

The complaint

Mr F complains that he was misled when he took out finance with BMW Financial Services (GB) Limited trading as BMW Financial Services ('BF').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr F took out a car finance agreement with BF at the end of October 2023.

In February 2024 Mr F called BF about the direct debit payments funding the agreement. He told it that the direct debit should not be coming out of his account but a family member, whom the car was for.

Because Mr F took out the finance for someone else BF wrote to Mr F to say he was in breach of the terms of the agreement. Mr F says he liaised with BF to resolve the issue but BF terminated the agreement anyway and marked it as defaulted.

Mr F is still using the car but says he has been treated unfairly because the dealer that arranged the finance ('the broker') advised him that financing the car for his family member was not a problem. He would like BF to put things right which would include amending his credit file to remove adverse information.

Our investigator upheld the complaint. He said BF should take back the car, remove adverse information and compensate Mr F.

BF and Mr F agreed with aspects of our investigation outcome but not everything. BF made an offer to Mr F which he rejected. So the matter has now come to me for 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. This includes the FCA Consumer Credit Sourcebook (CONC). The FCA Principles for Businesses (PRIN) which state (amongst other things) that '*a firm must pay due regard to the interests of its customers and treat them fairly*' and '*a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*'. And the FCA's Consumer Duty, which sets high standards of consumer protection across financial services and (amongst other things) requires firms

such as BF to give customers the information they need, at the right time, and in a way they can understand – so that they can make informed financial decisions

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Furthermore, via Section 56 of the Consumer Credit Act 1974 BF is responsible for representations made by the broker during the sale of the finance agreement.

It isn't possible to know exactly what was discussed when the broker sold the finance agreement to Mr F. So I need to rely on testimony and circumstantial information to decide what is most likely to have occurred in the particular case.

My starting point is that Mr F's submissions are detailed and consistent. He has explained he went to the dealer looking for a car for his family member who had returned from living abroad for about a year. However, because of their time away, this had impacted their credit history and ability to get finance. Mr F says the broker explained that he would have to take the finance out in his name instead – but Mr F's family member could insure and use the car as normal (with Mr F as a named driver). And the direct debit payments could come from said family member's account too. Mr F says he was reassured it was quite a normal arrangement so he went ahead with it.

I find Mr F's submissions to be credible in the circumstances. Crucially I believe it likely Mr F was told this wasn't a problem because he later called BF (about the direct debit arrangements) and openly and without prompting disclosed the arrangement. He said clearly and early in the call that the car wasn't for him but his family member. This action is consistent with someone who was told the arrangement was not a problem. It makes more sense as to why Mr F would have disclosed this unprompted and so openly. I note (presumably because Mr F was so open about it) the call operator appears taken aback and even suggests that it might have been the broker that said this was permissible but it was a breach of the agreement.

I also note that when challenged on the call about the arrangement Mr F says the broker had said this was all fine. Mr F says on the call he was quite upfront with the broker about what was happening. He then goes on to repeat that it was fully aware of what was going on – and explains the background about his family member having been abroad. Which further goes to reinforce his credible and consistent testimony. So, while I can't say with certainty I think it more likely than not the broker actively misled Mr F here. In making my findings I note there is no suggestion Mr F was particularly knowledgeable about finance agreements to have otherwise known this wasn't an acceptable arrangement.

I accept Mr F signed some paperwork called an 'Explanation Document' which said that he must not take out the finance for someone else. And that he needs to insure the car in his own name. However, this is amongst a lot of other information and not particularly prominent and in small typeface. And because of what I am satisfied the broker likely told Mr F – I think it needed to be more prominent (in either this document or the finance agreement) to reasonably place the responsibility on Mr F for questioning the accuracy of what I consider the broker likely told him.

All things considered, I am satisfied Mr F was likely misled by the broker about the finance arrangements. And had he been given clear and accurate information he would not have entered the agreement.

