6) which says: *A firm must pay due regard to the interests of its customers and treat them fairly*; and PRIN 2.1.1R(7) which says: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*.

The Consumer Credit Sourcebook (CONC) sets out the rules which apply to providers of consumer credit like BMWFS. It's clear there is a high degree of alignment between the Office of Fair Trading's (OFT) *Irresponsible Lending Guidance* (ILG) and the rules set out in CONC. As is evident from the following extracts, the FCA's CONC rules specifically note and refer to sections of the OFT's ILG on many occasions.

CONC 4 sets out a firm's obligations around pre-contract disclosure and adequate explanations.

CONC 4.2.5R(1) says: *Before making a regulated credit agreement the firm must: (a) provide the customer with an adequate explanation of the matters referred to in (2) in order to place the customer in a position to assess whether the agreement is adapted to the customer's needs and financial situation*.

CONC 4.2.5R(2) includes: *(a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use; (b) how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement; (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee*.

CONC 5 sets out a firm's obligations in relation to responsible lending. These rules were updated in November 2018, but I refer below to the rules as they were at the time BMWFS lent to Miss H in August 2017.

CONC 5.2.1R(2) sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

[Note: paragraph 4.1 of ILG]

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about the proportionality of assessments. CONC 5.2.3G says:

The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following: (1) the type of credit; (2) the amount of the credit; (3) the cost of the credit; (4) the financial position of the customer at the time of seeking the credit; (5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties; (6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm; (7) any future financial commitments of the customer; (8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer; (9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).

[Note: paragraph 4.10 of ILG]

CONC 5.2.4G(2) says: *A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.*

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1G(1) says: *In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says: *The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

[Note: paragraph 4.1 (box) and 4.2 of ILG]

CONC 5.3.1G(6) goes on to say: *For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:*

(a) without undue difficulties, in particular:

(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and

(ii) without having to borrow to meet the repayments;

(b) over the life of the agreement, or for such an agreement which is an open-end

agreement, within a reasonable period; and
(c) out of income and savings without having to realise security or assets; and
“unsustainable” has the opposite meaning.

[Note: paragraph 4.3 and 4.4 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) states: *(a) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*

And CONC 5.3.7R says that: *A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).*

[Note: paragraph 4.31 of ILG]

CONC also provides guidance to lenders about how to deal with consumers in arrears, making reference to the Office of Fair Trading's Debt Collection Guidance (DCG).

CONC 6.7.2R requires firms to monitor account use. It says: *A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.*

CONC 7.3.2G says: *When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.*

[Note: paragraphs 7.12 of ILG and 2.2 of DCG]

CONC 7.3.4R says that: *A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.*

[Note: paragraphs 7.3 and 7.4 of ILG and 2.2 of DCG]

CONC 2.5 sets out rules and guidance for the conduct of business for credit broking. Again there is an alignment between the Office of Fair Trading's Credit Brokers and Intermediaries Guidance (CBG), as well as the ILG and the rules set out in CONC 2.5, and again the Financial Conduct Authority rules refer back to sections of the OFT's guidance.

CONC 2.5.3R says: *A firm must:*

- (1) where it has responsibility for doing so, explain the key features of a regulated credit agreement to enable the customer to make an informed choice as required by CONC 4.2.5 R;*

[Note: paragraphs 4.27 to 4.30 of CBG and 2.2 of ILG]

- (2) take reasonable steps to satisfy itself that a product it wishes to recommend to a customer is not unsuitable for the customer's needs and circumstances;*

[Note: paragraph 4.22 of CBG]

(3) advise a customer to read, and allow the customer sufficient opportunity to consider, the terms and conditions of a credit agreement or consumer hire agreement before entering into it;

[Note: paragraph 3.9I of CBG]

CONC 2.5.8R says a firm must not:

...

