

## **The complaint**

Mr M is unhappy that BMW Financial Services (GB) Limited failed to provide him with enough support while he was experiencing financial difficulties, and terminated the hire purchase agreement he had with them.

## **What happened**

In June 2019 Mr M was supplied with a new car through a hire purchase agreement with BMW. He paid an advance payment of £42,215.45 and the agreement was for £13,500 over 48 months; with 47 monthly payments of £698.17, and a final optional payment of £14,956.74.

In March 2020, Mr M's income was affected by the coronavirus (Covid-19) pandemic. He advised BMW about this, and they agreed to a 30-day period of breathing space (where no payments were required), followed by a six-month payment deferral (covering the payments due from May to October 2020).

Mr M was unable to resume payments in November 2020, and BMW explained his exit options and offered a reduced payment plan. And they explained his credit file would be affected by this. But this wasn't put in place because it was unaffordable to Mr M at the time. Mr M contacted BMW again on 12 March 2021, and explained his income was still being impacted. BMW explained his options, including a reduced payment plan, but nothing was put in place.

On 29 March 2021, Mr M offered to pay £600 a month, with a view to increasing it in three months' time, to start to repay the arrears. However, BMW didn't accept this offer as it was less than the required payment and would mean the arrears would continue to increase. So Mr M continued to make no payments.

BMW continued to send Mr M letters, as well as attempting to contact him by phone and email. By May 2022 the arrears had risen to more than £14,000, and in June 2022, BMW sent Mr M a default notice. On 13 July 2022 they terminated the agreement.

Mr M wasn't happy with what had happened. BMW acknowledged they'd terminated the agreement before they'd responded to his complaint, which they said they wouldn't do. But they thought they'd acted reasonably by defaulting the account because of the extensive arrears, and they said they would start to take action to repossess the car if Mr M was unable to settle the outstanding balance.

Mr M remained unhappy and he brought his complaint to us for investigation.

Our investigator explained that, under the guidelines laid down by BMW's regulator, the Financial Conduct Authority ('FCA'), financial businesses should treat consumers in arrears with forbearance and due consideration. And this could be by way of waiving interest, deferring arrears payments, accepting token payments etc. She also said there was specific FCA guidance relating to customers whose income had been affected by Covid-19.

However, the investigator thought that BMW had followed the FCA guidance on both Covid-19 and for customers in arrears. She thought BMW could've accepted Mr M's offer of £600 a month for three months in March 2021 (subject to an income and expenditure assessment to ensure it was affordable). But she didn't think doing so would've made any overall difference, as Mr M continued to make no payments for more than a year after making this offer.

As such, the investigator thought BMW acted reasonably by defaulting and terminating the agreement, as it wouldn't be fair to allow the arrears to continue to increase where there was no sign of Mr M resuming payments. And she didn't think BMW needed to do anything more.

Mr M didn't agree with the investigator. He said it was "*shortsighted*" of BMW to repossess the car when its value was less than what he owed, and he thought they should reverse the termination, and allow him to pay £750 a month instead. He also said he needs the car as transportation for work, and not having it will further affect his income.

He also said that the amount he now owed BMW was more than the amount of the original credit, even though he's made payments towards the agreement. So, he didn't think we'd considered the "*excessive interest*" he'd been charged, especially as "*other financial bodies are forced to suspend their interest!*"

Finally, Mr M has said that he'd like us to consider the contents of the calls he's had with BMW, and he didn't think a full picture could be seen without these.

Because Mr M didn't agree, 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 M 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.

From the evidence I've seen, I'm satisfied that Mr M was in arrears with BMW. And, as the last payment he made was in March 2020, the arrears were increasing on a month-by-month basis. Mr M has said that 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 M. 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.

BMW's case notes show that, from the first point Mr M started to miss payments, they tried to work with him to clear the arrears in a sustainable way. I've seen that, in addition to the FCA Covid-19 six-months payment deferral, he was offered both breathing space and given the option to make token payments. Payment plans were also discussed on multiple occasions, but I haven't seen that Mr M ever agreed to one being put into place.

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. As doing so would only put Mr M in a worse situation financially as the arrears would continue to increase.

The statement of account shows that Mr M only made eight payments, £5,585.36, since the agreement started. And, by July 2022, the agreement was over two years in arrears, with around a year remaining on the original term.

The case notes show that, on 29 March 2021, Mr M asked about paying £600 a month for three months, and then set up a payment plan in three months' time. From this it's reasonable to presume that Mr M was expecting to be able to resume full payments (plus pay an amount toward the arrears, which stood at around £4,500 at the time) by July 2021.

I'm in agreement with the investigator that BMW should've explored this offer with Mr M, and conducted an income and expenditure assessment to ensure it was affordable. While they didn't, Mr M didn't make any attempt to make any payments to BMW, even token payments, nor did he contact them in July 2021 (when he was presumably expecting to be able to recommence full payments) and discuss what he was able to pay.

BMW continued to try and work with Mr M to resolve the situation, but he failed to respond to any of their letters, emails, or phone calls. And, during this time, Mr M remained mobile in a car that he wasn't contributing towards. So, given the situation, I think it was reasonable for BMW to terminate the agreement and start to take steps to repossess the car.

Mr M has argued that it's 'shortsighted' for BMW to now repossess the car, as it's worth less than what he owes. And he would like to refinance the agreement and pay £750 a month to clear the outstanding balance and all the arrears. This offer has been made after the agreement has been terminated, and I haven't seen anything, for example an income and expenditure assessment, to show that this offer is sustainably affordable. And, if it is, it's reasonable to assume that Mr M most likely had the means and opportunity to make this offer (or a similar offer) before the agreement was terminated. But he didn't do so.

Given this, I won't be asking BMW to accept this offer.

Mr M has also raised the issue of what he currently owes BMW, and that we haven't considered the 'excessive interest' he's been charged. In July 2022, when the agreement was terminated, Mr M was £19,840.15 in arrears. And the outstanding balance was £43,174.93, including those arrears.

The agreement Mr M signed is clear that the "*effective interest rate (fixed)*" was 4.9% a year, and the expected total interest that would be charged over the lifetime of the agreement was £5,555.28. However, this was based on the assumption that every payment would be paid on time and in full. And this didn't happen. When Mr M had the six-months payment deferral in 2020, BMW explained that interest would still be charged on the deferred payments, and that this would increase the total amount of interest payable. This is something the FCA allows financial businesses such as BMW to do.

Given this, BMW would continue to charge interest on all the unpaid payments i.e. the total amount of the arrears, until the agreement was terminated. And I haven't seen anything that shows me they did this at any interest rate other than the 4.9% confirmed in the agreement. So, while the small number of payments Mr M paid compared to the number he missed has resulted in the balance at termination being around £1,000 more than the amount of the original credit, I can't agree that he was charged excessive interest, nor that BMW have continued to charge him interest after the agreement was terminated. And, by terminating the agreement slightly earlier than they said they would, this has also reduced the amount of interest that BMW would otherwise have charged.

I appreciate the situation Mr M now finds himself in, and that he's reliant on the car for his employment. But I don't think it's fair to allow him to continue to have use of a car he's not paying for and clearly hasn't been able to afford for around three years. 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 M's complaint about BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 August 2023.

Andrew Burford  
**Ombudsman**