

Complaint

Mr W complains that BMW Financial Services (GB) Limited ("BMW FS") unfairly entered into a hire purchase agreement with him.

He's said that his income exceeded his expenditure and therefore the monthly payments to this agreement were unaffordable.

Background

In March 2019, BMW FS provided Mr W with finance for a used car. The purchase price of the vehicle was £24,627.00. Mr W didn't pay a deposit and entered into a hire purchase agreement with BMW FS for the entire £24,627.00.

The loan had interest and charges of £8,668.05 and a 48-month term. This meant that the total amount to be repaid of £33,295.05 was due to be repaid in 47 monthly instalments of £424.07 and an optional final repayment of £13,363.76.

Mr W's complaint was considered by one of our investigators. She didn't think that BMW FS had done anything wrong or treated Mr W unfairly. So she didn't recommend that Mr W's complaint should be upheld. Mr W disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

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

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr W's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr W's complaint. I'd like to explain why in a little more detail.

BMW FS needed to make sure that it didn't lend irresponsibly. In practice, what this means is that BMW FS needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

BMW FS says it agreed to this application after Mr W provided details of his employment and it looked at the way he'd managed payments on previous agreement. It says it also carried out credit searches on Mr W which had shown he had no previous difficulties with credit, that he had a joint mortgage and two unsecured loans with monthly repayments of £22 and £87 respectively.

In BMW FS's view, when the amount owing plus a reasonable amount for Mr W's living expenses were deducted from his monthly income the monthly payments for this agreement were affordable.

On the other hand, Mr W says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr W and BMW FS have said.

The first thing for me to say is that much like our investigator I'm not persuaded that the checks BMW FS carried out did go far enough. In my view, it wasn't reasonable to rely on an estimate of Mr W's income and living costs given the monthly payment required and the length of time the agreement was due to run for.

And I think that this ought to have led to BMW FS taking further steps to verify Mr W's income and actual living costs. That said, I don't think that obtaining further information on Mr W's income and actual living costs would have made a difference to BMW FS' decision to lend in this instance.

I say this because the information Mr W has provided about his finances at the time appears to show that he did have the funds, at the time at least, to sustainably make the repayments due under this agreement. I accept it's possible that Mr W's actual circumstances at the time might have been worse than what the information he's provided shows.

But the key here is that it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. And I don't think that BMW FS could possibly be expected to have known that the payments to this agreement were unaffordable, bearing in mind that the information provided now doesn't clearly show that this is the case.

So overall and having carefully considered everything, while I'm not persuaded that BMW FS' checks before entering into this hire purchase agreement with Mr W did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped BMW FS from providing these funds, or entering into this hire purchase agreement with him.

As this is the case, I don't think that BMW FS acted unfairly or unreasonably towards Mr W. So I'm not upholding this complaint. I appreciate that this will be disappointing for Mr W. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 November 2023.

Jeshen Narayanan
Ombudsman