

The complaint

Mr S is unhappy that BMW Financial Services (GB) Limited gave him incorrect information relating to his agreement.

What happened

In February 2018, Mr S was supplied with a new car through a hire purchase agreement with BMW. He paid an advance payment of £1,000 and the agreement was for £62,250.27 over 48 months, with 47 monthly repayments of £891.53, and a final payment of £27,250.54.

Mr S's income had been affected by Covid-19 and BMW agreed to a six-month payment deferral (otherwise known as a payment holiday) that ran between May and October 2020. They also extended the term of the agreement by six months. In June 2021, Mr S contacted BMW about ending the agreement early. And BMW told him that he was around six payments short of being able to voluntarily terminate (VT) the agreement at no further cost.

However, in December 2021, BMW explained that they'd given him incorrect information, and that he'd need to clear the deferred payments as part of any VT. Mr S complained to BMW about the incorrect information he'd been given in June 2021. BMW admitted their error and explained Mr S's options. But these didn't include allowing Mr S to refinance the remainder of the agreement and the arrears – the option Mr S wanted. BMW also offered £50 compensation for any impact of the incorrect information given.

Mr S wasn't happy with BMW's response. And he brought his complaint to us for investigation. In doing so he's said that, had he been given the correct information in June 2021, he may've acted differently when managing his overall debts. And he wanted BMW to either allow him to refinance the remaining agreement and the arrears or allow him to VT the agreement with nothing more to pay.

Our investigator said the agreement Mr S signed was clear that any overdue payments would need to be repaid as part of a VT. And this would include the deferred payments. However, he also thought that Mr S acted reasonably by relying on the information BMW had provided to him in June 2021, which BMW accept was wrong. But he didn't think this meant that BMW had to abide by the incorrect information they provided and allow Mr S to VT without paying the deferred payments.

The investigator said that, had Mr S been given the correct information in June 2021, it's not possible to say what he would've done. And it's not possible to rewind what's happened to put Mr S back in that position. But they also said that we can't tell BMW to refinance the agreement and arrears. So, the investigator said BMW should increase the compensation to £250 and come to a reasonable payment arrangement with Mr S to clear the outstanding balance.

BMW agreed with the investigator, but Mr S didn't. He accepted that he couldn't definitely say what he would've done in June 2021, had he been given the correct information. But he said that the value of the car had decreased since June 2021, that he'd paid six payments of £925 he needn't have done, and paid additional tax, insurance and maintenance on the car

– costs he thinks he could've legitimately avoided. And he believes this is a loss of around £11,500 that could otherwise have been avoided. So, he thinks that BMW should've allowed him to veto the agreement in December 2021 and allowed him reasonable time in which to repay the deferred payments.

Because Mr S didn't agree with the investigator, this matter 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

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 (if appropriate) what I consider was good industry practice at the time. Mr S 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.

The basic facts of this case aren't disputed. And BMW have acknowledged that they gave Mr S incorrect information in June 2021. As such, my decision will concentrate on what I think BMW should do to put things right. However, it's not the role of the Financial Ombudsman Service to tell financial businesses what policies and procedures they must have in place – this is something they will agree with their regulator, the Financial Conduct Authority. Because of this, I won't be considering asking BMW to refinance the agreement, over different terms, and to include the outstanding deferred payments.

I've seen a copy of the agreement Mr S signed on 23 February 2018. Under the heading ***“Termination: Your Rights”*** the agreement says *“You have a right to end this agreement. To do so, you should write to the person you make your payments to. They will then be entitled to the return of the goods and to half of the total amount payable under this agreement, that is £35,076.28. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more.”*

This makes it clear that, when looking to veto the agreement, any outstanding payments (which would include the deferred payments) need to be repaid in addition to 50% of the total amount payable under the agreement.

When Mr S spoke to BMW in June 2021, they told him he was around six payments short of reaching the 50% mark, which would allow him to hand back the car with nothing further to pay. While this wasn't the case, Mr S took this to be correct, and continued to make his payments. He also continued to use the car.

However, when Mr S spoke to BMW in December 2021, they explained that he still needed to repay the deferred payments before he could hand back the car with nothing more to pay. While I appreciate this would've come as a shock to Mr S, he was being told the correct position of the agreement. The incorrect information given in June 2021 didn't change how much Mr S owed, and he would've still owed this amount had he been given the correct information in June 2021. As such, I don't think it's reasonable for me to say that BMW should've honoured the incorrect information given in June 2021 and allowed Mr S to be able to hand the car back with nothing further to pay.

However, this doesn't mean Mr S wasn't able to VT the agreement. He could still have done so and come to an arrangement to repay the shortfall. And I've seen that BMW offered him this option. They explained that he still needed to pay £6,594.89, so could hand the car back and arrange to pay this. However, because this amount was more than £5,000, then, under their collections process, this matter would be handled through a solicitor. I've also seen that BMW's final complaint response letter, sent on 14 January 2021, reiterated this offer.

Mr S chose not to VT the car at this point, as he didn't want the solicitor involvement. Had he been given the correct information in June 2021; the shortfall would still have been more than £5,000. And, any repayment of this shortfall would've been arranged by a solicitor. As such, I'm satisfied that, had Mr S been given the same VT option in June 2021, he would've declined this for the same reason he declined it in December 2021. And he would've kept the car and continued to make payments. Which would've required him to continue to tax, insure, and maintain the car while it was in his possession.

BMW also gave Mr S the option of voluntarily surrendering (VS) the agreement, selling the car privately, and arranging a repayment plan for the shortfall. Given the sale price Mr S had been quoted, this would've left a shortfall of £4,306.19. Which meant that BMW could've arranged this without solicitor involvement. Again, Mr S chose to reject this option, which leads me to believe he would've done the same if given the same option in June 2021.

Taking all of the above into consideration, I don't think that Mr S is in a different position to that which he would've been had the correct information been given in June 2021. And, as he's continued to pay towards the agreement, it's likely that he's now in a position where he can VT with a shortfall of less than £5,000, and so avoid the solicitor involvement.

However, this doesn't mean that Mr S wasn't shocked by finding out that he wasn't able to hand back the car with nothing further to pay in December 2021. And being given incorrect information in June 2021 meant that he wasn't in full possession of the facts to consider options such as an Individual Voluntary Arrangement (which he's said was something he may've done). The investigator has recommended that BMW pay Mr S a total of £250 compensation for the impact of the incorrect advice, and I would've asked BMW to pay something in the region of this had it not already been suggested. As such, I see no compelling reason not to adopt this as part of my final decision.

Putting things right

BMW should pay Mr S a total of £250 compensation for the impact of the incorrect information provided in June 2021. They should also treat him with forbearance and due consideration when arranging for him to repay the outstanding deferred payments and/or any shortfall if he decides to take the option to either VT or VS the agreement.

My final decision

For the reasons explained, I uphold Mr S's complaint. And BMW Financial Services (GB) Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 December 2022.

Andrew Burford
Ombudsman