

## The complaint

Mrs O complains about the way that BMW Financial Services (GB) Limited, trading as Mini Financial Services, has dealt with the partial early repayment that she made towards a hire purchase agreement under which a car had been supplied to her. Her husband is also involved in her complaint.

## What happened

I issued a provisional decision on this complaint in November 2021 in which I described what had happened as follows:

*"A used car was supplied to Mrs O under a hire purchase agreement with Mini Financial Services that she signed in December 2019. She asked to make a partial early repayment and Mini Financial Services sent her two letters in November 2020 showing the effect of a payment of £1,200 – the first said that there would be a rebate of £824.39, she would then need to make one payment of £135.79 and then the optional final repayment of £8,260.95; and the second said that there would be no rebate, she would then need to make 18 monthly payments of £53.85 and then the optional final repayment of £8,260.95. Mrs O made the payment of £1,200 in December 2020 and Mini Financial Services sent her a letter in January 2021 which said that there would be a rebate of £594.32, she would then need to make four monthly payments of £31.46 and then the optional final repayment of £8,260.95.*

*It wrote to her again in February 2021 and confirmed that it had received the partial early repayment of £1,200, there had been a partial early repayment rebate of £594.32 and that the remaining repayments were four monthly repayments of £31.46 and then the optional final repayment of £8,260.95 unless she returned the car "at the end of the Agreement in accordance with clause 8(3) of the Agreement". She said that that wasn't what she was expecting and that it wasn't clear when the optional final repayment of £8,260.95 would be due.*

*Mini Financial Services said that there had been an error and only the second quote was valid – it apologised for that and offered Mrs O a goodwill gesture of £150. She tried to get further information from Mini Financial Services and it then sent her an e-mail in June 2021 to say that its February 2021 letter was correct (but it accepted that the letter hadn't specified the date when the optional final repayment would be debited) and that the term of her agreement had been reduced from 30 to 18 months – but that e-mail was sent to Mrs O two days after it had collected the optional final repayment of £8,260.95 from her.*

*Mrs O then complained to this service. Our investigator didn't recommend that her complaint should be upheld. He said that it was reasonable to think that the optional final repayment would be taken in the month following the fourth monthly repayment of £31.46, Mrs O had asked for the term of her agreement to be reduced, and he didn't think that Mini Financial Services had acted unfairly. He said that the offer of £150 as a goodwill gesture to apologise for the inconvenience caused was fair as it was clear that its error had caused some confusion.*

*Mrs O's husband, on her behalf, has asked for this complaint to be considered by an ombudsman. He has responded to our investigator's recommendations in detail and says, in summary, that there was no discussion of the contract term being reduced and that wasn't indicated in either of the quotes that Mini Financial Services provided in November 2020. He says that it's unreasonable for there to be an assumption that Mrs O had agreed to a reduced contract term and that she would then be expected to pay the final balance of £8,260.95 about twelve months earlier than had been contracted.*

*He says that at the very least Mini Financial Services should reinstate the contract for the original term of 30 months and that a direct debit should be reinstated to cover the balance of monthly payments due, and then the optional final payment, should Mrs O wish to keep the car at that time".*

My provisional findings were as follows:

*"The car that was supplied to Mrs O under the hire purchase agreement that she signed in December 2019 had a price of £12,730, she made an advance payment of £2,730 and agreed to make 29 monthly payments of £120.01 and there was an optional final repayment of £8,260.95. Mrs O asked Mini Financial Services about making a partial early repayment of £2,000 but was told that the maximum payment that she could make was £1,200. It provided her with two letters in November 2020 setting out the payments that would then be due.*

*Mrs O made a partial early repayment of £1,200 in December 2020 but it's not clear to me which of the two offers that Mini Financial Services had made that she intended to accept. Mini Financial Services then sent her a letter in January 2021 which said that there would be a rebate of £594.32, she would need to make four monthly payments of £31.46 and then the optional final repayment of £8,260.95 – but that letter was sent after Mrs O had made the payment.*

