

## The complaint

Mr B is unhappy with how BMW Financial Services (GB) Limited handled his request for a final settlement figure for a car he acquired under a hire purchase agreement.

## What happened

In October 2017, Mr B entered into a hire purchase agreement to acquire a new car. In September 2021, Mr B decided he wanted to sell his car, so he asked BMW for a settlement figure before doing this. BMW sent Mr B a letter in September 2021 with the settlement figure and the letter explained the figure was valid for settlement until 21 October 2021. Mr B says the letter also explained any monthly repayments that were due within the following five days would still be paid – so it advised Mr B not to cancel his direct debit. Mr B then sold his car but was told by BMW that his October 2021 monthly repayment would still be owed – this was for £525.53 – so this was paid.

Mr B was then contacted the following day by BMW and was told that what he'd been told about the October 2021 monthly repayment still being due was incorrect. So, Mr B said he was advised by BMW to make a direct debit indemnity claim with his bank to get the £525.53 back. Mr B then received a refund for this amount from his bank. But without Mr B's knowledge, BMW also issued him with a refund for the same amount - £525.53. As a result, this led to the account going into arrears.

BMW wrote to Mr B to let him know he'd been overpaid and as he'd already received £525.53 from his bank, he needed to repay the £525.53 BMW paid him. Mr B says he doesn't have the money to repay the £525.53 and that he spent it already – Mr B said he didn't check his bank statements so didn't realise he'd been given the extra refund. Mr B says he wants compensation which is equal to this amount as well as £100 compensation for distress and inconvenience caused to him.

In addition to this, Mr B says he was sent a Notice of Sum in Arrears (NOSIA) letting him know the account was in arrears. Mr B contacted BMW on 1 December 2021 and was told no action would be taken for the arrears while his complaint was ongoing. But he continued to receive communication from BMW regarding the outstanding amount. So, Mr B doesn't feel he's been treated fairly.

BMW say the settlement figure had already included the October 2021 monthly repayment of £525.53. However, as Mr B paid the October 2021 monthly repayment, it then left BMW with an overpayment of £525.53. BMW say this was why Mr B was advised to raise an indemnity claim with his bank in an attempt to recover this amount.

BMW say since they told Mr B this, they refunded the £525.53 to Mr B's bank account on 1 November 2021. However, BMW say Mr B's bank then took out the £525.53 following the indemnity claim and that this wasn't something they could see in process until it had been debited – because this was a process generated through the bank. As Mr B received a refund twice of £525.53, they asked Mr B to repay one amount back of £525.53. BMW confirmed the agreement was terminated and also acknowledged what Mr B said about not being able to afford to repay the amount they're asking for. So, they advised Mr B to get in

touch with them to arrange a payment plan. BMW said they wouldn't offer Mr B compensation as they didn't think there was any incorrect actions from them.

Our Investigator looked into Mr B's concerns. After having looked at all the information provided, she felt the October 2021 monthly repayment was included in the settlement amount and Mr B received a refund of this amount twice – so she said Mr B still owed BMW £525.53.

However, our Investigator felt BMW likely did give Mr B the wrong information about making a direct debit indemnity claim, given they were also processing a refund to Mr B for the same amount. Our Investigator also recognised BMW told Mr B no action would be taken while his complaint was being looked into but was later told recovery action wouldn't stop irrespective of his complaint being investigated. Overall, our Investigator thought BMW should pay Mr B £50 for the distress and inconvenience he experienced because of the misinformation he received on both occasions.

BMW accepted our Investigator's view. But Mr B didn't. In summary, he said he didn't feel £50 fairly compensated him for the wrong information BMW told him on two occasions. So, the complaint has been passed to me to decide.

### **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.

The crux of Mr B's complaint is that he was given the wrong information about the October 2021 monthly repayment still being due, despite being given a final settlement figure. And that he was given the wrong advice by BMW in order to get a refund of the overpayment. As a result, Mr B doesn't feel he should repay BMW the additional refund of £525.53 that he received.

Having looked at the settlement quote letter Mr B was sent on 23 September 2021; I can see it explained the settlement quote was valid until 21 October 2021 (the settlement date). It then went on to explain the way in which a settlement figure is calculated is that it'll take into account any monthly repayments that were due within the quotation period up to and including the settlement date – which for Mr B the quotation period was 23 September 2021 to 21 October 2021.

