

The complaint

Miss W is unhappy with how BMW Financial Services(GB) Limited ('BMWFS') administered her hire purchase agreement and recorded information on her credit file.

What happened

In March 2019 Miss W acquired a used car funded in part by a hire purchase agreement with BMWFS. The car was just under a year old, had covered around 896 miles and had a cash price of £30,389.

Miss W paid an advance payment of £1,027.92 and was due to make 48 repayments of £541.21, followed by a final payment of £10,520.77 if she wished to keep the car.

Unfortunately, Miss W got into some financial difficulty due to the COVID-19 pandemic. She asked BMWFS for a payment deferral ('PD') and this was initially granted to cover May, June and July 2020. Miss W then requested a further PD which was agreed to cover August, September and October 2020. The repayments on the account were due to restart from 29 November 2020.

Payments weren't made towards the agreement once the PD had finished for some time. Miss W says the Direct Debit ('DD') remained in place and she had expected BMWFS to automatically resume taking the repayments. The monthly repayments started being paid again via DD from July 2021.

Miss W later complained to BMWFS and said she shouldn't have arrears on the account as it was BMWFS' responsibility to collect the DD. She said the situation had affected her credit score. And she said she wasn't told when the repayments would restart following the PD.

BMWFS issued a final response in December 2021. It said, in summary, that it wrote to Miss W to tell her when the payments would restart on 12 October 2020. It said it wasn't able to collect the monthly repayments as Miss W's DD had been cancelled. And it said Miss W had arrears of £1,622.83 from before the PD.

BMWFS said it wrote to Miss W on 14 January 2021 advising her of the arrears and asking her to contact it. And it said in March 2021 it made multiple attempts to contact her, including via email.

BMWFS said Miss W currently had arrears of £5,340.12. It explained it was obligated to report this to credit reference agencies and wouldn't change this information. It said it had asked Miss W to complete 'open banking' to come to an arrangement to pay the arrears, but Miss W had refused this. So, it asked her to complete an income and expenditure assessment. It explained without Miss W's cooperation it may end the agreement.

Due to the arrears on the account, BMWFS then issued a default notice and subsequently terminated the agreement in January 2022.

Miss W remained unhappy and referred the complaint to our service. She told us that she moved address in September 2020 and explained this to BMWFS on the phone at the time. But, she says this wasn't updated, so she didn't receive the letters that were sent about the payment issues. She said she tried to contact BMWFS about the repayments before they resumed in July 2021. She said she never cancelled her DD and so BMWFS were responsible for not taking the repayments.

Our investigator issued an opinion. He said, in summary, that he couldn't be sure what happened with the DD, but he thought Miss W would've been reasonably aware these repayments were due and would've expected her to realise they weren't paid. He said he hadn't seen evidence Miss W made BMWFS aware she'd changed address until September 2021, and didn't think it had done anything wrong by sending letters to the address it had. And he said he didn't think BMWFS did anything wrong by terminating the account when it did.

Our investigator said BMWFS needed to record missed payments on Miss W's credit file. But, he did say adverse information had been recorded for May 2020 when a PD was in place, so this should be removed.

Miss W disagreed. In summary, she said she did update her address when she moved and had the mail redirected. She said BMWFS didn't email her. She reiterated that she didn't cancel the DD and gave some further information about this. She says she wasn't given notice the agreement would be terminated. She said incorrect information was reported to credit reference agencies between July 2021 and December 2021 as she made payments during this time. She questioned whether some letters were sent by BMWFS and also said the letters that were sent didn't make it clear action was needed, or that the account was in arrears. And she said the missed payments built up should not be treated as arrears as BMWFS didn't try to take the payments.

Our investigator responded and said this didn't change his opinion. In summary, he said it was more likely than not that Miss W received the letters BMWFS sent about the arrears – particularly if Miss W had her mail redirected. And he said, even if BMWFS didn't attempt to take the DD payments, another payment method could've been used. Our investigator explained it appeared Miss W's credit file reflected arrears were on the account from July 2021.

Miss W continued to disagree and reiterated the points she made.

