

## The complaint

Mr O is unhappy that BMW Financial Services (GB) Limited ('BMWFS') reported missed payments to the credit reference agencies ('CRAs') on a hire purchase agreement he had with them.

## What happened

In September 2016, Mr O was supplied with a new car through a hire purchase agreement with BMWFS. He paid an advance payment of £13,462.20 and the agreement was for £38,642.20 over 48 months; with 47 monthly payments of £448.19 and a final payment of £24,868.89 if Mr O wanted to keep the car.

On 23 March 2020, Mr O contacted BMWFS as his income had been affected by the coronavirus (Covid-19) pandemic. Following this discussion with BMWFS, Mr O made an agreed reduced payment of £100 a month between April and June 2020, before resuming full payments in July 2020. However, no arrangement was put in place for the £1,044.57 of payments Mr O missed during this period, and BMWFS reported this to the CRAs as arrears.

The agreement came to an end in September 2020, with the £1,044.57 still outstanding. It wasn't until February 2021 that Mr O paid this.

In October 2020, after returning the car to BMWFS, they charged Mr O £629.47 for mileage he'd done in excess of what was allowed under the agreement; and £249 for damage to the car that fell outside of normal wear and tear. Mr O paid £20 in March 2021, £20 in April 2021, and settled the outstanding amount in May 2021.

In 2022, Mr O applied for a remortgage and discovered BMWFS had reported arrears to the CRAs. He was also unhappy that the information being reported by the CRAs wasn't consistent. So, he complained to BMWFS. They said they'd reported factually correct information to the CRAs, so they didn't think they'd done anything wrong. But they did say they would ask the CRAs who were showing incorrect information to amend this.

Mr O wasn't happy with this response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said the Financial Conduct Authority's ('FCA') guidelines on support to customers who'd been affected by Covid-19, published in April 2020, was clear that any temporary payment deferral shouldn't be recorded as arrears. And the investigator thought that what Mr O had agreed with BMWFS in March 2020 fell under these guidelines, so BMWFS should've retrospectively applied the guidelines, and not reported arrears.

The investigator also said BMWFS didn't make any arrangements for Mr O to repay the £1,044.57 deferred payments, either during the remainder of the agreement, or once it ended. So, the investigator thought BMWFS should amend Mr O's credit file to remove any arrears relating to the £1,044.57 deferred payments.

With regards to the end of contract charges, the investigator said he hadn't seen anything to show these charges weren't due. So, he thought it reasonable that BMWFS reported arrears for the period this amount remained outstanding, and the agreement shouldn't be showing as settled until May 2021 when Mr O cleared the outstanding balance.

Finally, the investigator said that, while he'd seen no evidence that Mr O hadn't been able to remortgage, or had received less favourable terms, because of what BMWFS were reporting; it would still have come as a shock to Mr O to find out BMWFS had been incorrectly reporting arrears, and this would've caused him some shock. So, the investigator said BMWFS should pay him £100 compensation to reflect this.

Mr O didn't agree with the investigator. He said that, while he accepted the excess mileage charges, he disputed the damage charges. The investigator explained that, as this wasn't something Mr O raised when he brought his complaint to us, it wasn't something we've looked into.

Mr O was also unhappy the investigator recommended that BMWFS should report arrears for the end of contract damage charges, from when they were invoiced until when they were paid. So, he's asked for an ombudsman 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 O was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Mr O first contacted BMWFS to explain how his income had been affected by Covid-19 on 23 March 2020. Which was around a month before the FCA issued their guidelines about how affected customers should be treated. As such, I don't think BMWFS did anything wrong by making a three-month temporary arrangement of £100 a month. However, once the guidance had been published, I would've expected BMWFS to have applied this to Mr O.

This means that BMWFS shouldn't have reported the partially deferred payments as arrears. What's more, I would've expected them to have contacted Mr O once he resumed making full payments. Given the short-term remaining on the agreement, it wouldn't have been reasonable for BMWFS to have expected Mr O to clear the deferred payments over the remaining term, and I would've expected them to extend the agreement by three-months, continuing to collect payments so as to clear the deferred payments.

However, BMWFS didn't do this. Instead, they reported the deferred payments as arrears. And they made no attempt to arrange repayment of the deferred payments with Mr O. So, I think they should do something to put things right.

With regards to the end of contract charges, Mr O has accepted the excess mileage charge is due. However, I haven't seen anything that shows me the damage charges shouldn't have been charged.

BMWFS's case notes show that Mr O raised the issue of the damage charges with them on 17 November 2020. And they responded to his complaint on 15 February 2021, saying the charges were payable. If Mr O was unhappy with this response, he had six months in which to raise his complaint with us. And he didn't do so. As such, the damage charges aren't something we have the power to consider. So, I won't be asking BMWFS to amend or waive this charge.

### **Putting things right**

As I've said above, BMWFS shouldn't have reported the deferred payments as arrears, so I'd expect them to remove these from Mr O's credit file. However, the end of contract charges were invoiced on 21 October 2020, and it's reasonable to allow Mr O a month to pay these. As he didn't do so, and as these formed part of the agreement he entered into with BMWFS, it's reasonable that BMW record these as arrears from December 2020, until the payment was made in May 2021.

What's more, as these final payments due under the agreement weren't paid until May 2021, it's also reasonable that BMWFS report the agreement as being open until then. So, I'd expect BMWFS to make the necessary amendments to Mr O's credit file to reflect these changes.

Finally, it's clear that Mr O was shocked when he found out BMWFS had been incorrectly reporting arrears. While I've not seen any evidence that this has impacted his remortgage application, I still think BMWFS should compensate him for this. The investigator had recommended BMWFS pay him £100, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, BMWFS should update Mr O's credit file:

- to remove any arrears relating to the deferred payments from April to June 2020;
- to show the arrears for the end of contract charges from December 2020 to May 2021;
- to show the settlement date of the agreement as May 2021; and
- pay Mr O an additional £100 to compensate him for the shock and inconvenience caused by their incorrect reporting of his arrears.

### **My final decision**

For the reasons explained, I uphold Mr O's complaint about BMW Financial Services (GB) Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 7 December 2023.

Andrew Burford  
**Ombudsman**