I can see Mr B made his monthly repayments by direct debit on the 21<sup>st</sup> of each month. And I can see from the evidence provided by BMW that Mr B paid a monthly repayment on 21 October 2021 – which was the same day as the settlement date. However, BMW's internal notes show Mr B contacted them on 20 October 2021 to check they'd received the settlement amount and he was told his monthly repayment was still due on 21 October 2021. According to the letter Mr B received on 23 September 2021, it explained the settlement figure had taken into account any repayments due within the quotation period. As Mr B's October 2021 monthly repayment was due on the settlement date, I think it's likely that the settlement quote Mr B was given took into account this repayment. Therefore, I'm persuaded BMW gave Mr B the incorrect information about the October 2021 monthly repayment still being due when he spoke to them on 20 October 2021.

With that in mind, I've then gone on to consider what happened next. BMW's internal system note on 22 October 2021 says that a refund for the October 2021 monthly repayment of £525.53 had already been processed, but that Mr B hadn't been informed of this. The note then goes on to explain that Mr B will request a refund of the payment from his bank instead of waiting for BMW to process the refund. I note Mr B has said on more than one occasion

that he only raised an indemnity claim with his bank as a result of being given this advice from BMW.

Having looked at BMW's internal notes, they don't say this advice was given by BMW. However, BMW acknowledged in their final response letter that Mr B was advised to raise an indemnity claim on 22 October 2021 – which is consistent with what Mr B has told us. Therefore, I think on balance, Mr B raised an indemnity claim with his bank as a result of BMW's advice to do so. And it's not clear to me why Mr B was advised to raise an indemnity claim with his bank given BMW were aware a refund had been processed by them. With that said, I don't think Mr B would have received two payments of £525.53 had it not been for BMW's advice. And I think BMW ought to have explained in more detail to Mr B what he was due to expect from BMW processing his refund.

In any case, as previously mentioned, Mr B received two refund amounts of £525.53 - one from his bank (as a result of the direct debit indemnity claim) and the other from BMW (as a result of them processing a refund). Given Mr B was only due a refund of just £525.53, rather than two refunds of this amount, I think it's fair for Mr B to repay £525.53 to BMW. I say this because Mr B had overpaid by just £525.53 (which was the October 2021 monthly repayment) rather than £1,050.46 – which is what he received as a result of the two refunds. I note Mr B said he spent this amount and that he can't afford to repay the £525.53. But I think BMW's offer to arrange a payment plan for this amount seems fair.

I've also looked into what Mr B was told about being chased for the £525.53 despite BMW confirming no further action would be taken while his complaint was ongoing. I can see from the notes that BMW confirmed to Mr B on 9 November 2021 that the account was settled and nothing more was owing under the agreement – a follow up letter was also sent confirming this to Mr B. However, further calls were made by Mr B after this where he let BMW know he was still receiving letters from them to say there was arrears on the account. Mr B then contacted BMW again on 1 December 2021 to let them know he'd received a NOSIA and this was when BMW confirmed no action would be taken while his complaint was ongoing. But Mr B kept being chased for the arrears even though he was given the impression the account was settled. I can appreciate this would have been worrying for Mr B given he was told he no longer had any obligations under the agreement on 8 November 2021.

Overall, I think BMW caused some confusion when they told Mr B that his October 2021 monthly repayment was still owing despite it being likely this amount was already considered when the final settlement quote was sent out. And I think BMW gave Mr B some conflicting information about the status of the account. While I appreciate Mr B says he spent the money he received from the two refunds as he didn't realise he'd been given the extra refund from BMW, I don't think there's been significant detriment to Mr B as a result of BMW giving him the incorrect information. Although, I can appreciate Mr B has been caused inconvenience as a result of BMW's error, so I agree with our Investigator that BMW should pay Mr B £50 compensation.

### **My final decision**

For reasons explained above, I uphold this complaint and I require BMW Financial Services (GB) Limited to pay Mr B £50 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 June 2022.

Leanne McEvoy  
**Ombudsman**