

The complaint

Ms M complains that BMW Financial Services (GB) Limited (BMWFS) failed to inform her about a missing payment when they agreed a payment deferral.

What happened

In November 2019 Ms M entered a hire purchase agreement with BMWFS for a new car. The terms of this agreement required Ms M to pay £11,000 in advance, 47 monthly repayments of £763.51, with an optional final balloon payment of £32,705.52 if she chose to keep the car.

In April 2020 Ms M requested a payment deferral because her income had been impacted by the COVID19 pandemic. BMWFS granted a three-month deferral, which was later extended. In September 2020 Ms M paid £3,817.55 to clear the five payments she'd missed (May to September 2020). So, BMWFS reversed the agreed payment deferrals.

Unfortunately, Ms M was still facing financial difficulties. She was unable to make her October 2020 payment, and requested another payment deferral. BMWFS granted a three-month deferral, covering payments due between November 2020 and January 2021, and her agreement was extended by three months. But this left the October 2020 payment outstanding.

Ms M says BMWFS didn't tell her that the October 2020 instalment hadn't been included in the payment deferral and remained outstanding. They made no reference to this when Ms M contacted them in February 2021 to resume her payments. But soon after this, she was shocked to receive a notice of arrears for the missing payment.

Ms M complained to BMWFS. They sent their final response letter on 23 February 2021. They agreed Ms M had contacted them in October 2020 to say she couldn't afford to make the payment that was due to be taken. And they accepted Ms M hadn't been advised that this instalment was outstanding when she contacted them in February 2021.

BMWFS offered Ms M £50 compensation to reflect the inconvenience caused. They also offered either to include the October 2020 instalment into a repayment plan, or add it to the payment deferral and extend her agreement by four months.

Ms M didn't think BMWFS' offer went far enough, so she brought her complaint to us. Our investigator thought the information BMWFS had given Ms M wasn't clear – and that this had resulted in confusion about the payment deferrals applied to the account. She recommended BMWFS pay Ms M £150 compensation to reflect the stress caused, remove any adverse information recorded about the missing instalment, and add the October 2020 missed payment to the payment deferral.

BMWFS said they could add the missing October 2020 payment to the deferral and extend Ms M's agreement by a total of four months. But in addition to charging deferral interest on top of her monthly instalments, they also apply a monthly depreciation adjustment charge on all deferrals exceeding three months, to cover the anticipated depreciation in the value of the

car. BMWFS confirmed Ms M would need to pay £15.79 deferral interest and £17.10 depreciation a month on top of her monthly instalments if they allocated the extra month to her agreement.

Ms M remained dissatisfied. She said BMWFS had previously agreed to waive deferral interest, so she didn't think it was fair it was now asking her to pay it. Her complaint was passed to an ombudsman for consideration.

Our ombudsman's provisional decision

Our ombudsman issued a provisional decision saying she was minded to uphold Ms M's complaint. The ombudsman said that, unless she received more comments and evidence which changed her mind, her final decision was likely to be along the following lines:

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 (if appropriate) what I consider was good industry practice at the time. Ms M 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 Financial Conduct Authority (FCA) issued temporary guidance, that came into effect on 27 April 2020, about customers who were faced with payment difficulties as a result of Covid-19. This guidance says a firm providing motor finance agreements should grant a payment deferral for "3 months unless the firm determines (acting reasonably) that it is obviously not in the customer's interest to do so." And, in July 2020, the FCA allowed a further 3-months payment deferral for customers who still faced payment difficulties.

A payment deferral is not a waiver of the payments that are due under the agreement. These payments still need to be paid, either by spreading them over the remaining term of the agreement; or, as in this case, by extending the term of the agreement.

The basic facts of this complaint aren't in dispute. Ms M requested a payment deferral in April 2020, which BMWFS granted and then extended to cover payments due from May to September 2020. Ms M paid £3,817.55 to clear the five missed payments and BMWFS reversed the deferral. Ms M missed her October 2020 payment and requested another payment deferral in November 2020 as her income was still impacted by the Covid-19 pandemic. BMWFS assessed the request and granted a new payment deferral to cover payments due from November 2020 to January 2021. Ms M didn't realise the October 2020 was still outstanding and BMWFS failed to advise her of this when she spoke to them in November 2020 and February 2021 when she called it to resume her payments.