(10) effect an introduction to a lender or an owner or to another credit broker, where the firm has considered whether the customer might meet the relevant lending or hiring criteria and it is or should be apparent to the firm that the customer does not meet those criteria;

[Note: paragraph 3.9aa and 4.41i of CBG]

The Consumer Credit Act 1974 (CCA) is an act established for the protection of consumers and the control of traders of the provision of credit. S56 of the Act provides as follows:

56 Antecedent negotiations

(1) In this Act “antecedent negotiations” means any negotiations with the debtor or hirer—

- (a) conducted by the creditor or owner in relation to the making of any regulated agreement, or
 - (b) conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement within section 12(a), or
 - (c) conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or (c),
- and “negotiator” means the person by whom negotiations are so conducted with the debtor or hirer.

(2) Negotiations with the debtor in a case falling within subsection (1)(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity.

(3) An agreement is void if, and to the extent that, it purports in relation to an actual or prospective regulated agreement—

- (a) to provide that a person acting as, or on behalf of, a negotiator is to be treated as the agent of the debtor or hirer, or
- (b) to relieve a person from liability for acts or omissions of any person acting as, or on behalf of, a negotiator.

(4) For the purposes of this Act, antecedent negotiations shall be taken to begin when the negotiator and the debtor or hirer first enter into communication (including communication by advertisement), and to include any representations made by the negotiator to the debtor or hirer and any other dealings between them.

So one of the purposes of Section 56 CCA is to deem credit-brokers and suppliers to be the agent of the creditor when conducting antecedent negotiations with a debtor in relation to goods and services purchased with finance under debtor-creditor-supplier agreements.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so I'm required to take into account relevant law and regulations, regulator's rules and guidance and standards, codes of practice and where appropriate, what I consider to have been good industry practice at the time.

I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of this complaint. These questions are:

- Did BMWFS complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay her loan in a sustainable way?
 - If so, did it make a fair lending decision?
 - If not, would reasonable and proportionate checks have shown that Miss H could sustainably repay the borrowing?
- Did BMWFS act unfairly or unreasonably in some other way?

If I think Miss H has been disadvantaged in any way by BMWFS's actions, I'll go on to consider what I think is a fair way to put things right.

Did BMWFS complete reasonable and proportionate checks to satisfy itself that Miss H would be able to repay her loan in a sustainable way?

CONC sets out that BMWFS was required to carry out a reasonable and proportionate assessment of Miss H's ability to sustainably repay the borrowing. This is often known as an affordability check. CONC doesn't prescribe a set list of things lenders are required to check each time. But any check it carries out ought to be borrower-focused, meaning that rather than thinking about how statistically likely Miss H was to repay the borrowing, it needed to take her specific circumstances into account to understand whether she could afford it.

Any checks it did had to be proportionate to the situation. What's considered proportionate will vary depending on, but isn't limited to:

- The size of the borrowing;
- The total repayable and the cost of the borrowing;
- The size of the regular repayments; and
- The consumer's financial and other circumstances.

The hire purchase agreement Miss H entered into was for a little over four years for around £64,600 with a total repayable of almost £80,000. The monthly repayments were around £920 and had an APR of 4.9%. I think this would be a significant commitment for many people, my starting point therefore is that BMWFS ought to have completed thorough affordability checks before agreeing to lend. Having reviewed what information BMWFS and Miss H have provided about the affordability checks carried out, I have a number of significant concerns.

The details listed on the application form for income state "not supplied" and BMWFS has confirmed it didn't request any documentation from Miss H apart from her proof of address.

So it decided to lend a vast sum of money, with significant monthly repayments without appearing to know anything about what Miss H's income was, all it knew was that she was employed. This means it couldn't have known whether Miss H was able to sustainably repay borrowing over the four year term.

It's also unclear exactly what information it received back from the credit reference agency. Miss H says she had never taken out credit prior to this agreement and that is broadly supported by the copies of her credit file she's provided to our service (it appears she may have had a telecommunications agreement). While that means BMWFS wouldn't have received any data to suggest she had previously failed to pay credit, it also wouldn't have shown she had successfully repaid any credit either. Given the size of the borrowing and the overall lack of information BMWFS had, I think this ought to have prompted some further questioning.

