

The complaint

Mr S is unhappy that BMW Financial Services (GB) Limited trading as Alphera Financial Services ('BMW') terminated the hire purchase agreement he had with them and refused to accept his offer to clear his arrears.

What happened

In February 2020, Mr S was supplied with a used car through a hire purchase agreement with BMW. He paid an advance payment of £2,000 and the agreement was for £18,350 over 48 months; with 47 monthly payments of £284.54 and an optional final payment of £9,145.

Mr S's income was affected by the coronavirus (Covid-19) pandemic and BMW agreed a payment deferral. The payments were due to start again in September 2020, but Mr S had cancelled the direct debit, so no payments were made. Mr S wrote to BMW in January 2022, explaining that he'd not been financially able to make payments to the account previously. He then paid them an initial payment of £500, followed by payments of £400 a month.

BMW had offered to arrange a payment plan with Mr S in both February 2021 and February 2022, but nothing was put in place. They also provided him with his options to exit the agreement. Mr S completed an income and expenditure form in July 2022, which showed that his outgoings exceeded his income, so BMW were unable to put any arrangement in place to clear the arrears.

On 18 August 2022, BMW sent Mr S a default notice explaining his account was in arrears and asking him to take action to repay these by no later than 7 September 2022. And, if he didn't, BMW could terminate the agreement and repossess the car.

Mr S didn't take any action following the default notice, despite BMW's attempts to contact him to discuss the situation. So, on 15 September 2022, BMW wrote to him to tell him they were terminating the agreement and would be looking to repossess the car. On termination, his arrears stood at £4,023.26 – equivalent to around 14 months payments.

On 11 October 2022, Mr S said he'd sold a property and offered to clear the arrears. BMW, as a gesture of goodwill, said if he settled the agreement in full, they would remove the default from his credit file. They also confirmed this offer in writing. However, Mr S didn't take up this offer and BMW took action to repossess the car.

Mr S wasn't happy with what had happened, and he brought his complaint to the Financial Ombudsman Service for investigation.

While our investigator appreciated Mr S's financial difficulties, he noted that Mr S continued to have use of the car when payments weren't being made. But he thought BMW had offered Mr S support during his financial difficulties, kept him updated on the arrears situation on his account, and acted reasonably by defaulting and terminating the agreement. And he didn't think they needed to do anything more.

Mr S didn't agree with the investigator. He said that a default would mean he couldn't effectively run his business so *"the penalty that is currently in place is therefore not justified or reasonable."* He also said that he's asked BMW for copies of the calls he'd had with them as *"they directly contradict what the paperwork says"* and he didn't think it was possible for a fair and balanced decision to be made without these.

However, despite BMW confirming the calls had been sent to Mr S, he said that he has been unable to access these. So, they can't be provided. As such, this matter has 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.

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. Mr S 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.

Before I address Mr S's complaint, he's said I need to listen to the calls he had with BMW to understand the full situation. But he's currently unable to provide the call recordings. However, I've seen that BMW have provided extensive case notes, which include details of every call they had with Mr S. As I haven't seen anything to show me that these notes aren't correct, or that they weren't made at the time, I'm satisfied it's reasonable for me to rely on these notes as the calls themselves aren't available. And I'm able to reach a final decision on this basis.

From the evidence I've seen, I'm satisfied that Mr S was in arrears with BMW. And he didn't make any payments between the payment deferral ending in late 2020 and January 2022. I've noted that Mr S says he didn't cancel the direct debit, and there were sufficient funds in his account to pay BMW. However, if this was the case, I would've expected Mr S to contact BMW about the payments not being collected, and to have the funds available to repay the missed payments when BMW asked for them.

However, I've not seen that he did this. But I have seen that he advised BMW that his income had been long-term affected as a result of Covid-19, which is why he wasn't able to make payments in 2020 and 2021.

The agreement Mr S signed is clear that BMW can end the agreement early, and consider it to be in default, if Mr S fails to maintain payments. And, by Mr S not making payments for more than 12-months, I'm satisfied that BMW had the right to take this action. However, the Financial Conduct Authority ('FCA') also expect financial businesses to treat customers in financial difficulties with forbearance and due consideration.

BMW's case notes show that, from the first point Mr S contacted them about his financial situation in early 2020, they tried to work with him to clear the arrears in a sustainable way. I've seen that he was offered payment deferrals and his options to exit the agreement were discussed. He was also asked to provide income and expenditure details so a longer-term solution could be put in place. But, when Mr S provided this information, it showed that the payments to BMW were unaffordable.

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 Mr S in a worse situation financially – the income and expenditure details he provided in July 2022 showed that his monthly expenditure was more than his income, without taking BMW's payment into consideration, and ongoing payments were therefore unaffordable.

So, allowing him to continue to pay £400 a month towards the agreement, or allowing him to clear the arrears following the sale of an asset and resume the normal contractual monthly payments, would only put Mr S into further debt. Because of this I think it was reasonable for BMW to terminate the agreement and start to take steps to repossess the car.

I appreciate the situation Mr S now finds himself in, both with regards to his credit profile and that he's reliant on the car due to a family members ill health and transportation requirements. But I don't think it's fair to allow him to continue to have use of a car that he's clearly demonstrated is unaffordable. And to do so would only add to his financial situation, potentially putting him in a worse position to the one he now finds himself in. So, 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 Mr S's complaint about BMW Financial Services (GB) Limited trading as Alpha Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 September 2023.

Andrew Burford
Ombudsman