

The complaint

Mr W complains about the options provided by BMW Financial Services (GB) Limited (BMWFS) to repay the arrears on his account.

What happened

Mr W entered into a hire purchase agreement with BMWFS in September 2020 to acquire a used car. The agreement required Mr W to make 48 monthly payments of £388.25 followed by an optional final payment of £10,654.09.

Mr W experienced some financial difficulty as a result of the coronavirus pandemic (covid-19) and BMWFS provided a payment deferral for the period December 2020 to May 2021 to support him.

In June 2021 BMWFS gave Mr W information about his new monthly payments of £424.26 and told him these would restart at the end of June 2021.

Mr W told BMWFS that he'd struggle to pay the increased payments straight away, as he'd just returned to work. An agreement was reached that Mr W would pay £100 at the end of June 2021, with the remainder of the June 2021 payment spread over the next six months. The £100 payment was successfully made by direct debit.

In July 2021 BMWFS sent Mr W a notice of sums in arrears. The letter set out that if they had provided a payment deferral, they were required to send the notice by law, and provided Mr W was adhering to any arrangements, he didn't need to take any action and no negative information would be reported to Mr W's credit file.

In October 2021 BMWFS sent Mr W an agreement statement. The letter set out that it was for information only and Mr W didn't need to take any action in relation to it.

In December 2021 BMWFS sent Mr W a notice of sums in arrears. The letter contained the same information as confirmed in the notice sent in July 2021.

BMWFS discussed the agreement with Mr W in December 2021. No payment had been received since the £100 payment in July 2021. Mr W said he sends the funds to a separate account, so he hadn't realised that the payments weren't being taken. He told BMWFS he could afford around £650 a month in total in order to repay the arrears.

BMWFS asked Mr W to complete an open banking check so that they could ensure any repayment plan was affordable for him. They said they'd contact Mr B once the open banking had been completed. A direct debit was set up to resume Mr W's normal monthly payments.

Mr W's open banking information was received on 20 December 2021.

Mr W contacted BMWFS in March 2022 as he'd received no response to his open banking submission. BMWFS asked Mr W to agree to a four-month payment plan at £611.39 a month on top of his normal monthly payment.

Mr W said this wasn't affordable and offered to pay an additional £203.79 a month for 12 months on top of his normal monthly payment.

BMWFS rejected this and offered a six-month payment plan at £407.59 a month on top of Mr W's normal monthly payment. Mr W complained about the options being provided.

BMWFS sent Mr W their final response to his complaint in March 2022. They said the payments following the covid-19 payment deferral failed because of a system error. However, it was Mr W's responsibility to ensure the payments were being made. They said they tried to contact Mr W in December 2021, but he didn't get back in touch with them. BMWFS said the open banking had showed that Mr W had affordability of £691.93, so the payment plan they'd offered at £611.39 was reasonable. They'd also offered to reduce this to £407.59 which was also reasonable. They didn't uphold Mr W's complaint.

Unhappy with this, Mr W brought his complaint to this service for investigation. He said he'd like to repay the arrears over a reasonable timeframe, and not have them negatively impact his credit file.

Our investigator gave her view that she wasn't persuaded that the payment plans offered by BMWFS were affordable. She said they'd accounted for transfers into Mr W's account that weren't clearly reliable income, and in any event the plan for £611.39 would've left Mr W with little to no disposable income, which wasn't reasonable when the arrears were caused by BMWFS's system error.

Our investigator said the agreement runs until the end of 2024, so she thought it was reasonable for BMWFS to accept Mr W's offer to repay the arrears over a 12-month period.

In addition, our investigator said that BMWFS should remove any negative information from Mr W's credit file about the arrears, because they hadn't contacted him about the missed payments, and the communications they had sent were unclear. She said that Mr W was responsible for making sure his payments were being made, so she didn't think BMWFS needed to pay him any compensation for distress and inconvenience.

