

The complaint

Mr D has complained about the way BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS) administered a hire purchase agreement he'd taken out to acquire a car.

What happened

The circumstances of the complaint are well known to the parties, so I won't go over everything again in detail. But in summary, Mr D entered into a hire purchase agreement with BMWFS to acquire a used car in April 2019. The car cost around £21,200. It was to be repaid over four years with monthly repayments of £338.92 followed by an optional final repayment of £9,866.81.

I can see Mr D stopped making regular payments to the agreement from September 2022, although there were already some arrears before this. Mr D says he fell into arrears due to health issues which affected his ability to work. Mr D complains about the support offered by BMWFS and that it ultimately terminated his agreement on 13 January 2023.

Mr D said he'd been in contact with BMWFS several times about the arrears and the reasons for them. He said he'd been off work between August and December 2022 but had since gone back to work. He said he filled in income and expenditure forms and that he was willing to pay his normal monthly payment along with a bit more to help clear the arrears, but he needed to keep the car for work. Mr D was unhappy BMWFS wouldn't come to an agreement with him.

BMWFS said it rejected the complaint because it made several attempts throughout the course of the agreement to discuss the arrears. It said Mr D was informed of the consequences if arrears continued to grow and payment plans that were set failed. BMWFS says when it received Mr D's income and expenditure form it didn't show he would be able to maintain payments towards the agreement (he was in deficit). So due to this, and the growing arrears it decided to issue a default notice and terminate the agreement.

Our investigator looked into things and said she thought BMWFS acted fairly in the middle of 2022 by seeking to come to arrangements with Mr D about the arrears from around May onwards.

Our investigator noted Mr D had let BMWFS know about his health issues in September 2022 and that he wasn't able to work which was contributing to the arrears. Our investigator said BMWFS sent Mr D an income and expenditure form to complete a couple of times in October 2022 but didn't receive it back initially. And when it did receive it back it noted in December 2022 that Mr D was in deficit. So she said BMWFS thought terminating the agreement would be in Mr D's best interest. It wrote to Mr D asking him to pay about £1,900 or it would terminate the agreement.

Our investigator noted on 16 January 2023 Mr D requested a call back and said he wanted to start making payments towards the agreement. And BMWFS spoke to him and explained it could reinstate the agreement if he cleared the arrears of around £2,200. Mr D wasn't able

to do this. Our investigator thought BMWFS ought to have considered Mr D's proposals given his financial difficulties appeared to be temporary. She recommended BMWFS:

- Reinstatement the agreement.
- Arrange a repayment plan to clear the arrears.
- Remove charges relating to any termination/late payment fees.
- Pay Mr D £500 compensation.

Mr D accepted the proposal, but I can't see we've received a response from BMWFS.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr D and BMWFS that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I'm sorry to hear Mr D was unwell and off work. It can't have been easy, and I thank him for taking the time to bring his complaint to our service.

Mr D acquired the car using a regulated hire purchase agreement and our service is able to consider complaints relating to these sorts of agreements. I can only consider what BMWFS has already had the chance to look at up to its final response.

I think there are two primary things I need to consider for Mr D. How did BMWFS handle things when Mr D was out of work, and whether it needs to do anything to put things right. While it may feel slightly backwards, I've first thought about what options there are now for Mr D because I think it's important to get that across.

Mr D entered into the agreement in April 2019. From what I can see it would have had 48 repayments required of £338.92. If the first repayment was due in May 2019, this takes us to March 2023. And then in April 2023 a final payment was due of £9,866.81.

Therefore, the problem I can see with a recommendation to reinstate the agreement is that the agreement, now, is due to be settled one way or the other. Had things gone to plan, by April 2023 Mr D had the choice to either:

- 1. Hand back the car and pay off the arrears up to that point, along with any charges for damage outside of fair wear and tear. Or*
- 2. Buy the car by paying off the arrears and the final payment.*

So even if I were to uphold the complaint, I don't think I could direct BMWFS to reinstate the agreement, on the old terms at least, because it should have ended by now.

I've next thought about how BMWFS handled things generally. In the round, I think it handled things fairly in 2022. It offered the sort of forbearance I'd have expected, considering Mr D wanted to keep the car. It referred Mr D to debt advice charities. BMWFS's notes say Mr D thought he'd only be off work temporarily. BMWFS engaged with him and sent out income and expenditure forms which I think was fair. The notes indicate it offered to complete the income and expenditure form over the phone with Mr D but he didn't want to. It looks like the forms weren't received back until December 2022. BMWFS didn't take any formal steps while it was waiting to hear back from Mr D.

