

The complaint

Mr Z complains BMW Financial Services(GB) Limited trading as Alphera Financial Services (BMWFS) unfairly terminated his car finance agreement.

What happened

In February 2022, Mr Z entered into a 49 month personal contract purchase agreement (PCP) for a car.

In October 2022, the car was seized by the police under section 165 of the Road Traffic Act 1988 (the power to seize for driving without insurance or a driving licence).

BMWFS contacted Mr Z by phone and email to say this was a breach of the agreement and to remedy it, he had to provide a number of documents as follows:

- A signed letter to confirm the car was in his possession;
- A copy of the insurance certificate;
- Copy of the VC5 (log book);
- Copy of the collection receipt from the police compound.

There were further calls and emails between BMWFS and Mr Z to request the same but the documents weren't provided. In November 2022, a default notice was issued but as it wasn't satisfied the agreement was terminated in January 2023 and a default recorded against Mr Z.

In February 2023, Mr Z provided the documents outlined above (except the collection receipt). However BMWFS said their decision to terminate the agreement remained unchanged as the documents weren't received in time as they had requested. Mr Z complained.

BMWFS said the agreement was terminated and defaulted because the car was seized and they didn't receive the required documents from Mr Z in time despite their communication with him. They confirmed the termination and default would remain in place.

Since then, the car has been collected by BMWFS and sold at auction. The sale proceeds were put towards the agreement but there was a shortfall of around £3,300 which they said Mr Z needed to pay.

Unhappy with their response, Mr Z referred the complaint to our service. Our investigator recommended the complaint wasn't upheld. She said BMWFS had provided opportunities for Mr Z to provide the relevant documents to avoid the default. Having seen the correspondence and listened to the calls, she was satisfied he was aware of the same and BMWFS had the correct contact details for him. Overall, she didn't believe BMWFS had done anything wrong.

As an agreement couldn't be reached, the complaint has been referred to me to decide.

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 decided not to uphold Mr Z's complaint. I'll explain why.

As a starting point, I've referred to the terms of the agreement. In summary it says:

- BMWFS have the right to end the agreement after sending a notice required by law and the relevant actions aren't taken within the required period of time;
- The reasons why BMWFS may terminate and default the account include failing to pay the monthly instalments, the vehicle is seized, sold or abandoned, etc.
- Upon termination, BMWFS can demand sums including any arrears, the total amount payable, recovery costs, etc.

In this case, there is no dispute the car was seized by the police as they said there was no insurance. Based on the above terms, this is a breach of the agreement and one of the reasons that will permit BMWFS to terminate it.

I can see following the seizure, BMWFS contacted Mr Z by phone. I've listened to the phone call and the advisor confirmed the seizure was considered a breach of the agreement. He outlined the documents he needed from Mr Z and asked him to provide it by the end of the week. Having listened to the call, I find the advisor's instructions were clear. I also heard Mr Z repeat back the documents so I'm satisfied he understood what was required from him and he needed to take action immediately. As agreed, the advisor followed up by email which Mr Z said he was happy for him to do. I've read this email and it's in line with what the advisor told Mr Z. Based on BMWFS' contact notes, I can't see Mr Z provided the documents as requested.

There was a further call in November 2022 to Mr Z. Having listened to it, its content is very similar to the call in October 2022. After reiterating what Mr Z needed to provide, the advisor says he will send an email and he spells out Mr Z's email address which he confirms was the right one.

In November 2022, a default notice was issued and sent to Mr Z's address. I note this is the same address that our service holds so I consider it to be the right one. The notice outlines the breach and the consequences should Mr Z not take any action by the deadline – that is, termination and a default. However I can't see anything was received by Mr Z. He has provided evidence that he had to leave the country due to personal reasons in December 2022. While I accept he may have been out of the country for some time and there were things happening with his family members that he had to take care of, BMWFS had been requesting the documents for several weeks prior. So I can't say he wasn't aware he needed to take action.

In January 2023, there was a further call. Similar to the two earlier calls, I find the advisor was clear about what was needed and what would happen should it not be received. Again, I'm satisfied Mr Z understood as he repeated back the documents and there was a brief discussion about the fact he was unable to provide the compound receipt. Mr Z confirmed he was happy for an email to be sent and he would reply with what was needed. It's worth noting in all three calls, I can hear Mr Z confirm his email address was the correct one so I can't say BMWFS did anything wrong by sending the emails to that address. If it was

incorrect or equally if Mr Z didn't fully understand what was needed from him, I find it would've been reasonable for him to say so but he didn't during these calls.

As Mr Z failed to provide the documents to remedy the breach, I find BMWFS acted fairly and in line with the terms in terminating the agreement and recording a default. I must stress they had first requested the documents in October 2022, sent several correspondence about it and spoken to him on at least three occasions so I can't say they didn't provide sufficient time for Mr Z to provide what was needed. They terminated the agreement in January 2023 which is around three months after the initial breach.

Once the agreement was terminated, they collected the car. I understand it was sold at auction and the proceeds was put to the outstanding balance. I find this was a fair course of action by BMWFS as it reduced the overall balance owed by Mr Z. I'm aware there is a shortfall of around £3,300 which he must pay and based on the terms of the agreement, BMWFS are entitled to the same from him.

Taking everything into account, I'm satisfied BMWFS acted fairly and in line with the terms in terminating the agreement and recording a default. I encourage Mr Z to work with BMWFS to pay the outstanding balance. In the event he's experiencing financial difficulty, I wish to remind BMWFS of their obligations to treat him with forbearance and due consideration.

My final decision

For the reasons set out above, I've decided not to uphold Mr Z's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 20 November 2023.

Simona Reese
Ombudsman