

The complaint

Mr M complains about a fraud prevention marker recorded by BMW Financial Services(GB) Limited trading as BMW Financial Services.

What happened

In April 2017, Mr M went to a dealership to look at replacing his car. He says he spoke to a salesperson at the dealership about a hire purchase agreement with BMW, to finance the cost of a car. During the discussion, Mr M says he weighed up various alternatives to the hire purchase agreement. But in the end, he decided to go ahead with it.

Mr M says because he met with the dealer late in the day, the dealer said he'd complete the application using the information Mr M had given him. The dealer also took a deposit from Mr M and told him to return the next day to complete the sale.

The following day, Mr M says the dealer called him and said the application had been declined. When Mr M asked why, he says the dealer told him to check with a credit reference agency, but continued to discuss other lenders who may have been able to help. Mr M chose not to further his enquiry with the dealer and bought a car elsewhere.

Over three years later, Mr M says a potential employer decided to withdraw an offer of a job, based on a fraud prevention marker BMW had recorded with CIFAS. He says at first, BMW couldn't tell him why the fraud marker was recorded. So, Mr M complained to BMW and asked them to remove it.

In their final response to Mr M's complaint, BMW said that during the application process, Mr M had provided incorrect information about his address history. And that a previous address that hadn't been disclosed, had adverse information connected to it from other agreements in Mr M's name. BMW explained to Mr M that the fraud marker wouldn't be removed.

Mr M didn't accept BMW's response to his concerns and brought his complaint to us. One of our investigators looked into Mr M's case and found that BMW hadn't treated him fairly. She said she was persuaded by Mr M's side of the argument, in that he didn't deliberately mislead BMW. She found that not enough investigation was done at the time, to justify a fraud marker being recorded with CIFAS.

The investigator concluded that BMW should remove the fraud marker with CIFAS and pay Mr M £250 for the distress and inconvenience he had experienced.

Mr M didn't agree with the investigator's findings and said BMW should pay more than the £250 suggested. He said he'd found it difficult to find employment due to BMW's actions. BMW also disagreed with the investigator conclusions, so Mr M's 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.

This case is about an application for a hire purchase agreement, which is a regulated financial product. As such, we are able to consider complaints about it.

Mr M has explained that the dealer told him he would complete the application for the hire purchase agreement with the information he'd been given. Mr M says he left the dealership, but was willing to provide proof of everything he had been asked for.

BMW says Mr M provided incorrect information about his previous address history. And that one of Mr M's previous addresses was connected to some adverse information. So, I've considered if Mr M misled BMW, or that the dealer completed the application without getting the correct information from Mr M.

I've seen the notes recorded by BMW, the day after the application was made. I can see that the decision not to lend to Mr M was taken by BMW before usual business hours. I think this supports Mr M's argument, that he left the dealership when it had closed and the application was completed afterwards, by the dealer.

I think Mr M has been consistent and credible with the details surrounding his visit to the dealership. I also think Mr M's recollection of events is persuasive and that on balance, I don't think he was present when the dealer processed the application. I think it follows that Mr M wasn't able to fully answer the questions about his previous address.

Aside from how the application for the hire purchase agreement was processed, I also need to consider whether the report to CIFAS was made fairly.

On this point, BMW needed to have more than just a suspicion or concern, but they were not required to prove beyond all reasonable doubt that Mr M had done something wrong. They need to be able to show they had reasonable grounds to believe that fraud or a financial crime had been committed or attempted, with appropriate supporting evidence.

I've considered if BMW asked any questions of Mr M, after they saw his previous address history had been entered incorrectly. BMW's records don't show that they tried to find out if there was a problem with the application, or to establish Mr M's reasons for not disclosing his full address history.

I can see from BMW's records that they had other concerns, about the affordability of the hire purchase agreement. But, I don't think BMW did enough to rigorously test their suspicion that Mr M had committed fraud or a financial crime.

Previously, I've said I'm persuaded by what Mr M says. He's told us he was willing and able to support various details about his employment, income and address history. I think it's likely Mr M was aware of the adverse information connected to his previous address. But, on balance, I don't think Mr M was given sufficient opportunity to explain what had happened, when the dealer processed the application.

In all the circumstances, I don't think BMW made attempts at enough depth to clarify their concerns about Mr M, to be able to confidently report what had happened to the police. I think BMW have treated Mr M unfairly, so I think they should put the matter right. Overall, I think it's fair for BMW to remove the fraud prevention marker they recorded with CIFAS in April 2017.

I've thought carefully about the impact Mr M says BMW's actions have had on his personal circumstances. Mr M has told us about his current financial situation and that a job offer was withdrawn shortly after the application in 2017.

I agree that the fraud prevention marker has led Mr M to experience some distress and inconvenience, since BMW recorded it with CIFAS. And it must have been very worrying for him, when he found out about the marker in 2020. But, I don't think the withdrawn job offers Mr M says he's suffered from, can be solely linked to the fraud prevention marker recorded by BMW.

Having considered everything, I think it's fair for BMW to pay Mr M £250 for the distress and inconvenience he experienced when BMW recorded the fraud prevention marker with CIFAS.

Putting things right

BMW should:

- remove the fraud marker recorded with CIFAS against Mr M's name on 20 April 2017; and
- pay Mr M £250 for the distress and inconvenience caused.

My final decision

For these reasons, my final decision is that I uphold this complaint and BMW Financial Services(GB) Limited trading as BMW Financial Services should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 April 2022.

Sam Wedderburn
Ombudsman