

The complaint

Ms S complains about how BMW Financial Services (GB) Limited dealt with the overpayment in connection with her car finance agreement and the service it's given her.

What happened

In 2015 Ms S acquired a car through a hire purchase agreement taken out with BMW in her sole name. The agreement was voluntarily terminated in 2018 and the car was returned but there were outstanding charges. Ms S gave her consent for BMW to speak to her then husband and it was agreed to set up a payment plan to pay the balance in instalments. The payments were collected by standing order from a bank account. Ms S believes she was a joint holder of that bank account with her then husband.

The outstanding balance on the finance agreement was paid, but because the standing order wasn't cancelled £1,600 was overpaid to BMW. It tried to refund the payments to the bank account from which it had initially collected the monthly payments under the agreement, but those refunds bounced back. So BMW asked Ms S to provide up to date bank details and in 2020 BMW paid Ms S the £1,600 refund for the overpayments.

BMW says that in 2021 Ms S' now ex-husband told it the refund should have been paid to him as payments for the outstanding balance on the finance agreement had been made from a bank account in his sole name. BMW asked for confirmation that he'd made the payments and then also paid Ms S' ex-husband £1,600 for the overpayment. Around August 2021 BMW issued Ms S with a notice of arrears for £1,600, recorded as an outstanding balance on her finance agreement, as it said she had to repay its refund to her. It continues to send notices of arrears to her.

Ms S complained to BMW. It sent her a final response letter in 2023 setting out why it had issued the notices of arrears (Ms S says she didn't get that letter). It also sent a final response letter in May 2024, after Ms S had complained to us, apologising for not responding to her complaint and offering £25 compensation in full settlement of her complaint, which she rejected.

Ms S complains to us that BMW continues to issue notices of arrears to her to repay the £1,600. In summary she says:

- At the time of paying the outstanding balance on the finance agreement she was going through a divorce. Her ex-husband was a second named person on the bank account that paid the arrears but he wasn't a party to the finance agreement and BMW was wrong to refund any payments to him.
- BMW's actions have had a serious impact on her credit file. Previously her credit rating was excellent. But because of BMW issuing notices of arrears her credit rating is poor and she's unable to take any loans or credit which has caused her great stress.
- BMW's contact with her ex-husband when the finance agreement was in her sole

name is in breach of General Data Protection Regulations (GDPR). And it continued to copy her ex-husband into emails to her even when she told it not to.

- She'd told BMW she was no longer married and had changed her surname but it kept addressing correspondence to her previous married surname.
- She'd tried to communicate with BMW on the matter but either got no response or it sent a response to her old email address, which she'd told it she no longer used.
- BMW only sent her generic notices of arrears with no acknowledgment of the ongoing dispute or its impact on her financial situation. She only found out about the adverse effects of BMW's actions on her credit report when she tried to take out a loan.
- During this period she'd suffered distressing events within and outside her marriage, which she detailed to us, and BMW's actions caused her further upset at an already very distressing time.
- She believes BMW's service to her may be contrary to the 'Discrimination Act' in respect of her mental health, race and gender.

Ms S wants BMW to remove all adverse information relating to this dispute on her credit file, apologise to her and pay her compensation for her distress and inconvenience due to its actions.

BMW provided its file on this case but it didn't respond to our Investigator's requests for further information. Our Investigator set out in his recommendation that he'd asked BMW to send us the evidence it was provided with which would justify a refund being paid to Ms S' ex-husband. As BMW hadn't responded, he'd considered Ms S' complaint on the evidence we had.

Our Investigator considered that BMW had acted unreasonably. He wasn't persuaded that BMW fairly refunded the overpayments to Ms S' ex-husband having already paid the refund to Ms S, which led to adverse information on her credit file. He said BMW's actions, ongoing since August 2021, caused Ms S much distress and inconvenience as did it continuing to use her married surname in its correspondence, despite her asking it not to. He recommended that BMW:

- Update Ms S' name on its records to ensure all future correspondence is addressed to her correctly.
- Waive the £1,600 arrears so Ms S is not pursued for any further payments.
- Remove all adverse information BMW had applied on Ms S' credit file since issuing the notice of arrears in August 2021.
- Pay Ms S £300 compensation for the distress and inconvenience it's caused.