I understand the agreement has now been brought to an end (if it hasn't been it should be) and the car should now be collected by BF (without charge).

I am persuaded had the broker given Mr F correct information he wouldn't have ended up in the situation with an agreement he was in breach of from the very start, and which as a result was ultimately defaulted. So BF should fairly amend his credit file to remove the record of the agreement including all adverse information in relation to it.

Mr F has had use of the car and nothing persuasively indicates said usage has been impaired in any way. So my starting point is that he should pay for this use. I note that Mr F stopped paying for the agreement around April 2024. Mr F says that BF ended the direct debit at this time – which seems to be the case as it terminated the agreement. However, regardless of this – it still remains fair Mr F pays for the car he continued to use after this point. So my decision doesn't mean Mr F's outstanding payments will be written off. Mr F will still fairly be liable for any payments owed in relation to usage up to the point of settlement. However, BF will need to work with Mr F to provide an affordable plan for repayment of these monies over time.

I do consider it fair that in the circumstances Mr F get back his advance payment of £500 so that he isn't worse off after coming out of the agreement. So BF should refund this to him.

I consider Mr F has been caused significant inconvenience and distress by the actions of BF here. I note that the actions of the broker in mis-advising him have led to a situation that has clearly been upsetting. Not only the fact that he was in breach of the agreement – but what the situation would mean for his credit file. I don't think Mr F has persuasively shown that he has financially (and unavoidably) lost out as a result of the adverse information. However, I note he wrote to BF to say he was extremely worried about the situation and being in default. He has also described to our investigator the stress and worry this has caused and how it has impacted his mental health and his family. I am unable to make an award for distress caused to Mr F's family but I do recognise that seeing the impact on others would add to Mr F's overall distress.

I also note Mr F has been caused inconvenience in BF requesting he send it certain information in order to remedy the breach of the agreement. For example insurance documentation showing it had been changed to his name. This all occurred as a result of Mr F entering an agreement he would not have otherwise. Furthermore, to make matters worse Mr F said he sent all the information BF required but BF terminated the agreement anyway. BF appears to deny that it got clear copies of all the information it needed – however, even if that were the case - its system notes indicate that it didn't give Mr F sufficient opportunity to remedy this. It seems Mr F sent some updated information to it – and the agents were meant to pick up with Mr F anything which was outstanding but didn't. Regardless of whether it was ultimately possible to remedy the breach of said agreement it seems Mr F had poor customer service here. Mr F's persuasive testimony indicates that BF's communication about what it was going to do after it got his documentation was inadequate. And from what I can see from the system notes this appears to be the case. It seems BF terminated the agreement without further engagement. I think this was premature as Mr F was clearly co-operating with requests to that point. BF could have communicated more clearly about things.

This is not a science but in order to decide fair compensation I have considered what our website says about awards for distress and inconvenience. In this case I consider the impact of mistakes by BF have caused considerable distress and significant inconvenience. The impact of which has lasted over many months. In the circumstances, I consider the award recommended by our investigator of £400 is fair and reasonable. I understand BF offered Mr F £50 compensation in respect of its customer service over this matter already – if it turns out that it has paid Mr F this already then this can fairly be deducted from the award I am making here.

Putting things right

BF should resolve matters as set out below.

My final decision

I uphold this complaint and direct BMW Financial Services(GB) Limited trading as BMW Financial Services to:

- Ensure the agreement is brought to an end and that any record of it – including any adverse information is removed from Mr F's credit file;
- collect the car without charging for collection;
- only hold Mr F liable for monthly rentals incurred from inception up to the point of settlement – setting up an affordable repayment plan with him for any monies owed;
- refund Mr F the £500 advance payment;
- pay 8% simple yearly interest on any refunds calculated from the date of payment to the date of settlement; and
- pay Mr F £400 compensation for distress and inconvenience.

If BF considers it is required to deduct tax from the interest element of my award it should provide Mr F with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 29 July 2025.

Mark Lancod
Ombudsman