

## The complaint

Mr Z is unhappy with how BMW Financial Services (GB) Limited ('BMWFS') are reporting a hire purchase agreement to the credit reference agencies.

## What happened

In August 2014, Mr Z was supplied with a used car through a hire purchase agreement with BMWFS. The agreement was for £19,952 over 49 months; with an initial payment of £505.56, 47 monthly payments of £331.56, and a final payment of £7,652.92. Mr Z fell into financial difficulties and, in 2018, voluntarily terminated ('VT') the agreement.

BMWFS took back the car and charged Mr Z £312.98 for exceeding the mileage allowable under the agreement, £252 for damage to the car that fell outside normal fair wear and tear, and £12.04 interest – a total of £577.02. BMWFS also confirmed that *"the voluntarily termination value was zero at the time [Mr Z] returned the vehicle but he had arrears of £2,189.82 which needed to be cleared – a payment plan was agreed but not stuck to."*

Mr Z had previously complained to the Financial Ombudsman Service, and this complaint was dealt with under a separate reference number. The outcome of this complaint was essentially that BMWFS were entitled to record a default on Mr Z's credit file, and that this would continue to be reported for six years.

In January 2025, Mr Z complained that BMWFS were continuing to report £2,645.22 arrears to the credit reference agencies, even though they had been doing so for more than six years. BMWFS said that they were entitled to report any missed payments for six years after the last time they chased the outstanding amount, and not for six years after the payment fell due. Unhappy with this response, Mr Z brought the matter to the Financial Ombudsman Service for investigation.

An investigator initially reviewed the matter and said that BMWFS hadn't acted fairly. They said that a default should've been issued on 30 November 2018, so BMWFS should now backdate the reporting of this, as well as paying Mr Z £150 compensation.

BMWFS didn't agree with this. They said they were unable to default the charges applied to Mr Z's account after the car was collected, *"as they are not contractual: the customer cannot be in default for these specific sums as the goods have been returned."* So, they thought they'd acted reasonably by continuing to report the outstanding balance.

The matter was then reviewed by a second investigator, who issued a revised opinion. They said that BMWFS had issued Mr Z with a default notice in April 2018 but, had the agreement been defaulted at that time, Mr Z wouldn't have been able to VT the agreement and would instead have become liable for the full outstanding balance. And the investigator said that a default cannot be issued for the arrears, as these aren't part of the contractual payments under the agreement.

However, the second investigator said that because, in December 2023, BMWFS incorrectly advised Mr Z that *"the six years reporting starts from [date] and will expire 6 years later in*

*November 2024*”, they removed the opportunity for him to decide how to deal with the debt. So, even while the investigator thought it unlikely that Mr Z would’ve started making payments, they thought BMWFS should compensate Mr Z for this loss of opportunity. And they thought the £150 previously recommended was sufficient for this.

Mr Z didn’t agree with the second investigator’s opinion. He said that BMWFS are only allowed to report negative information for six years since the date of the default, and the entry must be removed after this, even if the debt remains unpaid. So, this 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’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 Z 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.

As well as the evidence relating to this case, I’ve also reviewed the evidence in relation to Mr Z’s 2024 complaint about the same agreement with BMWFS, which was dealt with under a separate reference number by ourselves. Based on this review, I haven’t seen any evidence that BMWFS have ever registered a default against Mr Z.

For clarity, the letter of 27 September 2018, referred to by the initial investigator as a default notice, was just a letter referring to the £252 damage charges that were outstanding. Crucially, it also didn’t follow the required legal format for a default notice so, even if BMWFS meant it as such (which I’ve seen no evidence they did) this letter couldn’t have been used as a default notice.

The Information Commissioner’s Office has issued guidance on defaults, and they say that a financial business should issue a default when an account is between three and six months in arrears. Mr Z started to have payment problems in May 2016, and, by 15 January 2018, he was £857.84 (the equivalent to 2.6 months) in arrears.

The January and February 2018 payments weren’t made, although the payment for March 2018 was. However, this was the last payment made. So, Mr Z exceeded three months in arrears when the January 2018 payment was missed and exceeded six months arrears when the payment for June 2018 was missed. BMWFS’s records show the agreement was VT’d on 30 August 2018, with the post termination charges being applied on 13 September 2018. At the time of the termination, BMWFS have said that Mr Z was £2,189.82, or 6.6 months, in arrears.

Mr Z first asked BMWFS if he could VT the agreement in October 2017, however he didn’t go ahead with this at the time. He then contacted BMWFS about termination in March 2018. He continued to discuss this with BMWFS throughout April, May and June 2018, with the car being collected from him in July 2018. While the terms for VT allow for Mr Z to end the

agreement with nothing more to pay once he's paid 50% of the total amount payable, he's still required to pay any arrears balance that had accrued, plus any post-termination charges.

It's clear that Mr Z wanted to exit the agreement, with the minimum liability, at around the same time his arrears reached the threshold for BMWFS to consider starting default proceedings. However, had they done this, Mr Z would not have been able to VT the agreement. Instead, the default would've led to the car being repossessed, with the full outstanding balance falling due (less any sale proceeds for the car). This would've meant that Mr Z would likely have had a much larger liability to repay to BMWFS, at a point when he was struggling to make regular payments.

As such, given these circumstances, I think BMWFS acted fairly by not defaulting the agreement and allowing Mr Z to VT instead. As I've said above, at the point of VT, Mr Z owed BMWFS the arrears balance and the post termination charges. And BMWFS are entitled to chase Mr Z for payment and report the outstanding charges to the credit reference agencies. Importantly, *as the agreement was never defaulted*, the reporting of the arrears doesn't fall off Mr Z's credit file after six years. Instead, it continues until the outstanding balance is cleared. So, BMWFS haven't done anything wrong by continuing to report this.

However, as BMWFS incorrectly advised Mr Z they would stop reporting the matter in November 2024, they need to do something to put things right.

### **Putting things right**

By misadvising Mr Z about when any reporting would end, BMWFS denied him the opportunity to make a fully informed decision about what he wanted to do. And I think they should compensate him for the lack of opportunity this error caused. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator recommended BMWFS pay Mr Z £150, to recognise the distress and inconvenience caused by the loss of opportunity. 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 Z £150 to compensate him for the loss of opportunity caused by their misadvice. They must pay this compensation within 28 days of the date on which we tell them Mr Z 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 Z 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 Z's complaint about BMW Financial Services (GB) Limited. And they are to follow my directions above.

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

Andrew Burford  
**Ombudsman**