

The complaint

Mr K has complained about the way BMW Financial Services (GB) Limited (BMWFS) administered a hire purchase agreement.

What happened

In June 2015 Mr K entered into a four-year hire purchase agreement with BMWFS to acquire a new car. The car cost around £38,700 and Mr K was required to make monthly repayments of around £600 followed by an optional final payment of around £12,000. The agreement came with an 18,000 mile a year mileage limit. Excess miles were charged at 8.76pence per mile.

I understand Mr K decided to hand the car back early, after around three years. From what I've seen, the car was handed back with around 76,000 miles, which was around 22,000 more than the limit. BMWFS sought to charge him around £1,900. This amount wasn't paid. Mr K wrote to BMWFS in August 2021 and explained he'd been in financial difficulties. BMWFS responded to say it would accept around £1,000.

Mr K said he wrote to BMWFS throughout 2021 (and 2022) to try to come to an arrangement to pay the outstanding balance but didn't receive a response. Mr K decided to refer his complaint to the Financial Ombudsman to consider along with another complaint against BMWFS that's been dealt with separately.

BMWFS said it wanted to apologise the complaint about the excess mileage was missed and offered £75 compensation. Our investigator tried to mediate a settlement between the parties. Mr K was unhappy negative data was recorded on his credit file in relation to the outstanding amount. He ultimately requested to pay of the balance; removal of adverse information from his credit file from 2021; an apology/compensation in recognition of the impact on him.

Our investigator looked into things and said BMWFS could have done more to make sure it was communicating with Mr K properly. He noted Mr K had made various attempts to email BMWFS about the outstanding balance and couldn't see BMWFS had shown it sent responses to those emails. But he also said Mr K ought to have taken reasonable steps to minimise the impact of BMWFS' mistake so he thought there may have come a point where it would have been reasonable for Mr K to seek to try a different contact method. In summary, our investigator said the £75 offer of compensation was fair, and that BMWFS should accept payment over three months under a payment plan.

Mr K didn't agree, he said he felt like email was an acceptable form of communication, particularly seeing as though he was previously communicating with BMWFS using the same method. He reiterated he was unhappy BMWFS didn't respond to him. He also highlighted his credit file should be updated and that it shouldn't show two years of missed payments when he was willing and ready to agree to a payment plan in 2021. He also highlighted the compensation wasn't sufficient, and that he'd been put to substantial distress and worry. I understand that since then Mr K says he settled the outstanding amount and

that, while it took longer than he'd hoped, BMWFS reset his credit file to reflect the correct status. He said it took several emails to resolve things.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr K and BMWFS that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr K acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

By the looks of it, Mr K said his credit file is now showing as correct. And BMWFS said it would be able to remove adverse information once the balance was paid. So I don't think I need to make further directions in relation to BMWFS amending the credit file. Mr K also hasn't shown us he was caused any financial losses or provided supporting evidence of other detriment caused as a result of adverse information having been recorded. But if that's not right, or if Mr K is still unhappy with what's being reported, he can let us know in response to this provisional decision.

What's left to decide is whether BMWFS needs to do anything else to put things right. I appreciate Mr K is unhappy with the level of compensation. He thinks it doesn't go far enough to reflect the distress and worry that was caused, over a prolonged period. On the one hand, it doesn't seem to be in dispute that matters should have been resolved a long time ago. Mr K has sent us several emails he sent from 2021 and 2022 that he says weren't responded to. It looks like Mr K was making attempts to resolve things. It must have been frustrating and confusing not to have received a direct response.

But on the other hand, BMWFS also tried to contact Mr K, albeit sometimes by a different contact method. And Mr K could have made attempts to contact BMWFS by a different method when he wasn't receiving a response.

Putting all that to one side though, I think what I do have to bear in mind is that not only has BMWFS offered Mr K £75 for not covering off all the elements of his complaint when it should have done, but it also offered to reduce Mr K's outstanding excess mileage bill by around £900. While I appreciate that preceded the more recent complaint, based on the evidence I've seen, that money was fairly owed under the agreement. Mr K had covered a significant number of excess miles, and there were provisions in the hire purchase agreement for that sort of scenario. Ultimately the car was returned and it likely would have achieved less through resale because of the higher mileage. I do need to take that into account when deciding what BMWFS needs to do.

Looking at things holistically, BMWFS has effectively compensated Mr K around £1,000 through initially reducing the excess mileage charge by around £900 and later by offering £75 compensation. As Mr K has pointed out, this level of compensation acknowledges the impact of substantial distress, worry and upset over a reasonably long time and it has taken into account the disruption and need for Mr K to put in extra effort to sort things out. I therefore believe it's in line with the guidance on our website for consumers and businesses on fair compensation, and I don't have the grounds to direct BMWFS to increase it.

As I said above, if I've misunderstood something, Mr K can let us know in response to this provisional decision. Otherwise, if Mr K is happy things are now broadly resolved, I'm glad he's able to draw a line under things.

BMWFS accepted the decision. Mr K had further points to submit. He said, in summary:

- BMWFS updated his credit file to show the agreement was paid under a payment plan. But this took longer than expected and it has not reset it back to where he thinks it should have been in 2021. He said BMWFS is able to amend his credit file to reflect when he wanted to settle the agreement.
- BMWFS have not removed adverse information. It has just reflected the account status correctly since the payment was made last year.
- He has evidence of mortgage in principle applications being declined and his credit history being poor with the only negative mark being the BMWFS missed payment.
- The situation caused significant detriment both to Mr K personally and through less favourable rates of financial products.
- The reducing of the debt isn't relevant. Mr K said he always believed he owed BMWFS money, and it shouldn't be used as a counter argument or positive mark for BMWFS.

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'd like to thank the parties for their responses. I've set out my reasoning for why I think it's fair to look at the compensation and reduction in amount owed under the agreement together. I'm not going to go over that again. Mr K hasn't shown us sufficient evidence he's suffered a financial loss as a direct result of BMWFS' actions so I'm not going to direct it to reimburse him in relation to any alleged financial losses. I think the main thing in dispute is how the agreement is being reported on his credit file.

BMWFS said to our service previously it would agree to allow Mr K to pay his excess over three months. It said *we would not be able to remove any adverse until after this is paid*. It went on to say *If this is set up as a three-month payment plan then it would record as a payment plan on his file. But the adverse would reoccur monthly, so it is an action that would need to be removed after the excess mileage is paid*. Mr K has now paid the sum owed. So, as per its previous comments, BMWFS should now be able to remove adverse information, if applicable.

The reporting should be accurate as well as fair, so I don't think I can fairly direct BMWFS to backdate the actual date Mr K paid off what was owed. The relevant guidance says the record should be closed and marked as partially settled if the lender accepts final settlement of the account for less than the balance outstanding. I think that is what has happened here.

I therefore think it's fair for BMWFS to mark it as partially settled if required. But, on balance, I don't think it's fair for BMWFS to continue to report monthly adverse information during the period Mr K was seeking to repay the debt and BMWFS wasn't responding to him. So, for the avoidance of doubt, if there's any adverse information recorded from November 2021 (when BMWFS agreed to reduce the outstanding balance) up to when he settled the debt, this should also be removed.

My final decision

My final decision is that I uphold this complaint and, to the extent it's not done so already, direct BMW Financial Services (GB) Limited to pay Mr K £75. It should also remove any adverse information recorded on Mr K's credit file from November 2021 up to the point it was settled.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 23 May 2024.

Simon Wingfield
Ombudsman