

## **The complaint**

Mr C complains BMW Financial Services (GB) Limited didn't do enough when a third party attempted to, and succeeded in, taking over their account.

## **What happened**

Mr C says he's taken out a number of finance agreements with BMW over the years including one he took out in June 2022.

At the beginning of April 2023 Mr C says he received a letter from BMW confirming that it had changed his contact details. Mr C says he had his identity stolen several years ago, and it started like this. So, he called BMW to find out what was going on and why additional security that he'd set up hadn't helped and what it was going to do to put matters right.

BMW looked into what had happened and into Mr C's complaint and ultimately said that the extra security question had now been added and that it couldn't load an identity theft marker onto CIFAS as his identity hadn't actually been stolen during the interaction in question. BMW said Mr C could purchase a protective registration from CIFAS if he thought that would help. Mr C wasn't happy with BMW's response. He wanted a transcript of the call between BMW and the third party – so he could understand what personal details had been compromised – and he still wanted BMW to register the fact that he'd been the victim of identity theft on CIFAS. He said another business – who had also allowed his identity to be stolen around the same time and who I'll refer to as "V" in the rest of this decision – had applied a "red flag" to CIFAS to protect him and that BMW should do the same. He also wanted assurance from BMW that it had improved its processes, and compensation. So, he referred his complaint to our service.

One of our investigators looked into Mr C's complaint and said that BMW had accepted that it hadn't asked the additional security question but had taken steps to make sure that wouldn't happen again. So, they didn't think they could ask BMW to make changes to its processes, and that an award of £100 was fair in the circumstances. Our investigator also agreed that BMW hadn't acted unfairly when it said it wouldn't load a marker onto CIFAS for the reasons it had given. Mr C wasn't at all happy with our investigator's recommendations, saying that he'd brought a complaint about another business that had done the same thing – in other words, V – and had been awarded £250. He also said that V had loaded a marker onto CIFAS, demonstrating that it could be done. He asked for £250 in compensation and acknowledgement that a CIFAS marker could have been loaded. In the circumstances, he asked for his complaint to be referred to an ombudsman for a decision. Mr C's complaint was, as a result, passed onto me.

## **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.

Last month I issued a provisional decision that I invited both parties to comment on. BMW didn't reply. Mr C – who I spoke to – shared his thoughts with me and said he was happy to

accept whatever outcome I proposed.

In that provisional decision, I said the following:

*"I accept that Mr C has been a victim of identity theft in the past, and I can see that he'd agreed with BMW that he'd be asked additional security questions as a precaution. BMW accepts that it didn't do so when a third party had called. BMW has explained why those additional questions weren't asked, and the steps that it has since taken to make sure they will be in the future. Our investigator thought that the explanation BMW had given and the steps it had taken were fair and reasonable, and I agree. But on two points Mr C doesn't agree – namely the compensation that he should get and whether BMW could have done more. I'll say what I think about both of these points next.*

*Mr C says that V applied a "red flag" to CIFAS having accepted that it had allowed his identity to be stolen and that BMW should do the same. He's told us that he believes a business applying a marker carries more weight than an individual paying CIFAS for "protective registration". BMW's response to Mr C's request was to say that his identity hadn't been stolen so this wouldn't be an appropriate thing to do, and that if he was concerned he should pay CIFAS for "protective registration".*

*In this case, I don't think BMW's response was helpful. It's true that the loans in question were taken out by Mr C, but I don't think that's the point here. The point is that the third party managed to get into Mr C's account and get all of his contact details changed. In other words, to take over his account. Had Mr C not taken action – when he received a letter saying his contact details had been updated – there's a good chance that the third party would have gone on to attempt to take out loans and other products. Indeed, at the end of the call – which I've listened to – the third party asks about whether, for example, he can take out further borrowing under the existing loan.*

*Taking over an account is often the first step to taking out fraudulent loans etc. I do think it would have been helpful had BMW asked Mr C to explain what he meant by a CIFAS "red flag". I've now done that, and asked Mr C to send me a copy of what has been recorded on CIFAS. He's sent me details from his credit report that show V has recorded a "facility takeover fraud" marker on CIFAS. I can see that Mr C has also paid for "protective registration". So, I do think BMW could have done more. I don't necessarily agree that BMW adding a second "facility takeover fraud" marker in addition to the "protective registration" would have provided Mr C with any additional protection, but I do accept that BMW's apparent unwillingness to take matters seriously has caused Mr C upset on top of that caused by the third party attempting to steal their identity.*

*In response to our investigator's recommendation of £100 compensation, Mr C said that he expected £250 as that's what another investigator who looked into his complaint against V awarded. A recommendation he accepted. I've explained to Mr C how our awards work, and why we wouldn't necessarily award £250 in compensation in relation to a complaint simply because that's what we've awarded in relation to another complaint. I've explained that any compensation we award is based on the impact the business' mistake had on the consumer.*

*In a case like this that also means distinguishing between the impact the fraudster's actions have had on the consumer – for which it wouldn't be fair to hold the business liable – and how much additional upset the business has caused on top of that."*

Having reconsidered everything again, the above remains my view. In other words, I

remain of the view that BMW could and should have done more in this case and that it caused Mr C additional distress and inconvenience. So, the only other question I have to decide is how to put things right.

### **Putting things right**

In my provisional decision, I said the following about putting things right:

*“I agree that BMW could have handled things better in this case and should have at least explored what else it could have done to protect Mr C. I don’t think a second “facility takeover fraud” would have made much of a difference. But I do think it would have been better had BMW acknowledged this as an option. Mr C has instead been caused additional upset – as a result of BMW not asking the additional questions it had agreed to ask and not taking the matter as seriously as it could have done. For that I agree that £250 is fair compensation.”*

Having reconsidered everything, I remain of the view that £250 is fair compensation in this complaint. So, that’s the award I’m going to make.

### **My final decision**

My final decision is that I’m upholding this complaint and require BMW Financial Services (GB) Limited to pay Mr C £250 in compensation.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 16 July 2024.

Nicolas Atkinson  
**Ombudsman**