BMW didn't respond to our Investigator's recommendations.

Ms S said the compensation should be higher as BMW had twice copied her ex-husband into the private emails it had sent to her on this matter, in breach of GDPR. Ms S also wanted us to tell BMW to not include her ex-husband in any future correspondence to her and to give a deadline for BMW to remove the adverse information from her credit file.

What I provisionally decided – and why

I made a provisional decision that I was intending to uphold this complaint but with a different outcome than our Investigator recommended. I said:

‘I’ve considered all the points Ms S has made but I won’t address all of them in my findings. I’ll focus on the key points which I think are relevant to the outcome of this complaint and the reasons why I’ve made my decision.

Ms S has raised concerns about BMW’s actions in regard to both the GDPR and the Equality Act 2010. Our role isn’t to decide if a business has breached data protection laws, that’s for the Information Commissioner’s Office. However, we can decide whether it’s fair for the business to pay compensation to the consumer or take any other action to recognise the impact of what’s happened.

Ms S has also said BMW may have discriminated against her. While we take any allegation of discrimination seriously, we’re an informal dispute resolution service, meaning we don’t have the power to decide whether or not BMW is in breach of the Equality Act 2010, only a court has the power to do this. What we can do is take relevant law and regulation into account when deciding what’s fair and reasonable in the circumstances of a complaint.

The hire purchase document dated in 2015 shows that Ms S entered into the hire purchase agreement with BMW in her sole name. It shows that payments for the agreement were made from a bank account in Ms S’ sole name.

BMW’s internal notes show that in 2018 Ms S authorised BMW to speak to her husband (I understand Ms S was still married at that time) about the voluntary termination. So I don’t think BMW acted unreasonably in having those discussions with her then husband. A payment plan was set up for the outstanding arrears. I haven’t seen any clear evidence which tells me the account holder of the bank account that paid those arrears.

BMW’s final response letter of 2023 set out why it had refunded the overpayment to Ms S’ ex-husband:

‘for anti-money laundering purposes, any overpayment on an agreement must be refunded to the verified account details we hold on file ((Ms S’) bank account). We later had contact from (her ex-husband) informing us of (him) making the payments and we later received proof to this effect.... As (Ms S) had therefore received a refund wrongly, the £1,600 refunded to (Ms S) was required to be paid back’.

However BMW’s final response letter of May 2024 says ‘My investigation has found that the credit was paid into your joint account’. So BMW isn’t clear about who was the account holder for the bank account that made the overpayment.

Even if the bank account that the arrears were paid from was in Ms S’ ex-husband’s sole name I’m not persuaded BMW should have refunded him for the overpayment when it had already refunded Ms S. Even if that was correct in law, I don’t think BMW’s actions were fair and reasonable to Ms S. I say that because the finance agreement which the arrears, and overpayment, related to was in the sole name of Ms S. It was her responsibility to ensure the payments for the finance agreement were made. Although the agreement was terminated, a payment plan was agreed and Ms S ensured the outstanding balance relating to the finance agreement in her sole name was paid. So I think any refund for overpayment in relation to the agreement should only have been issued to Ms S.

BMW's notes show that in 2021, when it was speaking to Ms S' ex-husband about also refunding him, it knew he and Ms S were now divorced. BMW also knew that by refunding Ms S' ex-husband it was going to ask her to repay the refund which it recorded as an outstanding balance of her finance agreement, even though she had already ensured payment of that agreement.

BMW's notes refer to Ms S' account being in arrears due to its refund 'error'. I think it did make an error in also refunding Ms S' ex-husband. In the circumstances it would have been fair and reasonable for BMW not to pursue Ms S for the refund it had erroneously paid twice.

