

The complaint

Mr B says BMW FINANCIAL SERVICES (GB) LIMITED (who I'll call BMWFS) were unreasonable to terminate his finance agreement,

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr B entered into a hire purchase agreement with BMWFS for a car.

In, or around, June 2024 the direct debit for the agreement was cancelled. BMWFS said it was cancelled by Mr B's bank and not by them. As a result, payments were not collected, and arrears began to accrue on the account.

Mr B contacted BMWFS to arrange for the direct debit to be reinstated. BMWFS accepted there was a delay in reinstating the direct debit and apologised. Mr B said he made repeated attempts to contact BMWFS and that he asked for communication to be made by e-mail rather than post due to issues receiving mail at his property.

BMWFS said they attempted to contact Mr B by telephone, e-mail and post between June 2024 and September 2024 but did not receive a response until early September 2024. They also said Mr B could have made payments by alternative methods while the direct debit was inactive.

As arrears increased, BMWFS issued arrears correspondence and, in November 2024, served a default notice. When the arrears remained unpaid BMWFS terminated the agreement in early 2025 and took steps to recover the car.

Mr B complained that BMWFS failed to communicate effectively, ignored his request not to use post, delayed reinstating the direct debit, and unfairly terminated the agreement. He said the arrears arose because of BMWFS's failings and they shouldn't have terminated his agreement.

Our investigator considered Mr B's complaint. She noted that BMWFS had suggested we didn't have jurisdiction to consider the complaint they had responded to in September 2024 as they believed it had been referred to this service too late. The investigator explained that as this was an agreement that involved Non-Discretionary Commission Arrangements (non DCA), even though the complaint wasn't about commission, under the Financial Conduct Authority's (FCA) temporary complaint handling rules (DISP 5.2.2B) there was an extension to the time limits and that she was satisfied this service could consider that complaint. The investigator accepted there had been some delay in reinstating the direct debit and that Mr B had experienced issues receiving post, but she concluded that BMWFS had attempted to contact him through multiple channels and that he remained responsible for maintaining payments under the agreement. As Mr B did not agree the complaint has been referred 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.

I agree with the investigator's view of this complaint, for broadly the same reasons.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Jurisdiction

BMWFS didn't respond to our investigator's view that we could consider the 2024 complaint. I agree with the investigator's view of that issue.

Our rules for what complaints we can consider are set out in DISP. DISP 2.8.2R says that unless a business consents to us considering the complaint:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service: (1) more than six months after the date on which the respondent sent the complainant its final response..."

In January 2024 the FCA introduced temporary complaint handling rules for certain motor finance complaints. These rules apply to relevant complaints about motor finance agreements which had discretionary commission arrangements (DCA) linked to them. Further amendments were made in October 2024 to include complaints about motor finance agreements linked to non-DCA, such as the one Mr B had with BMWFS. The relevant temporary rules can be found in DISP App 5, and, for complaints covered by the temporary rules, they (amongst other things) modify the provisions of DISP 2.

DISP App 5.1.3A is relevant here. It states, that from 26 October 2024 until 4 December 2025:

"A motor finance non-DCA complaint is a complaint where:

(1) the subject matter of the complaint relates, in whole or part, to a regulated credit agreement or a regulated consumer hire agreement;

(2) the regulated credit agreement or the regulated consumer hire agreement, in whole or part, financed the purchase of a motor vehicle, or a motor vehicle was bailed or hired under the agreement;

(3) there were arrangements between the lender or owner and a credit broker relating to the entering into of that agreement that provided for the payment (directly or indirectly) of any commission, fee or other financial consideration or remuneration including a benefit of any kind to the credit broker;

(4) the complaint is not a relevant motor finance DCA complaint as defined in DISP App 5.1.2R; and

(5) *the respondent:*

(a) *received the complaint in the period beginning with 26 October 2024 and ending with 4 December 2025; or*

(b) *sent a final response to the complaint in the period beginning with 21 June 2024 and ending with 29 January 2026.”*

Mr B entered into a regulated hire purchase agreement on or around June 2023. The agreement financed the purchase of a used motor vehicle. So, the first two limbs of the definition of ‘motor finance non-DCA complaint’ above have been met.

I’m also satisfied that 5(b) has been met, as BMWFS’s final response was sent in September 2024. BMWFS have confirmed that a commission arrangement was in place in relation to Mr B’s agreement. As the agreement was taken out after the ban on DCA came into force on 28 January 2021, such an arrangement must be a non-DCA arrangement – therefore satisfying limbs 3 and 4 of the definition above.

Where a complaint is a ‘motor finance non-DCA complaint’, the temporary rules in DISP App 5 mean that DISP 2.8.2R is modified so that the Ombudsman cannot consider a complaint if it is referred to the Financial Ombudsman Service on or after 30 July 2026. Based on what I’ve seen I’m satisfied Mr B’s complaint meets the FCA’s definition of a ‘motor finance non-DCA complaint’. And BMWFS doesn’t appear to dispute that. But in their view the rules and guidance in DISP App 5 don’t apply to Mr B’s complaint because the complaint isn’t about commission.

I haven’t seen anything to persuade me that complaints that meet the definition of a ‘motor finance non-DCA complaint’, but where the subject matter of the complaint is not the commission arrangement, should be treated any differently to those where the complaint is about commission. If there had been an intention to exclude a subset of ‘motor finance non-DCA complaints’ I think it’s reasonable to say that the rules would have been drafted in a way to reflect this.

I’m satisfied that the relevant rules in deciding our jurisdiction are those set out in DISP App 5. As Mr B’s complaint meets the definition of a ‘motor finance non-DCA complaint, DISP 2.8.2R as modified by DISP App 5.2.2.B applies. I’m persuaded the entirety of Mr B’s complaint has been referred to us in time and I can review all of Mr B’s concerns.

The issues Mr B complains about

While I recognise this has been a distressing experience for Mr B, I am not upholding his complaint.

It is not in dispute that the direct debit was cancelled in June 2024 and that this led to missed payments and arrears on the account. I have seen no persuasive evidence that BMWFS were responsible for the cancellation of the direct debit. In those circumstances responsibility for ensuring payments were maintained remained with Mr B, including by making payments through alternative methods when necessary.

BMWFS accept there was a delay in reinstating the direct debit and I think that was a shortcoming. However, I am not persuaded that the delay in itself caused the level of arrears that subsequently accrued. Mr B was aware that payments were due under the agreement and could have taken steps to make payments while the direct debit was not in place.

I've also thought about the communication issues Mr B says he experienced. I accept that Mr B experienced issues receiving post and that he asked BMWFS to correspond by e-mail. However, I am satisfied that BMWFS did attempt to contact Mr B through multiple channels, including e-mail and telephone, and not solely by post. Certain statutory notices, including default notices, are ordinarily issued by post and I do not find it unreasonable that BMWFS followed that process.

The communication issues may have contributed to some frustration and delay but I am not persuaded that they prevented Mr B from understanding that payments were outstanding, or from taking steps to address the arrears. The evidence shows that arrears had reached a significant level by the time the default notice was issued.

Given the level of arrears and the terms of the agreement, I am satisfied that BMWFS were entitled to issue a default notice and, when the arrears were not cleared, to terminate the agreement and seek recovery of the car.

Overall, I do not consider that BMWFS acted unfairly in a way that would justify me requiring them to take further action.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 April 2026.

Phillip McMahon
Ombudsman