I say this because of the significant size of the borrowing it was proposing to provide. The monthly repayments were not far off from being £1,000 per month. BMWFS says it was lending to Miss H on the understanding she would be the registered keeper and driver of the car (Miss H disputes this, and I'll deal with this separately later in the decision). On that basis BMWFS ought to have also considered the ongoing costs Miss H was likely to have when considering whether the agreement was affordable and sustainable. Taking into account the make and model of the car, it was likely Miss H's insurance costs, road tax, fuel and general maintenance costs were likely to be quite significant. I've not seen anything to indicate BMWFS took this into account, or indeed any non-motoring expenditure into account.

BMWFS says the application and information it received didn't raise any concerns around affordability. But there appears to have been a remarkable lack of information to rely on because of how little BMWFS gathered. So while I'm not surprised BMWFS didn't see any concerns from such a lack of data, that lack of data in itself ought to have raised a concern with BMWFS prior to agreeing to lend. And I'm not persuaded that there was anything in this information that demonstrated Miss H would be able to maintain payments of almost £1,000 for over four years.

Overall it seems BMWFS had little to no understanding of Miss H's financial circumstances before it agreed to lend to her. Given the size, duration, overall cost of borrowing and the limited personal circumstances BMWFS was aware of, there is an argument for saying that proceeding with this application on this basis was clearly irresponsible. In any event, I'm satisfied that there simply wasn't enough to be able to reasonably conclude Miss H was able to meet the commitment she was signing up to. For these reasons I'm also satisfied BMWFS didn't carry out reasonable and proportionate checks before agreeing to lend to Miss H. I've therefore gone on to consider what proportionate and reasonable checks would likely have revealed.

Would reasonable and proportionate checks have shown that Miss H could sustainably repay the borrowing?

I consider it would have been reasonable to find out more information about Miss H's income and expenditure. And given the size of the borrowing and the regular repayments, I think BMWFS ought to have also looked to verify at least some of that information, rather than relying solely on self-declared figures.

I can't be certain exactly what evidence or information BMWFS would have requested and reviewed. However, I've seen copies of Miss H's bank statements in the months leading up

to the lending decision. In the absence of anything else, I think this is a reasonable indicator of what information BMWFS would have likely found out about her income and expenditure had reasonable and proportionate checks been carried out.

I can see Miss H was earning around £1,380 per month. This meant a little over two thirds of her salary would be going towards repaying this one large financial commitment and would leave her very little each month towards her essential living costs. Miss H says she was living at a friend's house at the time of the application, although the application lists her residential status as 'other'. In any event, I've not seen any evidence of regular commitments she had towards rent or household bills. However, she did appear to have other essential commitments which her income had to support. These included:

- An insurance policy for around £22 per month;
- Two telecommunications contracts for around £41 per month (combined);
- A regular direct debit for what appears to be private medical cover for around £50 per month.
- Ongoing maintenance for another car in the form of DVLA tax payments and fuel. The fuel costs appear to be around £50 per month.

Taking these into account, Miss H would have been left with less than £350 per month in disposable income. However, if the new car was for her use, which BMWFS says it assumed it was (and the terms of the agreement said it had to be hers), then that £350 needed to also cover her new car insurance, tax, maintenance and fuel. Given the type of car that was financed, it's likely the ongoing running and maintenance costs for the car would have used up the majority, if not all or more, of that available income. This wouldn't have left Miss H with anything – or at least very little – towards other essential day to day expenses like food and clothing.

Taking everything into account, I think had BMWFS done more to establish Miss H's financial circumstances, I don't think it would have lent to her as it clearly wasn't affordable to her.

Did BMWFS act unfairly or unreasonably in some other way?

Miss H says the dealership was aware the car wasn't for her. She says her ex-partner was the one using the car and had convinced her to take out the finance for him. She says the salesperson at the dealership appears to have had a personal relationship with her ex-partner and that they knowingly falsified information or at least misled BMWFS into accepting her application without her knowledge.

