

## **The complaint**

Miss C is unhappy that BMW Financial Services (GB) Limited ('BMW') terminated the hire purchase agreement she had with them and refused her offer to refinance the agreement with a guarantor in place.

Miss C is being represented in this complaint by Mr D. However, for ease of reference, I'll refer to any comments or actions by either Miss C or Mr D as being made/done by Miss C.

## **What happened**

In November 2019, Miss C was supplied with a used car through a hire purchase agreement with BMW. The agreement was for £17,480 over 49 months; with 48 monthly payments of £262.93 and an optional final payment of £8,448.77.

Miss C didn't make the January 2022 payment, although the payments for February to April 2022 were made. However, the May 2022 payment, and all subsequent payments, were then missed. BMW issued default notices on 20 June and 11 August 2022, asking Miss C to bring her account up to date. She didn't do this and, on 10 September 2022 BMW terminated the agreement.

In November 2022, Miss C asked BMW to review the termination, asking if she could refinance the car over a longer term, and with a guarantor. However, BMW didn't agree to this, and they started the process of repossessing the car.

Miss C wasn't happy with what had happened, and she complained to BMW. In their final complaint response letter dated 23 January 2023, BMW said they'd tried to contact Miss C (by phone and email) on eight separate occasions between February and July 2022, to try and discuss the arrears situation, as well as sending her 11 letters. But she didn't put any arrangement in place. So, they thought they'd acted reasonably by terminating the agreement, which stopped the arrears situation getting worse.

Miss C didn't agree with BMW, and she brought her complaint to the Financial Ombudsman Service for investigation.

While our investigator appreciated Miss C's financial difficulties, the reasons for this, and the stress this put her under; she said that Miss C hadn't tried to put a repayment plan in place, even though she'd done this for a linked account. So, she didn't think it was reasonable for BMW to have kept the account open with the arrears balance increasing, and that BMW had acted fairly in the circumstances by defaulting and terminating the agreement.

Miss C had also said she was unhappy with the amount of time it took to speak to someone at BMW, or for her calls to be returned; but the investigator said she couldn't see any attempts to communicate with BMW following the initial arrears letters. And she hadn't seen anything to show her that BMW were aware that Miss C was experiencing financial difficulties due to illness, or that BMW should've been reasonably aware of this.

So, the investigator didn't think BMW needed to do anything more.

Miss C didn't agree with the investigator. She said that she had made BMW aware of her illness and provided copies of call recordings. She said these showed that BMW offered to call her back about payment options, after they had been reviewed by a manager, but this call back never happened. And, when she chased this, she was told it couldn't go ahead.

Miss C didn't think that BMW had offered her any support due to her illness and financial problems, and that she was being harassed by the agent BMW had instructed to recover the car. And BMW refused to put the repossession on hold, even though she'd asked them to.

The investigator listened to the calls, and she reissued her view. She said that all the calls Miss C had provided took place after the agreement had been terminated in September 2022. However, in these calls, while reinstating the agreement was discussed, BMW never agreed to this and explained it was highly unlikely that it would be reinstated after a manager had reviewed the file. So, she still didn't think BMW had done anything wrong.

The investigator also said that, while Miss C experienced long wait times when she tried to call BMW after the agreement had been terminated, which would've been frustrating, this didn't mean that BMW didn't follow their process correctly when terminating the agreement.

Miss C didn't agree with the investigator. And she's asked that an ombudsman make a final decision in this matter.

### **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 have 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.

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 what I consider was good industry practice at the time. Miss C 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.

From the evidence I've seen, I'm satisfied that Miss C was in arrears with BMW. And she was £1,314.65 (the equivalent to five months) in arrears, and had received two default notices, when the agreement was terminated.

However, I haven't seen anything to show me that Miss C made BMW aware that her financial difficulties were caused by illness, or that she contacted BMW to discuss her arrears and payment options before the agreement was terminated. And while Miss C has pointed to calls she had with BMW about this, as explained by the investigator, these all took place *after* the agreement had been terminated.

The agreement Miss C electronically signed on 20 November 2019 is clear that BMW can end the agreement early, and consider it to be in default, if Miss C fails to maintain payments. And, by Miss C stopping making payments in May 2022, I'm satisfied that BMW had the right to take this action. However, the Financial Conduct Authority ('FCA') also expects financial businesses to treat customers in financial difficulties with forbearance and due consideration.

BMW's case notes show that they spoke to Miss C in January 2022, when she told them she had missed the payment as she was short on cash that month. And both Miss C and her partner spoke to BMW in January 2022, but at no point was her illness mentioned.

The case notes also show that, from February onwards, BMW tried to contact Miss C by email, phone, and letter, to discuss the arrears situation on her account. And they asked her to contact them to discuss the situation and "*discuss a suitable payment arrangement.*" They also gave her advance notice they would be issuing a default notice and asked her to contact them to avoid this happening.

Neither Miss C, nor her partner on her behalf, spoke to BMW about this until 9 July 2022, when Miss C emailed BMW to say she had recently moved house, and this was why she had struggled to make payments. This contact was only made after the first default notice had been issued. But, when BMW called her back about this, the call went straight to voicemail. And they received no response from their follow up emails. So, the agreement was terminated on 10 September 2022.

Given this, I'm satisfied that BMW followed the FCA's guidelines around forbearance and due consideration. However, it's also not reasonable to expect BMW to allow a situation such as this to go on indefinitely. And doing so would only put Miss C in a worse situation financially, as payments weren't being made and the arrears were increasing on a month-by-month basis. So, I also don't think that BMW acted unreasonably by terminating the agreement when they did.

It wasn't until 28 September 2022 that Miss C told BMW that she had been ill which, along with moving home, had impacted her financially. At this point she asked about refinancing the car. I've not seen anything to show me that BMW ever told Miss C this would be possible, and even though it was passed to a manager to review, she was told it was unlikely the termination would be rescinded. So, I don't think BMW has misled Miss C in this regard.

Miss C has also commented on BMW's attempts to repossess their car. Miss C has started making monthly payments to BMW, which is reducing the balance she owes, and she's prepared to either refinance the agreement or repay it in full in a few months' time, when she says she will be able to. As such, I accept that she would find any attempts to repossess the car unwanted and unacceptable.

However, Miss C doesn't have any agreement in place that she can continue to make payments and keep the car, nor, to the best of my knowledge, have they agreed to allow her to keep the car and clear the amount outstanding by lump sum at a yet to be determined date in the future. As such, their repossession agent is trying to arrange to contact Miss C. And, while she may not want this to happen, it doesn't make these actions either threatening or harassment. And I've seen no evidence that BMW's contacts were excessive in the circumstances.

So, while I appreciate the situation Miss C now finds herself in, and I appreciate that she won't agree with my decision, for the reasons stated; I won't be asking BMW to do anything more.

**My final decision**

For the reasons explained, I don't uphold Miss C's complaint about BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 13 September 2023.

Andrew Burford  
**Ombudsman**