

The complaint

Mr W complains about a hire purchase agreement he had with BMW Financial Services (GB) Limited (BMWFS). He is unhappy that BMWFS defaulted and then terminated his account because of a missed payment from February 2020. And that he now has adverse information recorded on his credit file.

What happened

I issued a provisional decision to the parties on 29 September setting out the circumstances of the complaint and my proposed decision. In that provisional decision I set out the following:

Mr W took out a hire purchase agreement with BMWFS in July 2019. In return for the use of the vehicle, Mr W was required to make the agreed monthly repayments during the life of the hire purchase agreement.

In February 2020 the monthly repayment was missed and I understand this was because of Mr W changing banks, or accounts, and this caused the payment not to be made that month. BMWFS wrote to Mr W on numerous occasions about the missed payment explaining that it was overdue. It also tried to call Mr W on his mobile, succeeding on more than one occasion, again to discuss the missed payment.

The missed payment was not paid and BMWFS eventually issued a default notice and terminated the account. I understand the car was subsequently sold or part exchanged and the balance outstanding on the account was settled. Mr W remains unhappy that his credit file includes adverse information, including the default notice and termination, and this is causing difficulties obtaining further credit.

Mr W has said that he did not consider the missed payment to be severe and that he was told the missed payment could be added to the end of the agreement. He accepts that he did receive the arrears letters 'for many months' but he believed this to be an administrative error.

After complaining to BMWFS Mr W referred his complaint to our service, where it was considered by one of our investigators. They did not consider BMWFS did enough to notify Mr W of the arrears and felt it plausible that Mr W would think the letters were sent in error as they were sent so long after the missed payment.

BMWFS did not accept the investigator's view of the complaint and said it would await an ombudsman's view of the case. It referred to Mr W being sent 59 arrears letters, which it believes is sufficient.

What I've provisionally 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.

There is no dispute that Mr W's repayment in February 2020 was not paid and was overdue. I have seen nothing to indicate this was anything other than an administrative issue caused by Mr W's change of bank/account, which then caused the payment to be missed. Mr W says in his complaint to our service that he was told the missed payment would simply be added to the end of the agreement, and therefore did not need to be repaid. He says that because this was his understanding he did not believe he needed to take action when he received the arrears letters, as he thought they'd been sent by mistake.

I accept it is possible that Mr W was told during a telephone call with BMWFS that he need not make up the missed payment and this could be added to the end of the agreement. There is no record of this on the system notes with BMWFS, nor is there any mention of this in subsequent call notes between Mr W and BMWFS. On balance I consider that Mr W's recollection of calls, around being told the missed payment could be added to the end of the agreement, is inaccurate and this is not what BMWFS told him.

Even if I was persuaded Mr W was however told this, BMWFS sent a significant number of letters to Mr W informing him his account was overdue and that the repayment needed to be made. I understand these letters were sent, mostly at least on a monthly basis through 2020, 2021 and beyond. I can appreciate if Mr W received one letter, or perhaps two, he may have thought this was in error. But there were considerably more letters sent and I think that it should have been reasonably clear to Mr W that the payment was actually due. It is not unreasonable in my view to expect Mr W to have tried to clarify this with BMWFS in a call, where he would have understood the missed payment needed to be made.

In addition to the letters sent to Mr W I note that BMWFS did actually speak to Mr W over the phone and at that stage it would have been apparent that the missed payment was due. BMWFS's call notes suggest this was in May 2021. Despite this, the missed payment was not made and further overdue letters were sent to Mr W.

I have seen nothing in this case that persuaded me that Mr W was led to believe that the missed payment need not be repaid. I have however seen what I consider to be substantial attempts by BMWFS to inform Mr W the payment needed to be made.

BMWFS eventually sent a default notice to Mr W but I note Mr W was no longer living at that address by then. I have seen nothing to demonstrate Mr W informed BMWFS of his change of address prior to this and I cannot hold BMWFS responsible for Mr W not receiving the default notice. Mr W was required under the terms of his agreement to inform BMWFS of his change of address, which he accepts he did not do.

The agreement was later terminated and for similar reasons to those set out above, I am satisfied that BMWFS acted fairly and reasonably in its attempts to inform Mr W of the missed payment and the potential consequences of not making the payment.

I fully appreciate that Mr W may have underestimated the impact of not making the missed payment, because of the negative affect this has had on his credit file. But I am not persuaded BMWFS could or should have done more in the circumstances here. While I am sure my decision will come as a disappointment to Mr W, I do not consider his complaint should be upheld. And consequently, I do not consider there to be any grounds to instruct BMWFS to remove the negative markers Mr W now has on his credit file in relation to this agreement.

My provisional decision

My provisional decision is that for the reasons set out above, I do not uphold this complaint.

Mr W responded to my provisional decision and expressed his disappointment with the decision I had reached. In summary, along with reiterating some of the points previously made, Mr W highlighted that it was only one missed payment over a 3 year period. He has an exemplary credit record and can prove he was in a financially stable position during the time of the credit agreement.

Mr W says there is no evidence to disapprove what he was told on the telephone about adding the payment to the end of the finance agreement term and he disputes he was contacted in July 2021 about the missed payment.

Mr W refers to the default notice being sent to the wrong address and that BMWFS knew that he no longer lived at that address. And he highlighted the emotional impact this has had on him and asked that BMWFS reconsider whether it would be willing to remove the default from his credit record.

We received no response from BMWFS.

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 come to the same conclusions as set out in my provisional decision, for broadly the same reasons.

I fully appreciate the issues here were caused by only one missed payment and Mr W considers the impact of this to be excessive. But as I have set out, Mr W should have been aware of the missed payment and the need for that payment to be made. Mr W failed to inform BMWFS of his change of address so I do not consider it reasonable to hold BMWFS responsible for any possible impact of Mr W not actually receiving the default notice.

Mr W disputes that he did have a conversation with BMWFS about the missed payment but I have no reason to doubt the contact notes that BMWFS has provided. I find it unlikely that BMWFS simply fabricated the contact entry in its system referring to the call. Mr W refers to there being no evidence to disprove what he says he was told about the payment being added to the end of the finance agreement and I accept that I have not listened to any calls where this was or wasn't discussed. However, there was sufficient opportunity in my view, as I have previously referred to, which should have alerted Mr W to the fact that even if he was told the payment could be added to the end of the agreement, this was incorrect and he needed to make the payment.

For the reasons set out in my provisional decision, along with those here, I still do not consider there to be sufficient grounds to uphold Mr W's complaint. I do not therefore find that I can reasonably direct BMWFS to remove the default on Mr W's credit files. Should BMWFS wish to reconsider this, as per Mr W's request, I will invite it to do so. But again I must be clear that this will be for BMWFS to consider and I am not directing it to remove the information as part of my final decision.

My final decision

My final decision is that I do not uphold Mr W's complaint against BMW Financial Services(GB) Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 November 2023.

Mark Hollands
Ombudsman