The agreement was sold by the dealership on behalf of BMWFS. One of the effects of Section 56 of the Consumer Credit Act 1974 is that any representations made by the credit broker (in this case the dealership) are made in their capacity as agent of the finance provider (BMWFS). This means BMWFS can be held responsible for the actions of the dealership when it brokered the finance agreement for Miss H.

I can't be certain exactly what was discussed or whether Miss H's ex-partner did have a personal relationship with the salesperson. However, Miss H has been consistent throughout in what she's said has happened and I've found her account of events to be both credible and plausible. This is also because there are a few things that appear to support what she says happened.

I've seen the application screenshots the salesperson filled in. As previously mentioned it lists income as "not supplied", but it also has a checkbox filled in which says "household override". It's not clear what this checkbox was for, but it appears to have the effect of ignoring the lack of income information, possibly because the broker has taken 'household' income into account. I say this because BMWFS has said its affordability checks came back with no concerns, despite knowing nothing about Miss H's income.

It's possible the salesperson was aware of this and used it in order to get the finance approved. This means it's more likely the salesperson was aware of the arrangements Miss H and her ex-partner had in relation to the payments and use of the car.

I've considered that Miss H wasn't actually going to be paying some – or possibly any – of the costs associated with the car. Her ex-partner was making these payments as it appears the car was taken out for his use. However, BMWFS says it wasn't aware of this arrangement. This means had it done reasonable and proportionate checks it would have likely led it to two possible conclusions:

1. As set out above, that Miss H couldn't sustainably afford to repay the borrowing and therefore it wouldn't or shouldn't have granted her the credit.
2. Further questioning would have revealed who was actually going to be paying for the car and who the car was for. In those circumstances I think BMWFS ought to have considered how sustainable it was for Miss H's ex-partner too, or more than likely insist that he be party to the agreement given the car was for his use. It seems her ex-partner was unlikely to be able to sustainably repay credit given that he himself appears to have been of the view he wouldn't get approved for finance. So I think it's more likely than not BMWFS wouldn't have proceeded with the finance even if it was aware of Miss H and her ex-partners arrangement.

For these reasons I think had BMWFS carried out reasonable and proportionate checks, it wouldn't have lent to Miss H.

BMWFS appears to have suggested that Miss H provided inaccurate information at the point of application. But I'm not persuaded that she did. Had she for example exaggerated what her income was, I would have expected that income figure to be recorded on the application. It seems to me it's therefore more likely the salesperson either didn't ask or that they knew her income wasn't sufficient to get approved for finance.

I've taken into account that Miss H has knowingly taken out an agreement for someone else, which is a breach of the agreement terms. However, I'm satisfied that she wasn't aware of the implications of her doing so and only entered into the agreement on this basis as she genuinely believed it was ok for her to do so. She says the dealership was aware of the arrangement between her and her partner. Based on everything I've seen, I'm persuaded, on balance, that the dealership was likely to have been aware of the arrangement. By allowing Miss H to take out the agreement knowing that it would breach the terms, I think it acted unfairly.

But even if I'm wrong and the dealership didn't know, BMWFS ought to have found this out anyway had it carried out reasonable and proportionate checks on Miss H's ability to sustainably repay the borrowing or at least conclude she couldn't afford the borrowing. While Miss H's actions might be considered naïve (although I think she acted reasonably given I'm persuaded BMWFS' agent didn't indicate the agreement couldn't be operated in this way), I don't think she intended to deceive BMWFS. Had BMWFS done what it was required to do,

Miss H wouldn't now be in the position she is in, and it is therefore BMWFS' and/or its agent's actions that have mainly contributed to the detriment Miss H has suffered.

For the reasons I've already set out, I think it's more likely than not that BMWFS' agent didn't adequately explain the key information about the agreement or ensure that the agreement was suitable for Miss H's needs. I'm also satisfied that adequate information wasn't gathered to properly and reasonably assess whether Miss H could sustainably afford the borrowing.

