

The complaint

Mr C is unhappy with what happened after his hire purchase agreement with BMW Financial Services (GB) limited trading as BMW Financial Services ('BMW') ended.

Mr C is being represented in this case. However, for ease of reference, my decision will only refer to Mr C.

What happened

On 17 May 2017 Mr C was supplied with a used car through a hire purchase agreement with BMW. He paid an advance payment of £7,500, and the agreement was for £29,852.26 over 24 months; with 23 monthly payments of £310.98, and a final payment of £27,630.84.

At the end of the contract, Mr C agreed to return the car. And he agreed to deliver this to a local dealership, while it was awaiting collection by BMW. The car was left at the dealership on 9 May 2019 and was collected on 4 June 2019. BMW then sold the car at auction on 17 September 2020.

On 27 September 2019, Mr C received a fixed penalty notice because the car wasn't insured. And, as the registered keeper, Mr C was liable for this. Mr C applied for a mortgage in October 2019, which was initially declined because BMW had recorded missed payments on his credit file. BMW removed the adverse entries in December 2019, and the mortgage was subsequently approved.

Mr C complained to BMW about what'd happened. They said they'd fixed the issue with the credit file, but they didn't think they were responsible for the fixed penalty notice. Mr C wasn't happy with this response, and he brought his complaint to us for investigation.

Our investigator said he'd seen evidence that Mr C's mortgage application had been declined because of the adverse entries registered by BMW. He said this had caused Mr C some distress and inconvenience and, because of this, the investigator thought BMW should pay Mr C £250 compensation.

However, the investigator said it was clear from the letters BMW sent Mr C before the agreement ended that it was his responsibility to advise the DVLA he was no longer the registered keeper of the car. And Mr C didn't do this. As such, he didn't think BMW were responsible for the fixed penalty notice Mr C received.

Mr C didn't agree with the investigator. He said that he needed a solicitor to represent him in this matter, at a cost of £600. And he'd like this considered as part of the compensation. He's also said that he completed the end of contract paperwork correctly, and that he left the V5C with the dealership, who'd assured him they would send this to the DVLA for him. Mr C also said that the issue with the mortgage delayed him moving property until February 2021.

Because Mr C didn't agree with the investigator, this matter 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.

Having done so, I have reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time. Mr C was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

reporting of arrears

It's not disputed that BMW reported arrears against Mr C's account in error. While they've not provided any valid explanation as to what caused the issue, from what I've seen I'm satisfied this was most probably due to their failure to close Mr C's account properly. And they therefore reported missed payments when no payments were actually due.

I've seen an email from Mr C's mortgage lender which clearly states that *"when you first applied for the new mortgage application [this] was declined due to adverse credit history with [BMW] ... once this had been corrected ... the mortgage was subsequently agreed."*

Given this, I'm satisfied that BMW's error was solely responsible for Mr C's application being initially declined. However, Mr C wasn't made aware of what had happened until early October 2019. At which point he instructed a solicitor to complain to BMW.

Mr C has confirmed that *"my credit file was only amended after 2 months of constant complaints."* Which is borne out by BMW confirming that Mr C's credit file was amended in early December 2019. Mr C has also provided information that he was declined for a credit card and overdraft in February 2020. As BMW corrected his credit file in December 2019, and as I haven't seen anything to show me that they subsequently reported any further arrears; I'm satisfied there must've been another reason why Mr C was declined for finance. And BMW weren't responsible for this.

I've noted Mr C's comments about the delay in him being able to move properties. However, as stated above, I'm satisfied that any issues that occurred after December 2019 weren't the fault of BMW. But this doesn't mean that Mr C shouldn't be compensated for the distress and inconvenience he was caused in October and November 2019.

The investigator recommended a payment of £250 to recognise the impact on Mr C. I think a payment of £250 is a fair one and in line with what I would direct in similar circumstances. So, I think BMW should pay Mr C £250 in recognition of the impact he's experienced.

Mr C instructed a solicitor to deal with this matter. However, I don't consider this was an issue that was sufficiently legally complex that a solicitor needed to become involved. Mr C could've complained directly to BMW at no cost. And, if he didn't feel he was able to do this, he could've been represented by a friend or family member, or by a third-party, such as the Citizens Advice Bureau or his local MP. Which would also have been at no cost.

Given this, I don't see any compelling reason why BMW should cover the costs of Mr C's legal advice; when legal representation wasn't needed and was done at Mr C's choice.

fixed penalty notice

I've seen a copy of the letter BMW sent to Mr C on 18 March 2019. This explained what would happen when his agreement came to an end on 17 May 2019. And it said that, if Mr C chose not to keep the car, *"you will need to notify the DVLA that you are returning the car to us."* The letter went on to explain how Mr C would need to do this - on the day the car was handed over, he'd need to either send a completed part of the V5C to the DVLA, or notify the DVLA of the sale online.

BMW followed this up with a letter dated 20 May 2019, which also explained it was Mr C's responsibility to advise the DVLA the car had been returned to BMW. The letter also confirmed the ways Mr C could do this.

Based on the above, I'm satisfied BMW made Mr C aware of his responsibilities, and what he'd need to do. I'm aware that Mr C believed the dealership would do this for him, but this was an agreement he had with the dealership and not BMW. However, regardless of any agreement he may've had with the dealership, it remained Mr C's responsibility to ensure the DVLA were told he was no longer the registered keeper.

It's not disputed that the DVLA weren't advised and, as a result, Mr C received a fixed penalty notice. But, for the reasons given above, I'm not holding BMW responsible for the DVLA not being informed. And I won't be asking them to take any action regarding the fixed penalty notice.

Putting things right

For the reasons stated, BMW should pay Mr C £250 in recognition of the distress and inconvenience he was caused because of BMW reporting arrears on his account in error.

My final decision

For the reasons explained, I uphold Mr C's complaint. And BMW Financial Services (GB) limited trading as BMW Financial Services must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 August 2022.

Andrew Burford
Ombudsman