

The complaint

Mr D complains that BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS) terminated his hire purchase agreement and won't reinstate it.

What happened

In November 2022, Mr D was supplied with a car through a hire purchase agreement with BMWFS. The amount of credit was for around £11,561 and the duration of the agreement was 49 months; with 48 monthly payments of £209 followed by an optional final repayment of £6,383 should he decide to keep the car.

In March 2023, Mr D's direct debit payment was rejected. It was recalled successfully shortly after, but from April 2023 onwards Mr D's agreement fell into and remained in arrears. This led to BMWFS defaulting and terminating the agreement in November 2023.

Mr D contacted BMWFS in January 2024 after receiving communication about the repossession of the car. He said he didn't receive the default notice, or any of BMWFS's letters about the arrears, as he was working away from July 2023 and his mail hadn't been forwarded to him. He also said the emails BMWFS sent him about the arrears went into his junk mail. Mr D asked BMWFS to reinstate his agreement and he would settle the arrears in full, but they didn't agree.

Our investigator reviewed matters and didn't think BMWFS had acted unfairly by terminating Mr D's agreement. They said BMWFS sent sufficient notification of the arrears at regular intervals and offered to set up an affordable payment plan to help Mr D bring the agreement back up to date. They asked BMWFS if they would consider reinstating the agreement, given Mr D says he's now able to pay the arrears and maintain the monthly repayments. BMWFS suggested they could look into this again, subject to an up-to-date income and expenditure. The investigator told Mr D he would need to contact BMWFS directly to discuss this further.

Mr D said he'd had trouble reaching BMWFS to discuss the possibility of reinstatement. The investigator explained they were unable to ask BMWFS about this as this would be a commercial decision for BMWFS to make. The investigator maintained they didn't think BMWFS terminated the agreement unfairly.

As no agreement has been reached, the matter 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 have 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 affects what I think is the right outcome.

In considering this complaint I've taken into account 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 D was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The terms of the agreement say BMWFS can terminate the agreement early, and repossess the car, if Mr D fails to maintain payments. Mr D signed this agreement in November 2022, so I'm satisfied he was aware of the same.

Mr D's account initially fell one month in arrears in March 2023. Later, in June 2023, he told BMWFS he was struggling financially. In instances of financial difficulties, financial businesses are expected to treat customers with forbearance and due consideration. There's not a defined list but examples may include an affordable payment plan, accepting reduced payments, deferring payments or freezing interest. So, I've thought about how BMWFS handled Mr D's agreement generally, as well as their decision to default Mr D's agreement when they did. Having done so, I find them to have acted as I'd expect in the circumstances. I'll explain why.

To provide appropriate support, forbearance and due consideration to Mr D, I would expect BMWFS to gain a greater understanding of his financial circumstances. This is usually achieved by reviewing a consumer's incoming and outgoing expenses. Here, BMWFS's contact notes show Mr D informed them of his change in employment, which put him in financial difficulty, in June and August 2023. They offered to consider an affordable payment plan on the receipt of an affordability check. I think this was reasonable, as it would've allowed them to ensure the plan was affordable and wouldn't put Mr D in a worse position financially. However, I can't see it was sent back by Mr D to BMWFS despite their later unsuccessful attempts at calling him.

BMWFS's contact records show they contacted Mr D by phone, email and letter regularly from May 2023 onwards, with minimal engagement from Mr D in return. The emails and letters sent reiterated the account was in arrears, signposted Mr D to debt advice charities and informed him of what will happen if the account wasn't brought up to date.

BMWFS were able to speak to Mr D in August 2023 and he made a payment of £209 that day. But that payment didn't cover the arrears in full (around £420) and he told BMWFS the next direct debit payment would be rejected. The call notes say he was advised of the risk of defaulting if the arrears continued and they'd be sending him an open banking invite to look at a possible payment plan – which I can see from BMWFS's internal records was sent to him that day. So, I'm satisfied it was made clear to Mr D that he needed to take action and if he didn't, the account was at risk of defaulting. It's also noted that Mr D told BMWFS he was dealing with a debt charity. But following this call, there is no record of any further contact from either Mr D or the debt charity.

