

## **complaint**

Mr N complains that a finance agreement he took out with BMW Financial Services (GB) Limited ("BMWFS") was unaffordable and that the money shouldn't have been lent to him.

## **background**

Mr N took receipt of a used car in September 2017. He financed the deal through a 60 month hire purchase agreement for £53,303.80 with a monthly repayment of £888.33.

He later voluntarily terminated the agreement and was disappointed to be asked to pay a shortfall. His complaint was referred to this service where our investigator discussed the issue with Mr N in more detail. She noted that he believed the finance agreement was too expensive and that he hadn't had a care co-ordinator at the time to explain the implication of the borrowing. She said when a care coordinator was assigned she did notice that the monthly payments were high.

So she considered whether the agreement had been unaffordable for Mr N and whether the finance should have been provided. She asked BMWFS to tell her about the checks they'd performed. They said the information provided by Mr N suggested he could afford the repayments but the investigator noted that they didn't provide this information. She understood that BMWFS had explained Mr N had been able to manage repayments on an earlier agreement but she wasn't provided with details of that agreement. BMWFS didn't think they had to run an income and expenditure analysis but the investigator thought that in the absence of that analysis the checks BMWFS performed were insufficient.

So she went on to check what BMWFS would've found had they performed sufficient checks. She considered Mr N's bank statements for the three months before he signed the finance agreement with BMWFS. She noted that his main source of income was from Employment Support Allowance and Personal Independence Payments and overall it was reasonable to suggest his disposable monthly income was only about £168. She said it was therefore clear that he couldn't have afforded the agreement he signed with BMWFS and it was therefore mis-sold to him.

She said Mr N should be put back in the position he would've been in if he hadn't taken out his borrowing. He should remain liable for the cost of the car but not the cost of the borrowing (the interest). She said as the hire agreement should never have been approved the settlement cost of the voluntary termination should be removed. Mr N should also receive a refund equivalent to 13 months interest which she said had been paid from the start of the agreement until the agreement was voluntarily terminated. BMWFS should also remove any adverse information they may have reported to Mr N's credit file in relation to this agreement and they should pay him £200 to compensate him for the distress and inconvenience he'd experienced.

BMWFS didn't agree with the investigator. They said Mr N had kept up payments of £500 per month on a previous agreement he'd had with them. They said they'd carried out all of the checks required of them by their regulator the Financial Conduct Authority and they insisted there was no requirement for them to complete an income and expenditure analysis. So they asked for a final decision by an ombudsman.

## 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 know it will disappoint BMWFS but I agree with the investigator's view. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Before agreeing to provide a loan a business should check that the loan is affordable.

BMWFS have explained that the underwriter's notes say Mr N was "*auto accepted*". They say he was an "*A1 payer*" on his previous agreement and provided all the detail they needed to establish he could afford the repayments on this deal. They've not provided any further information about the detail they were given by Mr N.

In deciding what affordability checks BMWFS should have done, I have had regard to the *Consumer Credit Sourcebook* (usually known as "CONC"), issued by the Financial Conduct Authority (FCA). CONC 5.2.3 says that checks should be proportionate to the applicant's credit history and financial position and the type, amount and cost of credit being applied for.

CONC 5.2.4(3) says that the information a lender should consider may, depending on the circumstances, include some or all of the following:

- (a) its record of previous dealings;
- (b) evidence of income;
- (c) evidence of expenditure;
- (d) a credit score;
- (e) a credit reference agency report; and
- (f) information provided by the customer.

I've seen that BMWFS considered (a) and they say they considered (f) but I've not seen evidence of that. This was, I think it's reasonable to say, a significant amount of credit and a significant increase in monthly payments. I don't think BMWFS have provided sufficient information here to demonstrate their checks were sufficient.

I've reviewed Mr N's bank statements and I agree with the investigator that his monthly disposable income was a way short of enabling him to afford the £888.33 monthly payments due on this new agreement. So I think BMWFS need to put things right and having reviewed the investigator's suggested settlement, that I set out in the background to this complaint, I think it's fair and I'm asking BMWFS to comply with it.

It's the finance that has been mis-sold not the car it funded so Mr N should receive a refund of the interest that was collected on that agreement. I agree that the interest paid up until voluntary termination should be returned to him.

It's clear that Mr N has been inconvenienced here. He's provided detail of his ill health and I'm persuaded this matter would have exacerbated it. I think BMWFS could have resolved things quicker and it's right that they pay Mr N some compensation in recognition of the distress and inconvenience he's experienced. In the circumstances I agree that £200 is reasonable.

### **my final decision**

For the reasons I've given above I uphold this complaint and tell BMW Financial Services (GB) Limited to:

- terminate the agreement and collect the car, if that's not already been done, at no cost to Mr N
- waive the voluntary termination settlement
- refund 13 months of interest for the period prior to voluntary termination and add 8% simple interest from the date of payment to the date of settlement
- remove any adverse reports they may have made to Mr N's credit file in respect of this agreement
- pay Mr N £200 to compensate him for the distress and inconvenience he's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 November 2019.

Phil McMahon  
**ombudsman**