BMWFS didn't accept our investigators view. They said they'd need to do a further open banking assessment before being able to agree to a repayment plan as it'd been some time since the last one was completed. They didn't agree to remove the information from Mr W's credit file, as the arrears didn't relate to a covid-19 payment deferral and so had been correctly reported.

As an agreement can't be reached, the case has been passed to me for a 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 this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Mr W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

BMWFS have accepted that Mr W's payments weren't collected by direct debit due to an error with their system. So, I've thought about whether they've done enough to put things right.

Mr W has said that he can afford to pay around £650 a month in total to make his normal monthly payments and to repay the arrears. This would mean it'd take around 12 months for Mr W to repay the arrears.

BMWFS asked Mr W to pay £611.39 for four months, or £407.59 for six months, in addition to his normal monthly payments.

I've seen the review that BMWFS completed following Mr W's open banking information. This showed that Mr W had a predicted monthly income of £1,744.22 and predicted monthly essential expenditure of £1,463.09.

BMWFS have also taken into account a predicted monthly income from transfers of £410.80. It's not clear where these transfers were from, or whether they could be relied on as a consistent monthly income. So, I'm not persuaded that these should be taken into account when assessing the affordability of a repayment plan.

Without the transfers, Mr W has a disposable income of £281.13. So, I'm not persuaded that either the four month or the six month plans that BMWFS offered to Mr W were fair and reasonable.

Mr W offered to repay the arrears over a 12-month period, at an amount that he felt was affordable. Mr W's agreement is due to end in late 2024, so there is time for the arrears to be paid within the original agreement term. On balance, I think Mr W's offer was reasonable in the circumstances, and I'm satisfied that BMWFS should allow him to repay the arrears over this time period.

BMWFS have said they'll need to complete another open banking review to check that Mr W can afford any repayment plan. It has been some time since Mr W last completed a review, and I accept that his financial situation may have changed in the interim. So, I find it reasonable that BMWFS check that any plan is affordable, subject to allowing repayment of the arrears to occur over a 12-month period.

BMWFS have said that Mr W is responsible for ensuring that his payments are made, they contacted him about the arrears during the period they were being accrued, and there is a negative effect on his credit file as a result of the arrears, so they should be repaid quickly.

The two notices of sums in arrears that BMWFS sent to Mr W, during the period that payments weren't being collected, both set out that if they had provided a payment deferral, they were required to send the notice by law, and provided Mr W was adhering to any arrangements, he didn't need to take any action and no negative information would be reported to Mr W's credit file. The agreement statement set out that it was for information only and Mr W didn't need to take any action in relation to it.

Mr W knew he'd had a payment deferral as a result of covid-19, and believed he'd entered into and was adhering to a payment arrangement. So, I'm not persuaded that these letters went far enough to alert Mr W to the fact that he was missing payments.

I don't dispute that Mr W was also responsible for ensuring that his payments were being made. But I think he was entitled to rely on the information provided by BMWFS, that his payments would be restarted, and they didn't contact him to let him know there was a problem. So, I'm satisfied that it would be reasonable in the circumstances for BMWFS to remove any negative information from Mr W's credit file in respect of these arrears.

I've thought about the impact BMWFS's error has had on Mr W. He's said he's experienced a lot of anxiety and the situation has affected his mental health.

I'm sorry to hear of the impact on Mr W. Whilst BMWFS made an error in not collecting Mr W's payments, he did have a responsibility to make sure that his payments were made and could've mitigated his losses by checking his bank account sooner. So, I'm not asking BMWFS to compensate for distress or inconvenience.

My final decision

My final decision is that I uphold this complaint and BMW Financial Services (GB) Limited must:

- Allow Mr W to enter into a payment plan to repay the arrears over a 12-month period, BMWFS can complete checks to ensure that the plan is affordable for Mr W.
- Remove any adverse information relating to these arrears from Mr W's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 March 2023.

Zoe Merriman
Ombudsman