*I've not seen any evidence to show that Mrs O had asked to reduce the term of her agreement, I'm not persuaded that it's likely than she would have done so and I don't consider that Mini Financial Services' January 2021 letter made it clear that the optional final repayment would become due in June 2021 (and she'd already made the partial early repayment when that letter was sent to her). I don't consider it to be likely that Mrs O would have agreed that the optional final repayment would become due in June 2021 – more than a year earlier than it was originally due under the agreement.*

*Mini Financial Services confirmed in February 2021 that it had received the partial early repayment of £1,200, there had been a partial early repayment rebate of £594.32 and that the remaining repayments were four monthly repayments of £31.46 and then Mrs O would have to make the optional final repayment of £8,260.95 unless she returned the car "at the end of the Agreement in accordance with clause 8(3) of the Agreement". The agreement doesn't include a clause 8(3).*

*Mrs O said that that wasn't what she was expecting and that it wasn't clear when the optional final repayment of £8,260.95 would be due. Mini Financial Services responded to her but I don't consider that it addressed the issue about which she'd contacted it – which was when the optional final repayment would be due. She tried to get further information from Mini Financial Services. It then sent her an e-mail in June 2021 to say that its February 2021 letter was correct and that the optional final repayment would be debited by a specified date in June 2021 and that the term of*

*Mrs O's agreement had been reduced from 30 to 18 months. That e-mail was sent to Mrs O two days after Mini Financial Services had collected the optional final repayment of £8,260.95 from her.*

*I don't consider that Mini Financial Services had adequately explained to Mrs O that the effect of her partial early repayment was that the term of her agreement would be reduced from 30 months to 18 months and that the optional final repayment would be due from her in June 2021. I don't consider it to be likely that that would have been acceptable to Mrs O or that she had made the partial early repayment on that basis.*

*This was a hire purchase agreement so Mrs O had the option at the end of the agreement to either return the car or make the optional final repayment and keep it. I consider that Mini Financial Services should have written to Mrs O before the end of her agreement setting out the options that were available to her – but I've seen no evidence to show that it did so. I also consider that it would be reasonable to expect Mini Financial Services to have given Mrs O notice that it was collecting £8,260.95 from her – but I don't consider that it properly did so.*

*I consider that there have been multiple failures by Mini Financial Services to properly explain the effects of the partial early repayment to Mrs O. It has apologised for some of its errors and has offered her £150 as a goodwill gesture – but I consider that it needs to do more than that in response to Mrs O's complaint.*

*I consider that it should refund to Mrs O the £8,260.95 that it collected from her in June 2021 and that it should pay interest on that amount. I consider that it should then reinstate Mrs O's hire purchase agreement and recalculate the monthly payments that are due from her for the remaining part of the original term of the agreement, taking account of the partial early repayment and the rebate due to her. When the agreement ends, Mrs O will then have the option to either return the car or make the optional final repayment and keep the car.*

*The errors and failings of Mini Financial Services will have caused considerable distress and inconvenience for Mrs O. It has offered to pay her £150 as a goodwill gesture but I find that it would be fair and reasonable in these circumstances for it to pay her £300 to compensate her for the distress and inconvenience that she's been caused".*

Mrs O's husband, on her behalf, and Mini Financial Services both provided further comments and information in response to my provisional decision. I issued a second provisional decision on this complaint in February 2022 in which I set out my revised provisional findings as follows:

*"As Mrs O made an indemnity claim to her bank for the £8,260.95 that had been collected from her and her husband has confirmed that she received that money back, it wouldn't be fair or reasonable for Mini Financial Services to also refund that money to her. The payment was collected from her in June 2021 and she received it back in July 2021 so I don't consider that Mini Financial Services should pay any interest on that amount.*

