

The complaint

Mr G complains about a sum of money that BMW Financial Services(GB) Limited ("BMWFS") is seeking payment of from him.

What happened

In July 2021 Mr G entered into a hire purchase agreement with BMWFS for a new car costing £44,447.20. Under the terms of the agreement, everything else being equal, Mr G undertook to make an advance payment of £500 followed by 47 monthly payments of £619.80 followed by 1 monthly payment of £18,410.33 making a total repayable of £48,040.93 at an APR of 2.9%.

On 26 April 2022 BMWFS sent Mr G a default notice.

On 20 May 2022 BMWFS sent Mr G a termination notice.

On 6 July 2022, following a complaint made by Mr G, BMWFS sent Mr G a final response letter ("FRL"). Under cover of this FRL BMWFS said it was satisfied that it had nothing wrong in issuing a default notice and then a termination notice.

On 14 February 2023 the car was recovered from Mr G.

On 11 April 2023 BMWFS contacted Mr G to say that having sold the car at auction he owed it £4,431.90 repayable within 14 days.

On 16 April 2023 Mr G emailed BMWFS to say that he understood he could discuss a repayment plan for the sum of £4,431.90 it was seeking the payment of from him.

On 19 April 2023 BMWFS contacted Mr G to say that he owed it £6,881.53 (£4,431.90 plus a settlement rebate reversal of £2,449.63).

On 17 May 2023, following a complaint made by Mr G, BMWFS sent Mr G a FRL. Under cover of this FRL BMWFS said it was satisfied that it had done nothing wrong in seeking payment of £6,881.53 from him.

Unhappy with BMWFS' FRL Mr G complained to our service.

Mr G's complaint was considered by one of our investigators who came to the view that BMWFS should only seek payment of £4,431.90 from Mr G (not £6,881.53), that it should pay Mr G £250 for the distress and inconvenience it had caused him and that it should ensure anything recorded with credit reference agencies in respect of the agreement reflects (from 11 April 2023) an outstanding sum of £4,431.90 and not £6,881.53.

BMWFS didn't respond to the investigators view and Mr G responded to say that he felt he should be paid more than £250 in compensation.

Because BMWFS didn't respond to the investigators view and Mr G responded to say that he felt he should be paid more than £250 in compensation Mr G's complaint has been passed to me for review and 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.

I would first like to acknowledge that I'm very aware that I've summarised the circumstances surrounding this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Secondly, and for the avoidance of any doubt, I'm only considering in this decision Mr G's complaint about the sum BMWFS is seeking payment of from him after 'his' car was recovered and sold at auction. In other words, I'm not considering any other complaint Mr G might have against BMWFS.

Prior to the investigator issuing her view on this case BMWF advised our service that if Mr G had called it within 14 days of its letter dated 11 April 2023 it would have capped the sum it was seeking the recovery of from him at £4,431.90 and wouldn't have increased it to £6,881.53.

Now I accept that Mr G might not have called BMWFS within 14 days of its 11 April 2023 letter. But I'm satisfied that he contacted it by email within 14 days confirming, or at least suggesting, his acceptance of the debt of £4,431.90 and to say that he would like to agree a repayment plan. And because of this, I'm satisfied that it's only fair that BMWFS reduces the sum it's seeking the recovery of from Mr G to £4,431.90.

But I'm also satisfied that that that BMWFS should reduce the sum it's seeking the recovery of from Mr G to £4,431.90 for the following reasons:

- BMWFS has had the benefit of the sale proceeds of the car
- Mr G was in, and is still in as I understand it, financial difficulties
- FCA guidance is clear that customers that are in default or in arrears difficulties should be treated with forbearance and due consideration by businesses
- treating the sale proceeds as an early repayment and applying an early and non-reversable settlement rebate 'shows' in my view forbearance and due consideration and constitutes a fair and reasonable thing for BMWFS to have to do in the particular circumstances of this case

Like the investigator I'm also satisfied that BMWFS' handling of matters in this case has been poor and has caused Mr G a degree of distress and inconvenience for which he should be fairly and reasonably compensated for. But having considered everything the parties have said and submitted I can confirm that I'm satisfied that £250 constitutes an appropriate sum to be paid by BMWFS in this respect.

My final decision

My final decision is that BMW Financial Services(GB) Limited must:

- reduce the sum it's seeking the recovery of from Mr G to £4,431.90*
- pay Mr G £250 for the distress and inconvenience this whole matter has caused him and for the avoidance of doubt this sum should be paid to Mr G directly and not used to reduce the sum of £4,431.90
- ensure anything it has recorded with credit reference agencies in respect of the sum being sought from Mr G shows a capital sum being sought of £4,431.90 and not a higher sum

**I would politely remind BMW Financial Services(GB) Limited's of its obligations, if Mr G is in financial difficulties, to act with forbearance and due consideration in its collection – going forward – of this sum*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 January 2024.

Peter Cook
Ombudsman