From August 2021 BMW started to send Ms S '*Notice of Sums in Arrears ...because you are behind with the sums payable under your Contract Purchase agreement*'. I don't think BMW fairly issued those notices. The 'arrears' were, in fact, as a result of BMW's decision to pay Ms S' ex-husband rather than due to any failure of Ms S to pay the amount due under the contract. So BMW should waive those arrears and any associated charges and interest and remove any adverse information in relation to those arrears from Ms S' credit file. It should do both within 28 days of the date on which we tell it Ms S accepts my final decision (if the outcome remains the same in my final decision).

Ms S sent us her credit report from 2024 which shows her credit rating as 'poor'. I understand the notices of arrears BMW has and continues to send Ms S have contributed to that rating (well priced credit may have been more difficult for Ms S to obtain following the voluntary termination/payment plan). From the information in the credit report it looks as if Ms S has been able to get some credit since 2021 when BMW started to raise the notices of arrears. But I think it would have been more difficult for her to obtain credit/loans with £1,600 arrears showing as still outstanding on her credit report. I accept that's caused Ms S considerable distress and inconvenience.

Ms S says BMW should have told her its actions could affect her credit rating. But BMW's internal notes show that in August 2021 Ms S spoke to BMW and then emailed it saying that she knew the arrears affected her credit file, so I think she was aware.

I've also considered the service issues in general that Ms S has raised. I haven't seen any evidence that leads me to think BMW has discriminated against Ms S but I think it's acted unfairly.

I haven't seen any evidence that early on in this dispute Ms S told BMW about her change of contact details, nor that she had changed her surname. But there's clear evidence that in early 2024 Ms S told BMW it was still sending emails addressed to her married surname and it should stop, but BMW continued to do so. Ms S' email in March 2024 told BMW not to include her ex-husband into any of its correspondence with her. It's not clear to me why BMW thought it was appropriate to copy her ex-husband into the correspondence it sent to her and it should stop doing so. I understand why Ms S was upset about those matters particularly given the information she's told us about her relationship. But there's no evidence that BMW knew about her very difficult personal matters.

I've seen that Ms S sent BMW numerous emails about the dispute, which it didn't respond to. Its offer of £25 compensation to acknowledge her distress and inconvenience is unreasonable. Overall I think it's reasonable for BMW to pay Ms S £500 compensation for her distress and inconvenience its actions and service caused her over several years. Given BMW's poor response throughout this matter I think it's fair for me to add interest if it doesn't pay that compensation as I've set out below'.

Responses to my provisional decision

Ms S accepted my provisional decision. BMW said it had no comments.

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.

As Ms S accepted, and BMW had no comments on, my provisional decision I've no reason to change my mind. For the reasons I've given in my provisional findings and these findings I think BMW acted unreasonably and gave unfair service to Ms S. I uphold this complaint. I require BMW to take the actions, and pay compensation to Ms S for her distress and inconvenience, as I've set out below.

My final decision

I uphold this complaint and require BMW Financial Services(GB) Limited to:

- Update Ms S' name on its records to ensure all future correspondence is addressed to her correctly and not copy its correspondence to Ms S to her ex-husband.
- Waive the £1,600 arrears, and any associated charges or interest on the finance agreement, within 28 days of the date on which we tell it Ms S accepts my final decision.
- Remove all adverse information from Ms S' credit file in relation to the £1,600 arrears within 28 days of the date on which we tell it Ms S accepts my final decision.
- Pay Ms S £500 compensation for her distress and inconvenience it's caused. BMW must pay the compensation within 28 days of the date on which we tell it Ms S accepts my final decision. If it pays later than this it must also pay interest* on the compensation from the deadline date for settlement to the date of payment at interest of 8% a year simple.

*If BMW Financial Services(GB) Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Ms S how much it's taken off. It should also give Ms S a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 21 March 2025.

Nicola Sisk
Ombudsman