BMWFS also responded. It said Miss W was in touch with it about a PD on 5 May 2020 and this was confirmed on 12 May 2020. But, it said Miss W was already in arrears at this point, so it shouldn't remove the credit reference information.

As both parties didn't agree with the investigator's opinion, the case has been passed to me to decide.

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 think this complaint should be upheld in part. But, I don't think BMWFS are responsible for the majority of the points Miss W has raised. I'll explain why.

Miss W complains about a hire purchase agreement. Entering into regulated consumer credit agreements such as this one as a lender is a regulated activity. So, I'm satisfied I can consider Miss W's complaint about BMWFS.

I should explain to both parties that I may not comment on every point raised nor every individual piece of evidence. Where this is the case, this isn't because I haven't considered everything or because I think something unimportant. Miss W has raised a lot of points and has written to our service at significant length about the issues, particularly in response to our investigator's view. I want to reassure Miss W that I've carefully read and considered everything she's provided. But, I'm going to focus on what I think are the key facts and the crux of Miss W's complaint. This reflects the informal nature of our service.

Miss W has complained about various points. But I'm satisfied the crux of the complaint is whether she is responsible for the arrears on the account and whether this should be reflected on her credit file.

Arrears and termination

I've firstly considered whether Miss W would've been aware of what was expected to happen as her PD ended in October 2020.

I've seen a copy of a letter dated 12 October 2020 that explained to Miss W that the PD applied, in total, from May 2020 to October 2020 and that:

"Your monthly payments will restart in November"

Miss W has also said BMWFS never gave her a breakdown of what the monthly repayments would be following the PD. But it's also worth noting that this letter gives this information, along with the reasons and figures behind it.

It also appears from its system notes that BMWFS sent Miss W an SMS about the end of the PD in November 2020.

So, thinking about this, I'm satisfied Miss W likely knew the term of the PD and that payments were due to resume from November 2020.

I've then gone on to consider the issue with the DD not being taken. Miss W has provided a letter from her bank, stating the DD instruction wasn't cancelled and no payments were attempted to be taken by BMWFS between November 2020 and July 2021. BMWFS has provided evidence it says shows that it did request DD payments in this time and has said that it believes Miss W must have cancelled the instruction.

Neither Miss W nor BMWFS have also been able to show why the DD restarted in July 2021.

I want to reassure Miss W that I've carefully considered everything she's said about this and I've thought about her bank's comments. There is clearly conflicting evidence and testimony here from BMWFS and Miss W about who is responsible. I'm satisfied it's also possible that, rather than with Miss W or BMWFS, the 'fault' could lie with a third party, such as Miss W's bank.

Having thought about everything, I don't know what happened here. But, that being said, I'm satisfied I haven't seen enough to persuade me that BMWFS were at fault for the DD payments not resuming in November 2020.

Either way, I appreciate Miss W feels very strongly that the DD issue, and who is 'at fault', has a significant bearing on the case. She said, in summary, that it should not be treated as though she has arrears on the account, because she believes the situation is due to BMWFS not requesting payments. But I disagree here.

Whatever the reason the DDs weren't taken, the key point is that payments were not made towards the agreement and so it went into arrears. Whatever happened, I'm satisfied Miss W is still responsible for these amounts. So, I need to consider when Miss W would've been aware of the payments not being taken, and what then happened. It's also worth pointing out that, as the payments weren't taken, she hasn't lost out financially as she will have either kept the funds and had them available to settle the arrears, or spent them elsewhere.

Our investigator said Miss W should've been aware of the missed payments when they didn't leave her bank account, as this was a significant monthly commitment. I understand the point he's making here. And this might seem reasonable, given I'm satisfied, as above, that Miss W should've known the payments were due to start being taken again. But, I've also considered what else was sent to Miss W at the time.

A "*Notice of Sums in Arrears*" was sent to Miss W on 10 March 2021. Miss W says she believed from this that no action was needed from her. And I appreciate the front page says:

"Providing you are adhering to the deferral arrangements, you do not need to take any action in response to this Notice and we will report no negative impact on your credit file"

But, at this point Miss W wasn't paying towards the agreement. And this notice later makes this clear, as it shows a breakdown of the account with "*rejected Direct Debit*" listed nine times.