Ms M says if she had been made aware the October 2020 payment was missing, she would have requested it was included in the deferral granted in November 2020. BMWFS initially told our investigator it couldn't add the missing payment to the deferral as Ms M had already had a maximum of 6 months payment deferral. Our investigator clarified BMWFS had reversed the previous five months payment deferral, when Ms M made a lump sum payment. BMWFS then agreed to add the October 2020 payment to the deferral and extend Ms M's agreement. It says Ms M will need to pay the deferral interest and the depreciation adjustment on top of her monthly payments.

I can see from the contact notes BMWFS did agree on 8 February 2021 to waive all future deferral interest. Ms M tells us this was agreed because she let the advisor know she was

still in financial difficulties. In the circumstances I think BMWFS should honour its agreement to waive the deferral interest from 8 February 2021. BMWFS charges a depreciation fee on all deferrals exceeding three months, I've not seen anything to indicate BMWFS agreed to waive the depreciation charge, so Ms M will need to pay this if she wants the October 2020 added to the deferral and the agreement to be extended by four months.

Ms M says BMWFS is insisting she pays an extra £48 a month on top of her monthly instalments to clear the October 2020 arrears, and said it would refund this if her complaint is upheld. Ms M says BMWFS treated her unfairly as she explained she was struggling to make this payment on top of her monthly payments, because the car was in the garage and she is also having to cover the cost of car hire.

It is not clear from the records whether BMWFS is currently charging Ms M deferral interest, depreciation or whether she is on a payment plan for the October 2020 arrears. We have asked BMWFS to clarify this, but it has yet to respond.

Putting things right

I think BMWFS made a mistake when it didn't make Ms M aware the October 2020 payment was outstanding, when she got in touch with it in November 2020 and February 2021. I can see Ms M let BMWFS know in September 2020 she could not afford the October 2020 instalment. So, I think it is more likely than not that if she had been made aware of the missing payment in November 2020, she would have requested for it be added to her payment deferral and for her agreement to be extended accordingly.

Ms M has told us about how stressful it was trying to resolve this, during a very difficult and uncertain time. She has also told us how this has impacted her health. In the circumstances I think BMWFS should increase its offer of compensation to £250 to reflect this.

I think BMWFS should remove any adverse information recorded on Ms M's credit file in relation to the missed October 2020 payment. In addition, it should ensure it removes any missed, late payment or arrears information registered between May 2020 to January 2021.

As Ms M's agreement extension will exceed three months if the October 2020 is added, I think BMWFS should provide Ms M with the total depreciation figure for the four-month extension and let her know how much she will now need to pay each month on top of her monthly instalments over the remainder of the agreement.

The ombudsman said she was minded to direct BMW Financial Services (GB) Limited to:

- *pay Ms M £250 compensation to reflect the stress caused,*
- *ensure it removes any adverse information recorded on Ms M's credit file in respect of the October 2020 missed payment and remove any missed, late payment or arrears information registered between the payment deferral periods between May 2020 to January 2021,*
- *provide Ms M with the total depreciation adjustment figure for her agreement to be extended by four months and let her know the monthly depreciation charge she would need to pay on top of her monthly instalments. And give Ms M the option to either:*
 1. *have the October 2020 payment added to the payment deferral and extend the agreement by four months. If Ms M has made any payments to clear the October 2020 arrears, this should be refunded to her, adding 8% simple yearly interest, from the date of the payments to the date of the refund*. It should also refund Ms M any deferral interest she has paid from 8 February 2021 (after deducting any deferral interest that would have accrued for the October 2020 payment up to 8*

- February 2021), adding 8% simple yearly interest from the date of the payments to the date of the refund*, or*
- 2. agree an affordable repayment plan to repay the October 2020 instalment over the remaining term of the agreement. Reducing the arrears balance by any payments made to clear the October 2020 arrears, by any deferral interest paid or depreciation payments made.*

Responses to the ombudsman's provisional decision

BMWFS said they felt it was unfair that they should have to pay Ms M £250 due to her health problems at the time, because they hadn't been made aware of this. They said members of their collections team are trained to assist with sensitive cases, to enable them to provide customers with the best options based on their current circumstances.

BMWFS said Ms M had agreed to a payment plan for the arrears on her account. They provided copies of letters they'd sent her, referring to a payment arrangement set up in November 2021. BMWFS felt they'd treated Ms M fairly and with forbearance. They said Ms M was currently paying £763.51 for her monthly rentals and £42.36 for arrears, which she'd agreed to.

