

The complaint

Mr H is complaining that BMW Financial Services(GB) Limited (BMWFS) has charged an additional payment after he had a six-month payment deferral on his hire purchase agreement.

What happened

In December 2018 Mr H entered into a hire purchase agreement through BMWFS to acquire a car. Mr H was required to make 47 monthly payments of £482.40 and a final payment of £11,276.73 if he wished to keep the car.

Unfortunately in March 2020 Mr H temporarily lost his income due to the impact caused by Covid-19. So in May 2020, in line with regulator – the Financial Conduct Authority (FCA) – guidance, BMWFS granted him a three-month payment deferral. In August 2020 Mr H was granted a further three-month payment deferral.

As a result of these deferrals, the hire purchase agreement was extended by six months. BMWFS didn't charge anything extra as a result of the first three-month extension, but it told Mr H after he asked for the second deferral that it would charge an additional £45.71 per month over the remaining term of the agreement to reflect the fact the car will be six months older at the end of the finance agreement. In turn, BMWFS reduced the final monthly payment to £9,859.68.

Mr H didn't think BMWFS could charge this payment as he thinks it was out of line with FCA guidance. He accepted he had to pay the monthly payments that were deferred but he didn't think it could charge anything further. In particular he referred to the following statement in the FCA guidance which said:

“When granting a payment deferral or other option for assisting customers under PCP or PCH agreements affected by coronavirus, firms should not by any means seek to modify, or seek to unilaterally alter, any aspect of the original agreement in a way that takes advantage of the customer's necessity, lack of experience or weaker bargaining position or otherwise leads to unfair outcomes.”

I issued a provisional decision upholding this complaint and I said the following:

“The FCA issued detailed guidance about how it expected firms to support customers facing temporary payment difficulties because of the impact caused by Covid-19.

In March 2020, Mr H approached BMWFS to explain his employer had asked all its employees to take a period of unpaid leave. And he asked if BMWFS could do anything to support him – ideally a payment holiday. In April 2020, the FCA issued guidance setting out that it expected firms to offer customers payment deferrals of up to three months unless it thought to do so was obviously not in a customer's interests. Following this, BMWFS granted Mr H a three-month payment deferral, which I think was fair.

In July 2020 the FCA updated its guidance to say it would expect businesses to grant a

further three-month deferral if customers were still struggling. In August 2020, Mr H explained he was under furlough and suffering a significant reduction in income. So BMWFS granted a further three-month payment deferral, which I think was in line with the FCA's guidance.

However, I acknowledge Mr H doesn't think the guidance allowed BMWFS to charge an extra payment for depreciation. But I don't agree. I note he's referred to the guidance which says "firms should not by any means seek to modify, or seek to unilaterally alter, any aspect of the original agreement in a way that takes advantage of the customer's necessity, lack of experience or weaker bargaining position or otherwise leads to unfair outcomes."

I haven't seen anything to show that the FCA said BMWFS couldn't modify the agreement to take the car's depreciation into account. Ultimately, the agreement was extended by six months so it was modified accordingly, which includes the respective payments. But I think the crux of this matter is whether BMWFS's actions have led to an unfair outcome.

If the agreement is extended by a further six months Mr H will have been able to use the car for an additional six months as a result of the contract being extended by six months (although I accept he will have had reduced usage of it during periods of government-imposed lockdown). But, as a result of this, the car's value will have depreciated by the time the agreement ends. I think BMWFS was entitled to take this into account, so long as it doesn't result in an unfair outcome.

Ultimately, Mr H will have to pay around an extra £1,417 per month over the remaining monthly payments (excluding the final payment), which is the equivalent of three monthly payments. However, I'm also conscious that BMWFS reduced the final payment due by the same amount. So the total amount payable under the terms of the finance hasn't changed.

Further to this, I've also looked at the likely impact on the car's market value for the car being six months older at the end of the finance term and I think this is in line with what BMWFS has charged. So I think BMWFS has acted fairly in the way it has modified the agreement.

Mr H has said BMWFS hasn't taken into account that he's done less mileage in the car than he contractually agreed. But it has only charged the equivalent of three extra monthly payments, but he's been able to retain the car for six months.

Finally, I've taken Mr H's comment that the account statement refers to the additional payment as "Deferral interest Payment", but the agreement is interest free. I agree that the statement shouldn't say this, but BMWFS additional correspondence has clearly explained what this charge is for. So I don't think this is a reason that the increased monthly payments shouldn't apply.

Given this, I'm not persuaded that, if Mr H chose to have a six month extension to the agreement, BMWFS's actions have resulted in an unfair outcome and I think it was fair for BMWFS to charge the additional £45.71 per month it did.

However, while I don't think was necessarily unfair to charge what it has done, I also don't think its actions are in line with how other businesses have operated. In general, where a payment deferral is granted, the deferred payments were usually either payable at the end of the finance term, or the remaining monthly instalments are increased to ensure the deferred payments are paid by the end of the finance term. I can't see that BMWFS gave Mr H this as an option when he asked for a further deferment and I think it should have done so.

I've discussed this with Mr H and he's told us that he would prefer to have the terms of the

original agreement reinstated – i.e. the agreement ends after 48 months – and repay the deferred payments at the end of the finance term. I think this would be a fair way to resolve this matter as BMWFS still receives the payments due on time and the car doesn't suffer the anticipated depreciation.

So I think BMWFS should give Mr H the choice to either:

- 1. continue to make the payments he's been making since the end of the deferment period (with the increase of £45.71) until the end of the finance term and the remaining shortfall is paid at the end of the term; or*
- 2. the remaining payments are increased to ensure the deferred payments are paid off at the end of the finance."*

Mr H maintained that he didn't think it was fair he was being charged an extra £45.71 per month given he'd driven significantly less miles due to the national lockdown. So he doesn't believe the car will have depreciated as much in value as it otherwise would have done.

BMWFS didn't accept my provisional decision. It said Mr H agreed to the terms and conditions of taking a payment deferral when applying online, and it said the only way to stop the depreciation charge is to repay the deferred months which would then reduce the extended term and stop charging for the depreciation charge. It said the agreement automatically charges depreciation each month dependant on how many months Mr H had taken as a deferral. And it said that this wasn't something it could change on the system unless the months are repaid.

BMWFS also highlighted that it wrote to Mr H after the deferral was put in place and explained the costs of the deferral.

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.

I've taken everything into consideration but I've come to the same conclusion as I did in my provisional decision.

I note Mr H still doesn't think it's fair for BMWFS to charge for the extra three months he was keeping the car. But I'm satisfied my provisional decision sets out why I think it's fair. I recognise Mr H wouldn't have used the car as much because of the lockdown. But BMWFS also didn't charge extra for the additional three months he first received from deferring the payment.

I've also considered and understand BMWFS's submission that the cost of the deferral was set out to Mr H, but this was after the deferral was agreed. And I haven't seen anything to show that BMWFS gave Mr H the option to spread the cost of the deferred payments over the remaining term of the finance, which I think it should have done. And I'm satisfied this would have been Mr H's preferred option had BMWFS given him this option.

Ultimately I think Mr H has lost out as a result of what's happened here and I remain of the opinion what I said in my provisional decision is a fair way to put things right.

So I still think BMWFS should give Mr H the choice to either:

1. continue to make the payments he's been making since the end of the deferment period (with the increase of £45.71) until the end of the finance term and the remaining shortfall is paid at the end of the term; or
2. the remaining payments are increased to ensure the deferred payments are paid off at the end of the finance.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and require BMW Financial Services(GB) Limited to settle the complaint in line with what I've said above.

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

Guy Mitchell

Ombudsman