The Information Commissioner's Office (ICO) sets out industry best practice for dealing with defaults. This says a financial business can register a default once an account is three months in arrears and should be applied by the time an account is in arrears for six months.

BMWFS decided to issue a default notice in October 2023. At that point the arrears balance was the equivalent of three monthly payments, and the account had been in arrears for six months. So, it was clear the monthly payments were no longer affordable. Due to the lack of contact with Mr D, BMWFS had no way of knowing how long he was likely to have been unable to maintain the repayments, and I wouldn't expect them to allow this to go on indefinitely given this would've only worsened Mr D's financial situation. Based on what I've

seen, there was no indication Mr D was in the financial position to bring the account back up to date within a reasonable period of time.

BMWFS attempted to call Mr D multiple times before issuing the default notice. The default notice made it clear what needed to be paid, by when, and what would happen if the notice wasn't satisfied. BMWFS also called him after the deadline for the payment had been missed, and followed this up with an email giving him a further couple of days to satisfy the default before they went ahead with the termination of the agreement. Despite this there is no evidence the notice was satisfied nor any response from Mr D – so I can't say BMWFS acted unfairly by proceeding to terminate the agreement.

Mr D says he didn't receive the letters that were sent to his home address because he was away, and the emails went into his junk mail. And BMWFS's contact notes show they were unable to reach Mr D by phone due to the number they held for him being unobtainable. However, I can't say BMWFS was at fault for this. Ultimately, the onus was on Mr D to update BMWFS with his correct contact details as required by the terms of the agreement. Their obligation is to make sure correspondence is sent, I can't reasonably hold them responsible if it was delivered to Mr D's junk folder and he didn't check it. BMWFS also told Mr D the number they held for him was invalid, and there is no evidence of him providing them with his correct contact number.

I'm persuaded it's more likely than not that Mr D received at least some of the emails and he was fully aware the agreement was in arrears. This is because he did have some calls with BMWFS to discuss his situation and the agreement, which followed very shortly after emails were sent by BMWFS. Following the call in August 2023, Mr D made no contact with BMWFS until January 2024, after the agreement had already been terminated.

With the above in mind, I'm satisfied BMWFS made reasonable attempts to offer Mr D forbearance and due consideration. I find they acted fairly and in line with the agreement terms in defaulting the agreement when they did. His arrears were getting worse, it was unknown when Mr D would be in the financial position to maintain the monthly payments and their attempts at contacting him to come to some sort of agreement on a way forward had been unsuccessful.

When Mr D contacted BMWFS in January 2024, he asked BMWFS to reinstate the agreement if he cleared the arrears, but they didn't agree. I know this would've been disappointing for Mr D, but BMWFS are not contractually required to do this after the agreement has been terminated. I'd also note around this time, Mr D provided a budget document that was produced by a debt charity in November 2023, which showed a significant deficit on his income and expenditure. So, I can understand BMWFS's position on this, given the evidence available didn't show it was affordable for Mr D to settle the arrears and maintain monthly payments moving forward.

Since the case was referred to the Financial Ombudsman, BMWFS have suggested it may be possible to consider reinstating the agreement, on receipt of up-to-date income and expenditure information to establish affordability. However, I'm not aware of Mr D providing this to BMWFS. In any event, this isn't something I'd look to give a finding on here, as the decision would be entirely at the discretion of BMWFS. I can't compel BMWFS to reinstate the agreement as they aren't contractually obliged to do so.

I'm really sorry to learn of the situation Mr D has found himself in, the difficulties he's faced and the impact this has had on him and his family. I know this will come as a disappointment to him but ultimately, I don't find BMWFS acted unfairly when terminating Mr D's agreement, so I won't be asking BMWFS to do anything more.

It's not clear if Mr D still has the car or if he's been making payment towards the agreement. I'd urge him to speak to BMWFS to come to an agreement on a way forward. If he's not been paying towards the agreement, the arrears will be substantial. I'd remind BMWFS to treat him with forbearance and due consideration if he's still in financial difficulties.

My final decision

For the reasons explained, I don't uphold Mr D's complaint about BMW Financial Services (GB) Limited trading as ALPHERA Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 March 2025.

Nicola Bastin
Ombudsman