I've also considered how BMWFS responded when Miss H attempted to return the car. I've seen she contacted BMWFS a number of times about ending the agreement and BMWFS did provide settlement quotes and termination figures. When Miss H opted for voluntary termination in 2019 the termination figure was around £15,500. As she couldn't afford to pay that, she asked BMWFS to consider a repayment plan. I can see BMWFS did say a payment plan would be considered once the termination had been completed. However, it appears Miss H didn't wish to discuss this further as she had then raised her complaint with our service. It seems she wanted to await the outcome of this complaint before paying anything more to BMWFS. I don't therefore think BMWFS has acted unfairly in relation to the termination of the agreement.

Putting things right

It's unclear what use, if any, Miss H has had of the car as it appears it was her ex-partner that was using it. And it seems Miss H already had a car at the time based on the spending on her bank statements. She's told us she hasn't driven the car and I'm persuaded that's likely to be the case given the specific circumstances here.

Miss H has now handed the car back to BMWFS under voluntary termination with a balance still outstanding. As I'm satisfied Miss H should never have been given the agreement, my starting point is that she should be put back in the position she would have been in had the agreement never been entered into. I therefore think the finance agreement should be ended with nothing further to pay. Ordinarily, I may have also directed a refund of all payments that had been made (including any deposit), minus a deduction for any use of the car. However, doing so here I don't think would result in a fair outcome.

This is because it seems Miss H wasn't the one using the car, nor has she lost out financially for some of the payments (including the deposit) as her ex-partner either paid it directly or had reimbursed her. But Miss H says she's paid out in total £8,185 towards the monthly repayments herself, albeit by taking loans from her parents. It also seems the car wasn't driven from June 2018 so the payments she made were while the car wasn't in use.

There isn't an exact formula for working out what proportion of the monthly repayments BMWFS should be entitled to keep for use of the car. Taking into consideration that the car wasn't driven from June 2018 when Miss H stopped receiving reimbursement from her ex-partner, I think it's reasonable that any repayments she made from then should be refunded to her. Generally, I would look to award 8% simple interest for any money that was paid out when it shouldn't have been. This is to compensate the consumer for not having access to that money and being deprived of the opportunity of using it elsewhere. However, in the specific circumstances of this case, the money Miss H paid was borrowed from her parents, it wasn't money she ordinarily would have had access to and she has therefore not lost out on using it elsewhere. For that reason, I don't propose to award any interest on the refund.

As Miss H didn't pay the deposit or incur a loss with the other payments, I don't think it would be fair to refund her those. BMWFS can therefore retain everything else paid under the agreement.

I've noted that the mileage of the car was higher than expected and this will have caused slightly greater depreciation. But as I'm not proposing to refund the deposit or a proportion of the first eight monthly repayments, I think this will more than adequately cover any loss incurred by BMWFS from the additional mileage. And in any event, it wasn't Miss H that drove the car, so it wouldn't be fair to say she should cover the costs of any depreciation that might have occurred.

As I don't think the agreement should have been entered into, I don't think it would be fair or accurate to record the voluntary termination and any subsequent adverse information on Miss H's credit file. However, recording the agreement as satisfied isn't appropriate in this case either. This is because it will give a potentially misleading impression to future lenders that Miss H is able to adequately service an agreement of this size. I therefore think the agreement should be removed from Miss H's credit file entirely.

Lastly, Miss H wants BMWFS to reimburse her legal costs of around £5,000. Having thought about this carefully I don't think that would be fair. This is because Miss H didn't necessarily need to seek legal advice or representation, she could have raised her complaint without it both to BMWFS and to our service. From everything I've seen, BMWFS didn't initiate any contact through solicitors. So I don't think BMWFS' actions meant seeking legal representation was necessary or unavoidable.

my provisional decision

For the reasons given above, I'm planning to uphold the complaint and direct BMW Financial Services(GB) Limited to:

- End the finance agreement with nothing further to pay.
- Refund £8,185 representing what Miss H has paid towards the agreement.
- Remove the agreement entirely from Miss H's credit file.