

The complaint

X complains he wasn't told there was a minimum amount for overpayments to be made to his hire purchase agreement with BMW Financial Services (GB) Limited (BMW). X is also unhappy that his credit file was affected whilst he was on an agreed payment holiday.

X has been represented on this complaint. But to keep things simple I'll only refer to X in my decision.

What happened

In September 2016 X acquired a new car through a hire purchase agreement with BMW. The purchase price of the car was £55,260.19. The total amount financed on this agreement was £55,260.19 payable over 48 repayments with a final repayment of £24,566.42.

In August 2020 X refinanced the remaining balance on his agreement and entered into a new hire purchase agreement with BMW for the same vehicle. The amount financed on the agreement was £29,499.71 payable over 48 months.

X said he was never told by BMW, after entering into the new agreement, that there was a minimum amount required for overpayments to be made to his agreement. X said if he'd known that was the case, he would have opted for a shorter term.

X said he complained twice to BMW, firstly for not being given a payment holiday which he said led to him defaulting on his agreement, and secondly regarding the issue with the overpayments. BMW offered X £75 to resolve the complaint about the overpayments. However, X said he accepted the offer for the issue relating to the payment holiday but not for the mis understanding of the overpayments as it's ended up costing him more.

X says to resolve his complaint, he'd like to have two years interest free from the start of the loan or the ability to make overpayments. X would like to be returned to the position he would have been in had he taken out a two-year agreement.

BMW shared a complaint form completed in May 2021 showing X complained to them about the impact his agreement had on his credit file despite being in a payment holiday.

BMW provided us with a copy of their final response dated in May 2021, which advised X that any adverse markers would be removed from his credit file. They also provided us with a copy of their final response dated August 2021 where they apologised that X wasn't made aware of the minimum lump sum amount and offered £75 as a gesture of goodwill. BMW advised that both complaints were upheld.

Unhappy with their decision X brought his concerns to this service for investigation. Our investigator gave their view that BMW hadn't acted fairly in the circumstances relating to the overpayment. They found the information provided about the overpayments was likely to be confusing for X. Our investigator recommended that BMW pay a further £250 in compensation and to provide X with a full explanation in writing of the overpayment process.

Unhappy with the investigator's view, X asked that his complaint be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

X complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider X's complaint about BMW.

My starting point is that X brought two concerns to our service, about the adverse information being recorded on his credit file and the restrictions he experienced when trying to make an overpayment. BMW has provided us with information relating to both complaints, so I've decided to address them both in my decision.

I acknowledge our investigator focussed their view on X's issue about the overpayments, however, our investigator also wrote to both parties letting them know that I'd be addressing both issues as X had raised them with us. BMW have also provided X with a final response to each complaint and provided us with information relating to both issues.

Following our investigator's email, neither party shared any further information relating to either complaint issue.

adverse credit data

In relation to the adverse data recorded on X's credit file, X explained he became aware of this when making changes to his mortgage. X believes it was as a result of his payment holiday not being processed correctly.

In their final response to X's complaint about this, BMW upheld the complaint and advised that they'd submitted a request to remove any negative impact from X's credit file. BMW's system notes also confirm in May 2021 the request had been placed and the credit information updated.

From the information provided I've not seen any evidence that X's credit information was affected by the payment holiday, for example with a copy of X's credit report. In addition, BMW's system notes stated in May 2021 that they couldn't see any impact. So, I'm not persuaded in the circumstances that any compensation for X, in relation to this part of the complaint is appropriate, because I've not seen anything to confirm any adverse credit information relating to BMW's administering or processing of the payment holiday.

So with all things considered, I'm satisfied that BMW acted reasonably by submitting a request to remove any negative impact on X's credit file as a result of the payment holiday, and so I won't be asking them to do anything more in relation to this issue.

overpayments

X said on a number of occasions he was prevented from making an overpayment to his agreement despite being told he could do so.

In their final response BMW upheld X's complaint and apologised for not advising him of a minimum payment amount. In their system notes dated September 2020 BMW advised in correspondence to X that a minimum payment of £200 would reduce the interest on his agreement. However, in an email to our investigator dated April 2022 BMW explained that there was no minimum amount required on overpayments, but the amount of interest repaid would differ dependent on when the payment was made.

I don't think there's any dispute by either party that BMW hadn't provided X with the correct information on the outset, and it seems that X is still experiencing issues with making overpayments to his agreement. In a phone call to our investigator in May 2022 X said he was told by BMW that even a payment of £200 would mean paying more interest on his agreement.

The Financial Conduct Authority says that information provided to consumers should be clear, fair and not misleading.

All things considered, I'm persuaded that the information provided by BMW to X regarding overpayments have been confusing for X and unclear.

From the information provided, I think it's likely that overpayments of any amount can be made to X's agreement, however what seems to be the likely issues are the methods in which overpayments are made and whether X would be disadvantaged for making overpayments of less than a certain amount.

I'm in agreement with our investigator that BMW should provide written confirmation to X explaining the process for make overpayments, and any impact it could have on his agreement. I also acknowledge X has spent time trying to resolve this issue with confusing information being given to him by BMW. X advised that had he known there was a minimum amount he would have renegotiated the term of his agreement. However I haven't seen evidence of any financial or material loss to X as a result of BMW's actions, so, I think £125 in compensation for the inconvenience caused, in addition to what BMW has already paid is fair in the circumstances.

I acknowledge our investigator recommended BMW pay X an additional £250 in compensation, however for the reasons explained I think £125 is fair in the circumstances; so, I'll be instructing BMW to pay this to X.

As my compensation differs from what our investigator recommended, I wrote to both parties to give them an opportunity to provide further comments.

BMW responded to say they agreed with my intended decision, however X responded to say that they'd lost out financially as they would have taken the agreement out over a shorter period had they known there were limitations to making overpayments.

Having considered the additional comments provided, I've not seen any further evidence that causes me to change my outcome. I acknowledge X has said he could've paid the agreement off over a shorter term by paying considerable more each month, however I can't see that there was anything stopping X from making larger overpayments to reduce the term of the loan. I also acknowledge the interest paid by X is likely to be more over a longer term, however I'm satisfied from the evidence provided that X would have been made aware of the amount of interest payable, when he entered into it. Overall, I'm not persuaded that BMW's actions in this case means X should receive more compensation.

I acknowledge X disagreed with our investigator's outcome and with my proposed compensation, however having considered all the information provided, I'm satisfied that this is the fairest outcome in the circumstances.

My final decision

To settle the complaint BMW Financial Services (GB) Limited has already paid £75 in compensation to X and has removed any adverse information from X's credit file in relation to the payment holiday. I think this is fair in the circumstances. So, in addition to this I instruct BMW to:

- Pay £125 compensation to X for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 27 October 2022.

Benjamin John
Ombudsman