

The complaint

Mr P is unhappy that BMW Financial Services (GB) Limited trading as MINI Financial Services ('BMWFS') recorded a default on his credit file, in relation to a car they had supplied to him under a hire purchase agreement.

What happened

In December 2018, Mr P was supplied with a new car through a hire purchase agreement with BMWFS. He paid an advance payment of £299, and the agreement was for £19,848 over 48 months; with 47 monthly payments of £312.70 and an optional final payment of £6,683.09.

Mr P fell behind with payments and BMWFS sent him a Notice of Sums in Arrears ('NOSIA') in December 2019 and May 2020. In September 2020, because Mr P's income had been affected by the coronavirus (Covid-19) pandemic, BMWFS granted him a three-month payment deferral (also known as a payment holiday).

A NOSIA for October 2020 explained that Mr P was two payments in arrears, which had increased to four payments when another NOSIA was sent to Mr P in March 2021. Mr P had reduced the arrears to three payments when the next NOSIA was sent out in September 2021. The arrears increased again to four payments when another NOSIA was sent in February 2022, but had reduced to three payments by May 2022.

Mr P obtained a Debt and Mental Health Evidence Form, completed by his GP, in March 2022. This explained that Mr P was suffering from a mental health condition. However, he didn't provide BMWFS with a copy of this form until July 2022.

BMWFS issued a default notice on 8 June 2022, at which point Mr P was back to four payments in arrears. In this they advised him that, if the arrears weren't cleared or if he didn't contact them to discuss his options, then they may register a default on his credit file and terminate the agreement. Mr P didn't take any action and the agreement was terminated in June 2022, with a default being registered.

BMWFS didn't recover the car from Mr P and, although the outstanding debt was passed to a third-party debt collection agency and then solicitors, Mr P made payments towards this. The debt was cleared in full in May 2024.

Mr P complained to BMWFS. He didn't feel they had taken his mental health condition into consideration, and he felt discriminated against. He said that the situation he found himself in had triggered further mental health episodes and that the default BMWFS registered is having a long-term effect on his financial situation and is stopping him from being able to get a mortgage with his preferred lender and move home to within the catchment area of his preferred school for his children. To resolve his complaint, he would like the default removed from his credit file.

Our investigator didn't think BMWFS had treated Mr P unfairly when they issued the default, as Mr P was in arrears at the time, and these arrears had been longstanding. However, the

investigator thought BMWFS could've explained things more clearly to Mr P, which added to Mr P's distress. They also delayed in updating his credit file after the agreement had been cleared in full. So, the investigator recommended that BMWFS pay Mr P £75 compensation for the distress and upset he'd been caused by this.

Mr P didn't agree with the investigator's opinion. He explained the ongoing impact of the default on his ability to obtain mortgage finance with his preferred lender, and said that he didn't want any financial recompense, only the removal of the default. So, he asked that this matter be passed to an ombudsman 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'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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 P 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.

Based on what I've seen, I'm satisfied there are two elements to this complaint – the registration of the default notice, and how BMWFS have communicated with Mr P.

the default notice

I've seen BMWFS's case notes and the majority of the NOSIAs and arrears letters they sent Mr P. From these it's clear that he was in long-term arrears, being between two and four payments in arrears since at least October 2020. For clarity, these arrears didn't include the three deferred payments BMWFS agreed to in September 2022. The letters BMWFS sent to Mr P were clear in the amount of arrears, and that Mr P was expected to repay these / contact them to discuss the situation. However, as I've said, he didn't do this.

In a situation like this, I would expect BMWFS to issue a default notice when the arrears were between three and six payments behind, and this is what they did in June 2022. While it's arguable that BMWFS could've issued this earlier, for example in March 2021 when the arrears stood at four payments, given that the arrears balance was fluctuating, I don't think it was unreasonable of BMWFS not to do this earlier.

When BMWFS issued the default notice, they explained to Mr P the actions he would need to take to stop any future action – repay the arrears or contact them to discuss the situation. It's not disputed that, due to suffering a mental health episode at the time, Mr P was unable to do this. But, crucially, BMWFS were unaware of this – in March 2022 Mr P had the Debt and Mental Health Evidence Form signed by his GP, but he didn't provide BMWFS with a copy of this until July 2022, after the default and termination had happened.

As such, I can't say BMWFS acted unfairly by not taking into consideration circumstances they were unaware of at the time. And I think they acted reasonably by defaulting and

terminating the agreement due to the long-standing arrears and the general lack of contact from Mr P about this.

As such, and while I appreciate it will come as a disappointment to Mr P, I won't be asking BMWFS to remove the default. In saying this, I have also considered the impact Mr P has explained due to him not being able to obtain a mortgage from his preferred lender. However, I haven't seen anything to show me that his preferred lender won't provide a mortgage solely because of the default, and there aren't any other factors involved in this decision i.e. the longstanding arrears on the agreement with BMWFS before the default was issued. What's more, as different lenders have different criteria, this doesn't mean that Mr P wouldn't be able to obtain a mortgage from a lender other than his preferred one.

correspondence from BMWFS

Both Mr P and BMWFS have provided details of the correspondence between them, and this was also detailed in depth in the investigator's opinion. As such, and as this is well known to both parties, I won't repeat this here. However, for the reasons already given, I am satisfied that BMWFS were clear in their correspondence about the arrears and the default notice. As such, I won't be directing BMWFS to remove the default from Mr P's credit file as a result of any shortcomings in their communication with him after the default was registered.

It wasn't until after the default and termination that Mr P started any meaningful communication with BMWFS about the arrears situation and the outstanding balance. I note our investigator recommended BMWFS pay Mr P £75, to recognise the above detailed distress and inconvenience he was caused by this communication. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward. So, this is a payment I'm directing BMWFS to make.

Therefore, BMWFS should pay Mr P £75 to compensate him for the distress and upset caused by their communication with him after the agreement had been terminated. (BMWFS must pay this compensation within 28 days of the date on which we tell them Mr P accepts my final decision. If they pay later than this date, BMWFS must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires BMWFS to take off tax from this interest, BMWFS must give Mr P a certificate showing how much tax they've taken off if he asks for one.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 April 2025.

Andrew Burford
Ombudsman