BMWFS took the decision to send the default notice when it saw Mr D was over £100 in deficit on his income and expenditure form. At this point Mr D was already a few months behind and given BMWFS thought he wasn't able to come to any sort of arrangement, I can see why it decided to send the default notice. This is the sort of process a firm is supposed to follow when customers are over three months in arrears. And I have to bear in mind that BMWFS didn't know how long Mr D was going to be in financial difficulties. BMWFS said in the default notice it could still come to an agreement with Mr D to avoid the consequences. It also tried to call and email Mr D in January before it took the decision to terminate. I think this was broadly fair of it.

BMWFS spoke to Mr D just after the agreement had been terminated. And Mr D explained he was now back in work and looking to make up the arrears. BMWFS said it would only reinstate the agreement if Mr D could clear all the arrears, but Mr D wasn't in a position to do that. Had the agreement not already been terminated, I think asking Mr D to clear all the arrears in one go wouldn't have been particularly fair on him if he'd have been able to clear them within a reasonable amount of time. The problem I have is that the agreement had already been terminated at this point. And, while I can appreciate why Mr D doesn't agree, I don't think that was unreasonable from BMWFS – at the time. His arrears were getting worse, he'd shown he was in deficit on his income and expenditure, and so BMWFS took the decision to draw a line under things. It wasn't until after the agreement had been terminated that BMWFS found out Mr D was back in work. While it may seem unfair BMWFS asked for all the arrears to be cleared in one go, I don't think the termination was necessarily wrong – based on what BMWFS saw at the time. It tried to speak to Mr D before terminating the agreement to look at options for him. And it gave him two weeks longer than was set on the default notice before doing so. BMWFS wasn't contractually required to reinstate the agreement. So, while I know it must have been upsetting, I think that was broadly fair.

Taking all this into account, while I'm very sympathetic to the situation, I don't find I have the grounds to direct BMWFS to take action, or to direct it to do what Mr D wants. I'm not disputing Mr D kept BMWFS informed what was happening in 2022. But BMWFS gave Mr D forbearance. And at the key time – after it received the income and expenditure form, and up to the point it terminated the agreement – I can't see it acted unfairly.

I'm not proposing to direct BMWFS to take any action. For the avoidance of doubt – I'm only considering its actions to the point of the final response letter. If Mr D is unhappy with anything after that point, he'd need to take it up with BMWFS in the first instance, and if he's unhappy with its response, it might be something our service is able to consider for him. I'd remind BMWFS to treat Mr D with forbearance and due consideration with regards to any arrears and what's left owing.

I can't see we've received a response from BMWFS.

Mr D has responded to say, in summary, he wants BMWFS to come to an arrangement with him. It sounds like he wants it to sell the car and clear the debt or come to an arrangement with him so he can keep it. He said the matter caused him distress, he's unhappy it's affected his credit file, and he wants the arrears accrued while he was unwell to be cleared. He's also reiterated he has regular income and he's in need of a car.

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 want to thank Mr D for his response. I want to reiterate I'm very sorry to hear he was unwell and that it impacted his ability to pay towards his finance agreement. I don't underestimate

how important having a vehicle is to him.

I also need to highlight again that I'm considering what happened up to the point BMWFS sent Mr D its final response letter. This is important to get across. Mr D is setting out he wants to come to some sort of arrangement with BMWFS. But he'd need to speak to BMWFS about that in the first instance. And if he's unhappy with how it responds, it may be something our service is able to consider for him. But the purpose of this complaint is for me to consider how BMWFS dealt with Mr D's complaint relating to the support it offered him in 2022 and up to the point it issued a final decision in March 2023.

I've set out that I think BMWFS broadly treated Mr D fairly in 2022 by offering him forbearance and due consideration. I explained that on balance, based on what it knew at the time, its decision to terminate wasn't unreasonable. And I've not been supplied anything further to lead me to change my conclusions on that. I also don't have the grounds to direct BMWFS to remove arrears for the time Mr D was unwell, or to amend the credit file for that period. Mr D was contracted to make those payments, and it's fair he pays for his use of the car during that period.

It's my role to consider the complaint that BMWFS has already had the chance to look into. That's why I've considered what happened up to the final response letter. I appreciate a lot has happened since March 2023. And that Mr D now wants to come to some sort of arrangement with BMWFS. That scenario hasn't played out yet. And for the reasons given above, I can't deal with that in this decision. For the complaint I can deal with, I think BMWFS broadly treated Mr D fairly. So I'm not going to direct it to take any action for what happened up until its final response in March 2023.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 January 2024.

Simon Wingfield

Ombudsman