

## **The complaint**

Mrs P is unhappy that BMW Financial Services (GB) Limited ("BMW") recorded missed payments on her credit file about her hire purchase agreement. She's also unhappy that they threatened to take legal action to recover the car and any outstanding debt.

Mr P brought this complaint to us on Mrs P's behalf. To keep things simple, I'll refer to Mrs P throughout this decision.

## **What happened**

In June 2019 Mrs P took out a hire purchase agreement with BMW for a car. The terms of this agreement required her to pay 35 monthly instalments of £318.24, followed by an optional "balloon" payment of £14,486.58 in July 2022.

Towards the end of June 2022 Mrs P contacted BMW to ask for a three-month extension. On 30 June 2022 they sent her a letter confirming the agreement had been extended until 1 October 2022.

Mrs P told us BMW tried to take the balloon payment from her bank account on 1 July 2022. She said she contacted BMW about this, and they advised her to cancel her direct debit instruction.

Mrs P told us her husband made numerous attempts to make the required monthly payments over the next few months, using BMW's automated payment system to pay by credit card. Only one payment went through successfully. Mrs P said after that the automated payment system kept saying no payment was due, so her husband eventually gave up trying.

On 20 September 2022 Mrs P contacted BMW again to ask about the possibility of a further three-month extension. BMW told us they sent her a form to sign to confirm she was happy to go ahead with the extension at the price they'd quoted, but they didn't hear anything more from her. Mrs P told us she believed the extension had been agreed.

Mrs P said things came to a head in February 2023, when an application she'd made for a credit card was declined. She was shocked to discover BMW had recorded on her credit file that she'd missed four months' payments.

Mrs P said her husband phoned BMW on her behalf to make a formal complaint. She said he demonstrated the problems with the automated payment system during this call, so BMW's call handler could hear the system saying no payment was due.

BMW issued their final response to Mrs P on 8 March 2023, saying they hadn't upheld her complaint. They said they'd never have been able to take credit card payments from someone else acting on her behalf. They said they felt they'd done all they could to assist her in making payments, and that they'd reported correct information on her credit file. Dissatisfied, Mrs P referred her complaint to our service.

After looking into what had happened, our investigator said she thought BMW had acted fairly and reasonably by recording the account as being in default. Although Mrs P was experiencing issues with the automated payment line, the investigator thought it would've been reasonable for her to make payments using the bank details BMW had given her – or to discuss it further with them.

Mrs P remained unhappy. She said BMW had initially accepted payment from her husband's credit card, but later couldn't do so. She said when he spoke to them about this they'd simply guided him back to the same automated system, suggesting he used a bank card instead of a credit card. She said they'd never told her that their collections team are unable to take payments from the automated line.

Mrs P asked for an ombudsman to review her complaint again - including looking into whether the agreement should've been extended.

### **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 that, I'm not persuaded BMW have done anything wrong in this case. I'll explain why.

BMW have provided a copy of the agreement Mrs P signed on 28 June 2019. This made it clear that the agreement would last for 36 months. It explained that Mrs P would be required to make 35 monthly payments of £318.24, with an optional final repayment of £14,486.59 payable one month after the rest of the repayments had ended.

I've reviewed BMW's letter to Mrs P dated 30 June 2022, confirming the agreement was extended for three months. It said her monthly payments of £318.24 would start on 1 July 2022 and would be collected on the same day of each subsequent month. The letter explained that the final balloon payment would now be £13,764.84 and would be due on 1 October 2022.

So, I'm satisfied Mrs P knew what monthly payments she was required to make whilst she had the car. And I've seen a copy of her account statement, showing payments were missed. I've also seen copies of letters from BMW to Mrs P dated 7, 14, and 21 August 2022; advising her that the account was in arrears by £636.48.

BMW have provided records showing they spoke to Mrs P or her husband on 25 August 2022 about the arrears on the account. These records show BMW's call handler explained that two monthly instalments were due, and the call was transferred to their automated payment line.

Mrs P's account statement shows only one payment of £318.24 was received after the original agreement period came to an end. This payment was made by card and was credited to the account on 26 August 2022. Having thought about what Mrs P has told us, I think it most likely that this payment was made using the automated payment line.

I'm satisfied that Mrs P knew a payment of £636.48 was needed to clear the arrears on the account at that time. So, I'm not persuaded that the payments were missed because BMW's automated payment line wasn't working properly.

Mrs P feels BMW's payment system hampered her husband's ability to make the required payments. She told us that he contacted BMW time and again about problems he was having with it - and that he eventually gave up.

I don't think that was reasonable. If Mrs P was having difficulties with the automated payment system, I think she could've used another method of payment. I've seen evidence showing BMW provided their bank details so she could pay by bank transfer. Alternatively, I think she could've asked them to reinstate her direct debit.

BMW have shown us a copy of an email they sent Mrs P on 18 September 2022, saying they'd been trying to contact her about the end of her finance agreement but hadn't heard from her. They said they assumed she'd decided to keep the car and would be taking the final repayment of £13,764.84 on 1 October 2022.

BMW have also provided a copy of a letter to Mrs P dated 28 September 2022 offering her a three-month extension until 1 January 2023. It isn't disputed that Mrs P emailed BMW on 3 October 2022 saying she hadn't received any documents about the extension. BMW's records show they re-sent their letter to Mrs P by email and post the following day. Mrs P says she assumed this documentation was the confirmation of the extension that she'd requested.

I find BMW's letter and covering email sent on 4 October 2022 to make it clear that Mrs P needed to sign and return the enclosed form; or reply by email to confirm she was happy to go ahead with the extension at the price quoted. As I've seen no evidence to show she did this, I'm not persuaded that BMW did anything wrong by treating the agreement as coming to an end - and the final balloon payment of £13,764.84 as being due.

I've seen copies of letters from BMW to Mrs P dated 6 October 2022, 25 October 2022, and 25 December 2022. I'm satisfied that each of these letters told her she was in arrears by £14,401.32 and provided various payment options.

I've also seen a copy of the default notice BMW sent Mrs P, dated 6 January 2023. This explained the action BMW would take if she didn't pay the arrears before 26 January 2023 – including terminating the agreement, taking steps to recover the amount due, repossessing the car, and recording a default on her credit file.

BMW's records show Mrs P's husband called them on 6 February 2023 - and while he was on the line he demonstrated the automated system telling him no payment was due. Mrs P feels strongly that this proves there was a fault. I'm not persuaded that it does. I think the automated system may no longer have been able to accept payment because the deadline specified in the default notice for settling the arrears had passed.

But even if there was a glitch with the automated payment system, I'm satisfied that BMW had very clearly told Mrs P how much she owed and provided her with several different payment options at least three months before their final deadline of 26 January 2023. So I think she could've used another method of payment.

I'm satisfied that the payments were missed, and I'm not persuaded that this was due to any error by BMW. I think it was fair and reasonable for BMW to treat the account as being in default. And as they're required to record accurate payment information on Mrs P's credit file, I won't be directing them to do anything different.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 16 February 2024.

Corinne Brown  
**Ombudsman**