Ms M said BMWFS had given her no option but to start making payments towards the missed instalment along with her usual monthly repayments, which she'd found extremely stressful and difficult. Ms M said she'd now prefer the option of having the missed instalment deferred, with a refund of the payments she'd already made towards this.

Ms M said BMWFS had assured her that making payments towards the missed instalment would prevent any impact on her credit file. But she said applications she'd made for a mortgage and interest-free credit card had been declined, due to a default BMWFS recorded in September 2021. Ms M said she'd lost her house sale and £425 in interest fees on her credit card as a result.

Ms M told us that she's unable to provide further information about her credit file and the declined applications because she's currently unwell. She provided supporting evidence from her doctor.

The case has been passed to me 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.

I'm grateful to both parties for taking the time to respond to my colleague's provisional decision. I want to reassure both parties that I've thoroughly reviewed all the information and comments they've provided about Ms M's complaint. Having done so, I agree with my fellow ombudsman's provisional findings, so I adopt that reasoning here.

I appreciate BMWFS feel it's unfair that they should have to pay a higher level of compensation to Ms M due to personal circumstances they hadn't been made aware of. But when considering what level of award is appropriate for distress and inconvenience caused, our service recognises that the impact of a business's mistake will depend on the customer's circumstances at the time.

I've seen copies of BMWFS' records showing Ms M made them aware in April 2020 that she'd had a very significant drop in salary due to COVID19, and that this had put her into

financial difficulty. I've seen that she contacted BMWFS several times in the months that followed to discuss payment deferrals - and that she expressed concerns about the additional charges she'd have to pay as a result.

I think those circumstances would have been very stressful for Ms M. So, I think it was foreseeable that she'd be distressed to receive a formal notification in February 2021 saying her account was in arrears. And I think this would have had a greater impact because she'd recently discovered she was expecting a baby and was feeling very unwell. So, I consider £250 compensation to be fair and reasonable.

I can only consider a complaint when BMWFS have sent Ms M their final letter of response, or they've had eight weeks in which to do so. Ms M contacted us in February 2021 because she was dissatisfied with BMWFS' response to her complaint about the missed payment she'd just been made aware of. So, that's the complaint I've addressed in this decision.

It's clear that other issues have arisen since Ms M contacted us in February 2021. In particular, I can see she's unhappy about a default recorded on her credit file in September 2021, which she feels caused her to lose out on a home mortgage and interest-free credit card.

Ms M has told us that she's complained about these later issues to BMWFS. Unfortunately, she currently isn't well enough to provide us with the information we'd need to see in order to properly consider her concerns. So, if Ms M wishes to complain about events that have happened since February 2021, I'd invite her to raise this as a new complaint as soon as she's well enough to do so.

My final decision

For the reasons I've explained, I uphold this complaint and direct BMW Financial Services (GB) Limited to:

- pay Ms M £250 compensation to reflect the distress she's been caused,
- remove any adverse information recorded on Ms M's credit file in respect of the October 2020 missed payment and remove any information relating to missed, late payment or arrears during the payment deferral periods between May 2020 to January 2021,
- provide Ms M with the total depreciation adjustment figure for her agreement to be extended by four months, and let her know the monthly depreciation charge she would need to pay on top of her monthly instalments,
- Give Ms M the option to either:
 1. have the October 2020 payment added to the payment deferral and extend the agreement by four months. If Ms M has made any payments to clear the October 2020 arrears, this should be refunded to her, adding 8% simple yearly interest, from the date of the payments to the date of the refund*. BMW Financial Services (GB) Limited should also refund Ms M any deferral interest she has paid from 8 February 2021 (after deducting any deferral interest that would have accrued for the October 2020 payment up to 8 February 2021), adding 8% simple yearly interest from the date of the payments to the date of the refund*, or
 2. agree an affordable repayment plan to repay the October 2020 instalment over the remaining term of the agreement. Reducing the arrears balance by any payments made to clear the October 2020 arrears, any deferral interest paid, or depreciation payments made.

*If BMW Financial Services (GB) Limited believes tax should be deducted from the interest element of the award, they should give Ms M a certificate showing how much tax they've taken off, if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 28 October 2022.

Corinne Brown
Ombudsman