*Mini Financial Services says that it can't reinstate the agreement because it's come to its natural end but I consider that Mini Financial Services has ended the agreement when it shouldn't have done so – and I consider that it should reinstate the agreement, but if it's unable to do so, I consider that it should treat the agreement as if it had been reinstated and allow Mrs O the same rights and obligations as were set out in the agreement.*

*It also says that Mrs O has been using the car since July 2021 but hasn't been paying for it. I consider that it's fair and reasonable for her to pay for the use that she's had from the car. I consider that Mini Financial Services should recalculate the monthly payments that are due from Mrs O for the remaining part of the original term of the agreement and any period for which she has had the car but hasn't paid for it, and also taking account of the partial early repayment and the rebate due to her. It should then notify Mrs O of the amount due from her and try to agree a repayment arrangement with her for that amount.*

*The errors and failings of Mini Financial Services will have caused considerable distress and inconvenience for Mrs O and I find that it would be fair and reasonable for it to pay her £300 to compensate her for that distress and inconvenience”.*

Subject to any further representations by any of Mrs O, her husband and Mini Financial Services, my provisional decision was that I intended to uphold this complaint. Mrs O's husband, on her behalf, has provided further comments in response to my provisional decision and says, in summary, that:

- when the quotes for making the early lump sum repayment were received there were two options, one offering a rebate of £824.39 and the other for £594.32, and Mrs O's acceptance was based on the higher figure so it would be reasonable that Mini Financial Services should have to base any future recalculations on the higher rebate figure;
- Mrs O has honoured all payments due but hasn't had the benefit of the difference between the rebate figures of £230.07 so that amount should be added to the proposed compensation of £300 compensation; and
- the contract should either be reinstated with zero payments due until the end of the 30 month term or, if Mini Financial Services is unable to reinstate the contract, it should commit in writing that there are no further payments due until that point and that Mrs O can enjoy all of the options available to her prior to that date, such as handing the car back, trading it in, or buying it for the final value figure.

### **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'm not persuaded that I should change the findings that I set out in my second provisional decision.

I'm not persuaded that it would be fair or reasonable for me to require Mini Financial Services to use the higher rebate figure of £824.39 in the calculation of the monthly payments that are due from Mrs O or to refund to her the difference between the two rebate figures of £230.07. I consider that it's fair and reasonable for Mrs O to pay for the use that she's had from the car so I'm also not persuaded that the contract should be reinstated with zero payments due until the end of the term or that Mini Financial Services should be required to give the commitment suggested by Mrs O's husband.

I consider that the outcome that I described in my second provisional decision is fair and reasonable in these circumstances. I find that Mini Financial Services should: reinstate the agreement (or if it's unable to do that, it should treat the agreement as if it had been reinstated and allow Mrs O the same rights and obligations as were set out in the agreement); and recalculate the monthly payments that are due from Mrs O for the remaining part of the original term of the agreement and any period for which she has had the car but hasn't paid for it, and also taking account of the partial early repayment and the rebate that was properly due to her for the partial early repayment that she made. I also find that it should pay her £300 to compensate her for the distress and inconvenience that she's been caused.

### **Putting things right**

I find that it would be fair and reasonable in these circumstances for Mini Financial Services to take the actions described above and as set out below.

### **My final decision**

My decision is that I uphold Mrs O's complaint and I order BMW Financial Services (GB) Limited, trading as Mini Financial Services, to:

1. Reinstatement the hire purchase agreement or, if it's unable to do so, to treat the agreement as if it had been reinstated and allow Mrs O the same rights and obligations as were set out in the agreement.
2. Recalculate the monthly payments that are due from Mrs O for the remaining part of the original term of the agreement and any period for which she has had the car but hasn't paid for it, and also taking account of the partial early repayment and the rebate due to her - it should then notify Mrs O of the amount due from her and try to agree a repayment arrangement with her for that amount.
3. Pay £300 to Mrs O to compensate her for the distress and inconvenience that she's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 26 May 2022.

Jarrold Hastings  
**Ombudsman**