

The complaint

Mr M complains that after making what he thought was the final payment on his agreement, BMW Financial Services (GB) Limited trading as BMW Financial Services ("BMW") have told him that he still owes further money to them.

What happened

Mr M entered into a hire purchase agreement in March 2018 to acquire a new car from BMW. The agreement was for four years.

During the term, Mr M had more than one period where he either paid reduced amounts or had payment deferrals. These occurred during the Covid-19 pandemic and included a period in May to July 2020 where he made reduced payments, followed by another period later in 2020 into 2021 year where all payments were deferred for several months.

This deferral from later in 2020 led to the agreement extending past four years. Mr M says he received a text message in June 2022 asking him to make contact to discuss with BMW what he wanted to do at the end of the agreement, and another text and email in late August 2022 saying that as they had heard no different, they assumed Mr M intended to keep the vehicle and so they would take the final "balloon" payment from his bank account in early September 2022.

This payment was taken, and then later that month BMW made contact about some arrears still owing on the account. There was some confusion about how much this was, but eventually BMW confirmed it was £944.88. Mr M has told us that as far as he was concerned, when they gave him a final payment figure in August 2022 and took that amount, he believed that was the final amount payable so should have included any arrears. He wasn't aware of any money owing and didn't think he should have to pay any more.

He complained to BMW, and they issued their final response letter in February 2023 not upholding his complaint. They explained that he had made the final balloon payment in full, but as there were arrears owing from the monthly payments, this was separate to the balloon payment, so he still had to pay the money.

Unhappy with this Mr M brought his complaint to our service. An investigator here investigated the complaint and didn't uphold it. They said that they were satisfied the amount owing was correct and referred to the shortfall in payments in the May to July 2020 period, which totalled the amount in question. As such, they felt it was fair for BMW to expect payment of this amount.

Mr M didn't agree with this and asked for an Ombudsman to make a final decision. He highlighted that BMW had indicated that the payment they messaged about was the "final payment", and he had complied with that. He also said they had then sent confusing messages about how much they thought he still owed, so he felt this was being charged just to maximise BMW's own position.

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've 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 (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

In deciding this complaint, I've looked into the circumstances of the arrears BMW says are owed, alongside considering whether Mr M has been treated fairly in these circumstances.

With regards to the £944.88, I am satisfied that Mr M still owed this money. The circumstances here were quite unusual, as during the pandemic, it seems that BMW first allowed Mr M to reduce down his payments for three months, and then shortly afterwards provided full payment holidays, so then a total of seven monthly payments were deferred as well. Both of these scenarios suggest BMW were more than fair in dealing with the financial pressures the pandemic put on Mr M.

I highlight this because I think this is part of the reason for the confusion in what Mr M was required to pay, in that there were two different shortfalls in his payments on the agreement that needed to be addressed.

I've also considered what Mr M told us. He said in June 2022 he received a text message asking him to make contact to discuss the upcoming end of his agreement and what he wanted to do. I have the contact notes from BMW and can see no contact between Mr M and BMW or communications to BMW from Mr M from February 2022 until September 2022. This suggests Mr M didn't reach out to discuss the end of the agreement with them.

This in itself isn't a problem, but then Mr M received a text message in August 2022 with a balloon payment or final balance that needed paying, and assumed it includes the various deferred payments and arrears he owed. I've thought about this carefully, as this is the crux of the complaint. Mr M feels he should have been able to rely on this message as being accurate and it should have included all the money he still owed.

I agree that in an ideal world this might be the case but having had so many of his payments reduced and deferred, I think it would be reasonable for him to make contact with BMW to ensure this was indeed the total amount still owed.

Mr M feels that as the message he received said "final payment", that he shouldn't have to pay any more. I agree that this would have been an ideal scenario, but I can also appreciate that a balloon payment is different from arrears on the monthly payments. And fundamentally, I am satisfied that he still owed BMW the money. On that basis, it feels fair that Mr M still should still have to pay this money.

The customer service from BMW was a little below what they might aspire to, in that they appear to have taken the balloon payment first and then reminded Mr M that he still owed some arrears on the monthly payments. But Mr M could have checked on his account and discussed it with BMW at any point before allowing the balloon payment to be taken. They

encouraged him to make contact to discuss things, and I've seen no evidence that he tried to do this.

Mr M had also been made aware during his agreement that he had shortfalls on his payments that would need to be addressed. I'm not persuaded that because he wasn't reminded of this proactively towards the end of the agreement, this should mean he doesn't have to pay the money to BMW.

Mr M was £944.48 short of making all payments for the amount owing on the agreement with BMW. He feels that because he made "the final payment", this should mean they can't ask him for any more money, but I don't agree that this is fair. During the time he had the agreement, BMW treated him fairly, allowing him to pay less when he needed to, and to take payment holidays when he needed to, to get through the pandemic.

Now, they've highlighted that he hasn't repaid all this money back to them, and I think it's fair that he should pay it. I appreciate that it would have been clearer for BMW to have highlighted the arrears to him before taking the final balloon payment, but I've seen no evidence that knowing this would have changed his mind about keeping the car, and he hasn't asked to change his mind about that. Mr M feels that he shouldn't have to pay the remaining money, and I'm afraid I don't agree with this. I won't be asking BMW to do any more here.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 November 2023.

Paul Cronin
Ombudsman