

The complaint

Mr M has complained about the information reported on his credit file by BMW Financial Services (GB) Limited (BMWFS).

What happened

Mr M acquired a car under a hire purchase agreement with BMWFS in September 2016. He decided to voluntarily terminate the agreement in February 2020 and he spoke to BMWFS to arrange this. Mr M's agreement had an annual mileage limit of 15,000. The car was returned with 65,471 miles. As Mr M had the car for 41 months, his limit up to that point was 51,250, meaning he'd covered 14,221 excess miles. The agreement says BMWFS will charge 9.17 pence per excess mile. It sent Mr M an invoice for £1,304.07 on 4 March 2020 asking him to pay the charge by 18 March 2020.

Mr M contacted BMWFS at the beginning of April 2020 because he was surprised to receive the bill. He said he needed to look into things further. And he also indicated his employment was affected by Covid-19. BMWFS responded on 8 April 2020 to explain it had previously informed Mr M excess mileage charges may become payable. But it said if Mr M couldn't make payment it would be able to discuss a payment plan. It also offered to pass the details to the accounts department so it could provide more details if Mr M wished, which he did.

From what I can see on the contact notes BMWFS made attempts to speak to Mr M and it wrote to him in August 2020 to say it had not been able to reach him. I can see Mr M wrote back in October and highlighted he was still receiving statements and that he'd been out of work for six months of the year. It looks like Mr M was unhappy he wasn't being listened to. And he wanted to complain BMWFS were reporting negative information to the credit reference agencies (CRAs).

BMWFS sent a final response to say its reporting to the CRAs was correct but that it also offered to set up a payment arrangement.

Unhappy with BMWFS' response, Mr M brought the complaint to our service to consider. One of our investigators looked into things but didn't make any recommendations. She said the charge became due before the Government imposed national lockdown and job retention scheme. As Mr M hadn't paid the charge by the due date, she didn't think BMWFS were wrong to record this on Mr M's credit file.

Mr M didn't agree. In summary, he said:

- He had foresight his employment would come to an end, or that he'd be on furlough, and he spoke to BMWFS as soon as he was aware and able.
- The whole country had foresight of a possible national lockdown, which created uncertainty.
- There were only 20 days between BMWFS' invoice and the national lockdown.
- He'd done everything to be fair and reasonable in telling BMWFS about his circumstances.
- He'd always returned BMWFS' calls.

- On returning to employment he'd made payments towards the debt – that he'd always accepted he needed to pay.

As things couldn't be resolved, the case has been passed to me to make a final decision.

What I've decided – and why

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

I first want to say that I'm sorry to hear Mr M has been negatively impacted by Covid-19. It can't have been easy, and I thank him for taking the time and effort to bring his complaint to our service.

BMWFS is reporting information to the CRAs relating to a regulated hire purchase agreement. And our service is able to consider complaints relating to these sorts of agreements.

As Mr M has pointed out, he's not disputed he owes the debt to BMWFS. But he's complained about BMWFS' decision to report the charge as a missed payment. So there are a few questions I've asked myself to decide if BMWFS needs to take any action.

1. Is the charge valid?
2. Is it correct for BMWFS to report the charge as having been missed?
3. Should BMWFS remove adverse data in relation to the charge?

Turning to the first question, the agreement says Mr M has an annual mileage limit of 15,000, and that the maximum total mileage for the four-year term is 60,000. It says BMWFS will charge 9.17 pence for each excess mile. And it also says *If you return the Vehicle before the end of the agreement the Total Maximum Mileage will be reduced to reflect the shorter period of hire on a pro-rata basis. Your obligation to pay any Excess Mileage Charge will accrue immediately prior to termination.*

The agreement sets out that Mr M could terminate the agreement at any time before the final repayment became due by giving BMWFS notice. This is what he did. The agreement also says Mr M would have to return the car and pay, amongst other things, *any arrears and other sums which have become payable under the agreement before the termination (including any Excess Mileage Charge).*

So as a starting point, while Mr M hasn't disputed this, I agree BMWFS is allowed to charge him for excess miles covered. And, for completeness' sake, having reviewed its calculations, I think the charge of £1,304.07 is correct as well.

Turning to the second question. The agreement sets out that the excess mileage charge is immediately payable upon termination. BMWFS wrote to Mr M on 4 March 2020 and asked him to pay the invoice by 18 March. This didn't happen. So it's not in dispute the charge was not paid on time. Therefore, I don't have the grounds to say BMWFS were technically wrong to report it as such.

Turning to the last question. Which to my mind is the key question here. Is there any reason why BMWFS should remove the adverse data? Mr M no doubt found himself in a difficult position. He says he works in the construction industry and he told BMWFS at the beginning of April that he might be about to be furloughed and this is when he asked for help. I agree with the investigator here that by the point Mr M asked for help the due date to pay the charge had already come and gone.

I've also thought about whether there were any other forbearance measures BMWFS should have offered Mr M given he's said he was later impacted by Covid-19. There was no guidance released for car finance firms at the time the charge was due on how to treat customers who'd been impacted by Covid-19. But the Financial Conduct Authority (FCA) released guidance later on in April 2020 for car finance firms. The guidance is called *Motor finance agreements and coronavirus: temporary guidance for firms*. Even though the guidance was issued after Mr M's charge became due, I've looked into it to see if there's anything that would have applied to Mr M. Ultimately Mr M said his finances were impacted by Covid-19 and the guidance was intended for those sort of customers. Was there anything BMWFS could or should have retrospectively offered to Mr M?

The Covid-19 guidance broadly said car finance firms should offer customers impacted by Covid-19 payment deferrals for up to six months and that these deferrals shouldn't show a worsening status on the customer's credit file. But Mr M's situation is slightly different in that he had terminated his agreement, and the amount due was in relation to an excess mileage charge.

When considering what is, in my opinion, fair and reasonable, I must take into account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time.

In Mr M's case, I'm mindful the charge became overdue before he spoke to BMWFS and asked for help. I can't point towards something in the subsequent Covid-19 guidance that would clearly indicate BMWFS should have offered to remove the adverse data. Even if I could, it's taken longer than six months for Mr M to clear the debt. So even if he was given some breathing space, it looks likely the debt may have always got to the point of being overdue, with his credit file reflecting this. And BMWFS has always indicated it was willing to work with Mr M to come to a payment arrangement which is what I'd expect. Therefore, while I know it'll disappoint Mr M, I don't find I have the grounds to ask BMWFS to remove adverse information from his credit file.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 May 2022.

Simon Wingfield
Ombudsman