

complaint

Mr S complains about the default that BMW Financial Services (GB) Limited has recorded on his credit file. He's being helped with his complaint by his wife.

background

A new car was supplied to Mr S under a hire purchase agreement with BMW Financial Services that he signed in July 2017 to replace a car that had been supplied to him under a previous agreement – and the previous agreement was terminated. BMW Financial Services was unable to collect the direct debits for the monthly payments that were due to it under the agreement – and it was unable to contact Mr S – so it recorded a default on his credit file. Mr S complained to BMW Financial Services but wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He said that Mr S had signed the agreement which included his address and a bank mandate which contained his bank account details. But he'd changed address and bank account details but hadn't told BMW Financial Services about the changes so it hadn't been able to collect the payments or contact him about them. And the adjudicator was satisfied that BMW Financial Services made enough attempts to contact Mr S prior to the default being applied and gave him the opportunity to bring the account out of arrears. And he said that BMW Financial Services' account notes show that, when Mr S called it about the payments in October 2017, the call was disconnected before it could talk to him about the default. So the adjudicator felt that the actions taken by BMW Financial Services were reasonable and that he said that he wouldn't be asking it to remove the default.

Mr S has asked for his complaint to be considered by an ombudsman. He says, in summary, that:

- his first port of call was the dealer and he contacted the dealer in September 2017 which said that it was its fault that the payments hadn't been made and that it would sort it out;
- he changed his bank details on the previous agreement and BMW Financial Services didn't update its systems and continued to hold his old bank details; and
- it's the dealer's fault that BMW Financial Services has incorrect contact details for him.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The car was supplied to Mr S under a hire purchase agreement. That agreement includes an address and contact details for Mr S. He signed the agreement and immediately above his signature it says:

"IMPORTANT: BEFORE YOU SIGN, ENSURE YOU HAVE READ:

1) the information on pages 1 and 2.

2) Use of Your Information and the Terms and Conditions starting on the following page.

The personal information provided in this agreement is true and correct, and I understand that the provision of false information may constitute a criminal offence".

But Mr S's address and contact details weren't the ones that were current for him and he didn't correct them or tell BMW Financial Services to use a different address or contact details for him. The terms and conditions of the agreement say that:

"You must tell us promptly if your name, address or any other details you have provided changes".

As Mr S hadn't told BMW Financial Services about any changes to his address or contact details, I consider that it was fair and reasonable for it to rely on, and use, the address and contact details for him that were included in the agreement.

And Mr S had been provided with a direct debit mandate for the monthly payments due under the agreement. It included his bank account details. And he signed the mandate. It said:

"Please pay BMW Financial Services Direct Debits from the account detailed in this Instruction subject to the safeguards assured by the Direct Debit Guarantee".

But he says that those details are for an old bank account. But I'm not persuaded that there's enough evidence to show that he provided the correct bank account details to BMW Financial Services in connection with this agreement. So I consider that it was fair and reasonable for it to rely on and use the bank account details that were included on the mandate.

But it was unable to collect the payments using those bank account details – and it was unable to contact Mr S because his contact details had changed. Because it hadn't received the payments that were due under the agreement, it sent three arrears notices to Mr S and then recorded a default on his credit file in October 2017. Mr S contacted BMW Financial Services about the payments later that month – but its account notes show that the call was disconnected before it could tell Mr S about the default.

I consider that it was Mr S's responsibility to make the payments that were due under the agreement. I consider that it would be reasonable to expect him to have noticed that the monthly payments of £782.54 hadn't been debited from his account – and he's said that he was aware that the payments hadn't been made. But I've seen no evidence to show that he contacted BMW Financial Services about the missing payments until his call in October 2017, after the default had been recorded. He says that he contacted the dealer about the missed payments. But Mr S was required to make payments to BMW Financial Services and not to the dealer – and they are separate legal entities. So I consider that Mr S should've contacted BMW Financial Services about the missed payments – but he didn't do so.

I'm not persuaded that there's enough evidence to show that BMW Financial Services has recorded the default incorrectly. So I don't consider that it would be fair or reasonable for me to require it to remove the default – or to take any other action in response to his complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 September 2018.

Jarrold Hastings
ombudsman