I can see from BMWFS' system notes that it tried to contact Miss W about the account on 17 March 2021 and 18 March 2021, including by phone and email.

On 25 March 2021 a statement was also sent to Miss W that detailed the missed payments and the rejected DD's.

I've carefully thought about all the points Miss W has made here. I think it's very possible she would've known in November 2020 or shortly after that the DD wasn't taken from her bank account. But, either way, I'm satisfied she should've been aware, from March 2021 at the very latest, that the DD hadn't been paid since November 2020 when it should have.

I've also carefully considered what Miss W said about her change of address. I appreciate she said she told BMWFS about this in September 2020. But I haven't seen enough to persuade me this was the case. BMWFS' system notes suggest Miss W told it about the change of address in September 2021, at which point it appears it was changed. So I don't think BMWFS did anything wrong here.

The next contact with Miss W happened in August 2021 where a further "*Notice of Sums in Arrears*" was sent. I agree with Miss W's point that there was a reasonably large gap in contact here, and I might have expected BMWFS to be in touch with her sooner.

That being said, I then need to consider what then happened. In summary, when Miss W was in contact with BMWFS about the arrears on the account, it appears BMWFS asked her for some further information in order to come to a repayment plan and explained the arrears needed to be made up.

I appreciate she disputes this, but I think it's most likely Miss W didn't engage with BMWFS in order to bring the account up to date. I say this as BMWFS' contact notes from the time appear to make it clear this was the case.

A default notice was issued, which wasn't met, and then the agreement terminated in January 2022. At this point the account was over £5,000 in arrears and no plan was in place to repay them. Given all of this, I don't think BMWFS acted unreasonably.

Credit record

Miss W has shown a screenshot of her 'payment history' for the account. It's worth pointing out here that this doesn't show all of the information a full credit report might contain and instead only shows payments either 'on time' or 'missed'.

This shows a 'missed payment' for May 2020. I'm satisfied Miss W was in a PD at this point. The Financial Conduct Authority ('FCA') issued temporary guidance for firms in April 2020 in relation to COVID-19 that explained:

"firms should not report a worsening arrears status on the customer's credit file during the payment deferral period"

I've also seen on BMWFS' contact notes that it appears it told Miss W it would remove adverse information from April 2020, as she told it she had originally requested a PD in March 2020, but it appears it didn't apply this logic to May 2020's payment, which doesn't seem reasonable.

Thinking about all of this, I'm satisfied Miss W's credit record should not reflect a missed payment for May 2020.

The FCA issued further guidance to firms in October 2020. Part of this explained that firms should:

"resume normal CRA reporting once all of a customer's payment deferral periods have come to an end"

So, BMWFS needed to report any arrears from when Miss W's PD ended. On the screenshot she provided, this shows 'missed payments' between July and December 2021. Miss W says this is incorrect, as the DD had started back up at this point.

Given the lack of detail on the screenshot, I can't say for certain. But, I think it's most likely what is showing here is the account being in arrears – which is accurate – rather than specific payments being missed during these months.

I take on Miss W's point that 'missed payments' aren't recorded for November 2020 to July 2021. And I don't know why this is. But, this doesn't change the fact that I think it's most likely the negative information following this period, that is recorded, is accurate.

Summary

In summary, I'm satisfied Miss W is responsible for the arrears on the account, whatever the situation with the DD. I'm satisfied she knew payments were due to be taken from November 2020. I'm satisfied she should've been reasonably aware in March 2021, at the latest, that payments weren't being made to the account. I'm satisfied it's most likely she then didn't engage with BMWFS in order to bring the account back up to date and so I'm also satisfied

BMWFS didn't do anything wrong when it sent a default notice and terminated the agreement.

I'm satisfied it's most likely the 'missed payments' Miss W has shown on her credit record from July 2021 correctly reflect that the account was in arrears. But, I don't think it's reasonable a 'missed payment' was recorded for May 2020. So, BMWFS should remove this.

My final decision

My final decision is that I uphold this complaint.

I instruct BMWFS to make sure Miss W's credit file doesn't reflect that a payment was missed in May 2020.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 2 October 2023.

John Bower
Ombudsman