

## **The complaint**

Miss K complains about the way BMW Financial Services (GB) Limited treated her, when she tried to settle the outstanding balance of a hire purchase agreement.

## **What happened**

In June 2021, Miss K spoke to a dealership about changing her car. In order to do so, Miss K needed to settle a hire purchase agreement with BMW, that she had in place for her existing car, which I call 'car one'. It was then Miss K's plan to take out a brand new agreement with used car, which I'll call 'car two'.

A few months later, BMW provided a settlement quote to Miss K, which told her the amount she had to repay to end her agreement for car one. Miss K says she asked for another settlement quote a few weeks afterwards and handed that quote to the dealership.

Once the finance was agreed for car two, the dealer sent a payment to BMW, to repay the outstanding balance owed for car one. This payment matched the settlement quote that Miss K had provided to the dealer. However, BMW say that Miss K had given the dealer an incorrect settlement amount, which meant she had underpaid by around £2,700.

Miss K repaid the outstanding balance owed to BMW for car one in May 2022, some four months after it was due. But, because that agreement wasn't settled, BMW applied adverse information about Miss K's loan, to the records held with credit reference agencies.

BMW also disputed that they had sent a settlement figure to Miss K with the incorrect amount. And in light of the underpayment from Miss K, BMW say this led them to terminate the agreement for car two. Although, Miss K has retained the use that car.

Miss K complained to BMW about the adverse information recorded on her credit file and that her agreement for car two had been terminated. BMW didn't change their approach, but said they would allow Miss K to keep car two and arrange a repayment plan, if she applied to a court for a suspended return of goods order. Miss K didn't accept that and referred her case to us.

One of our investigators looked into Miss K's case and concluded that BMW had treated her fairly. He found that BMW's contact records with Miss K didn't include the settlement figure she had relied upon and that the dealer had followed Miss K's advice. So, he said BMW were able to update her credit file with adverse information.

The investigator also concluded that BMW hadn't made an error, when they terminated the agreement for car two. And where BMW added the interest that Miss K was due to pay, had the loan lasted the full term.

Miss K didn't agree and said it was unfair of BMW to have ended the agreement for car two, because it was separate to car one. The investigator didn't change his findings and Miss K's case has now been passed to me to make 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.

Miss K's car was supplied to her under a regulated hire purchase agreement and our service is able to consider complaints about these sorts of contracts.

I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here. Namely, did BMW treat Miss K fairly when they recorded the adverse information and terminated the second hire purchase agreement?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

There is a dispute between Miss K and BMW over the settlement quote that Miss K used, when she tried to end the hire purchase agreement for car one. Miss K says she was sent an email from BMW, containing a settlement quote at the end of December 2021. BMW say they didn't send a settlement quote to Miss K in December 2021 and that the format and detail within the document she has provided is incorrect.

To help me decide what's fair here, I've looked at the document Miss K provided to the dealer, as well as BMW's contact records with Miss K.

Having done so, I can see that BMW generated a settlement quote on 26 November 2021 and sent it to Miss K on the same day. Additionally, Miss K acknowledges receiving that quote in November 2021.

I've looked at a copy of the quote and it says that Miss K needed to pay £10,552.16 to end her agreement for car one. BMW's quote also lists the interest rebate applied by BMW to reach the settlement figure.

The paperwork Miss K relied upon shows a settlement quote dated 23 December 2021. In this document, the settlement figure is £7,323.92 and the interest rebate matches the figure from BMW's quote a month previously.

From looking at the two documents, I can see that there are several differences with the fonts used and the settlement timeframes are inconsistent. The total settlement amounts are also notably different, where the figure Miss K used was around £3,000 less. I think this difference is stark, considering Miss K's monthly payment was £228.24 and the documents are dated month apart.

Furthermore, BMW's contact records don't show that a settlement figure was generated in December 2021. Although I acknowledge what Miss K has told us, I think BMW's records are persuasive, because they show when she was sent accurate information about the figure needed to end her hire purchase agreement.

On balance, I don't think BMW sent a settlement figure to Miss K in December 2021. I think there are several inconsistencies between the document Miss K has provided and the quote BMW have shown that they sent her in November 2021. So, I don't think it was reasonable for Miss K to have relied on the settlement figure she says BMW sent to her in December

2021.

I've also considered if the dealer made an error here. But, Miss K says the dealer paid BMW the amount she had told them to. Although I accept it would have been prudent for the dealer to have double checked with BMW, I think they followed Miss K's instructions, based on a document she had supplied.

In all the circumstances, I think BMW treated Miss K fairly when they produced a settlement quote in November 2021. And when the full payment wasn't received, I think BMW were able to reflect what they had found, by updating the information held about Miss K's agreement with credit reference agencies. So, I think it would be unfair for me to ask BMW to remove that information now.

I've thought about BMW's termination of the hire purchase agreement for car two and the balance they have asked Miss K to repay.

On page five of Miss K's hire purchase agreement with BMW for car two, it lists the events where BMW can end the agreement. Section six, part (I) says BMW can terminate an agreement when:

*"you break any other agreement you have with us or any of our Group Companies and as a result we or our Group Company become entitled to terminate that other agreement."*

I've found that BMW hadn't caused the confusion over the settlement figure. It seems from BMW's notes that they doubted the authenticity of the settlement quote document Miss K says was sent to her. And that it was this, along with the arrears built up on the agreement for car one, that led to them terminating the agreement for car two.

Having thought carefully about what both sides have said, I think Miss K had allowed arrears to be built up on her agreement, since she attempted to end it in January 2022. I've also seen that those arrears weren't satisfied until Miss K made a payment in May 2022. So, it follows that as Miss K breached the contract she had with BMW for car one, they were able to consider taking further steps for the hire purchase agreement for car two.

Overall, while I accept that Miss K found it troubling when BMW ended the agreement for car two, I think the terms and conditions of that agreement allowed BMW to do so. In light of this, I think BMW have treated Miss K fairly here.

I've also seen from section six of Miss K's agreement with BMW, that it covers the amounts owed when an agreement is ended. It says:

*"We will have the right to end this agreement, after sending you any notices required by law if any of the events listed in clause 7 below occur and you do not remedy them within the required period. If this agreement is ended by us, you must pay us on demand the following sums:*

*(a) all arrears, Repayments, interest and other sums due to us at the date of termination."*

Against this background, I think BMW were able to add interest to the balance of that agreement. So, I don't think BMW have treated Miss K unfairly, when they added interest to the balance, after the agreement for car two was terminated.

I'm aware that Miss K still has an outstanding balance owed to BMW under the agreement

for car two. Miss K has previously told us that she still has use of that car. And BMW say there may be certain conditions whereby they may allow her to keep it and start to make repayments again.

I make no finding on the fate of the car, given that I've not found in Miss K's favour in this complaint. However, I'll leave it to BMW to decide what they are prepared to do.

Whatever BMW decides, I remind them of their responsibility to treat Miss K's financial circumstances with due consideration and forbearance. This will mean looking at Miss K's income and expenditure details when talking about the options they are able to offer to her.

### **My final decision**

My final decision is that I don't uphold Miss K's complaint about BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 24 October 2023.

Sam Wedderburn  
**Ombudsman**