

The complaint

Mrs S complains that BMW Financial Services (GB) Limited ('BMWFS'), trading as MINI Financial Services, put her account in significant overdraft when they debited a large payment in error.

What happened

In December 2023 Mrs S entered into a hire purchase agreement with BMWFS to finance a car. The cash price of the car was £42,288 and Mrs S provided an advanced payment of £15,244.20. The agreement required 36 monthly repayments of £325.89 to be made with an optional ('Balloon') payment of £20,410.23 due at the end of the agreement if Mrs S wanted to take ownership of the car.

Mrs S made lump sum partial payments towards the account with the last one, of £6,423.33 being taken in May 2024. That meant her monthly repayments would reduce to £25 per month. But at the end of that month Mrs S was dismayed to find BMWFS had taken that £6,423.33 payment again. As that left her account in significant arrears, she had to cash in an ISA to restore her bank balance so that charges weren't incurred. She complained to BMWFS and she said when she reported the issue to them they were unapologetic and seemed to find it amusing.

BMWFS apologised and explained that the payment had been debited because of human error. They refunded the overpayment and offered £250 to compensate Mrs S for the distress and inconvenience caused.

Mrs S was disappointed. She wanted compensation for the hours she had spent trying to resolve the issue on the phone and for the loss of interest on the ISA she'd had to close. As she couldn't pay the £6,423.33 back into her ISA, she wanted that payment to be taken as a further partial payment towards her debt with BMWFS.

Our investigator thought the compensation offered by BMWFS was reasonable, but he thought they were unfair to refuse to take the overpayment towards the account balance. He noted the finance agreement said that partial or full payments could be made at any time. He suggested that BMWFS accept that partial payment and consult with Mrs S about whether it should be paid to reduce the term of the account or the repayments.

BMWFS explained that they couldn't accept a repayment of that size. They said that the partial payments already received on the account meant that Mrs S was already only paying £25 per month and that it was their policy not to allow lower repayments. If they accepted a further £6,423.33 it would wipe out all of the monthly repayments and would need to reduce the balloon payment. They said that's something they couldn't do *"as the balloon is what the vehicle is worth to us at the end of the finance term, this value cannot be adjusted and/or reduced at any point"*. They did, however, offer to increase the compensation to £400 and our investigator thought that new offer was a fair one.

Mrs S didn't agree with the investigator's view. She said she'd invested countless hours on the matter and she suggested that we review all of the calls she had with BMWFS. As

BMWFS didn't agree to the investigator's view either, the complaint has been referred to me, an ombudsman, to make a 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 know it will disappoint Mrs S, but I think the compensation on offer is sufficient here.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mrs S acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

There's no dispute here that BMWFS made a mistake. They wrongly debited Mrs S's account. That had an impact on Mrs S. It meant her account fell into a significant overdraft and that she had to cash in her ISA to remedy the situation. She has been unable to reopen that closed ISA and may, therefore, have lost some interest that would have been attracted to her deposit. Mrs S was deprived of that money for about three weeks. I can understand that she would have needed to call the business and I understand that she struggled, at times, to get a response. She's also upset that the business haven't allowed her to make a further partial payment towards her account

The loss of interest on the ISA over a three-week period would not have been much (I think no more than about £50) and when the money was returned to Mrs S it was available for her to reinvest. While I can understand Mrs S was regularly chasing a response and suggests she wouldn't have received one had she not done so, she did receive a response in a reasonable time frame and that mitigated the distress and inconvenience caused. I've not seen or heard enough evidence to suggest the business were rude or found her complaint amusing. The call I have reviewed doesn't evidence that, and it was the one taken when Mrs S referred her complaint to the business, when she says the issue happened. Mrs S can, understandably, not direct me to the correct call date as it's her position that she had many calls with the business. I don't think, even if there was another call and the agent was rude, it would lead me to conclude the compensation offered was unreasonable. So, I'm not going to ask for, or review all of the call records.

I've considered whether BMWFS have been fair to refuse to accept a further partial payment. The finance agreement explains:

“Early Repayment

You have a right to repay all or part of the credit early at any time”

And Section 94 of the Consumer Credit Act (1974) explains that borrowers under regulated credit agreements, such as the one Mrs S has with BMWFS, have the right to repay their credit agreements early.

The balloon payment is included in the overall credit being advanced by the business and while it is an optional payment, there is no clause in the contract that would suggest partial repayment of it was not possible, or that repayments of less than £25 cannot be made.

It seems BMWFS's reluctance to accept that partial repayment is a practical one. So, I've thought about whether it would be reasonable to tell them to do so. I don't think it would. I think it's likely that such a partial payment would create unreasonable operational or administrative challenges for BMWFS. It would, in my experience, be very unusual for a business to accept such a payment and I don't think the benefit to Mrs S outweighs the challenges such a payment would raise for the business. Mrs S would gain little financial advantage as the interest-bearing repayments left on the account are minimal. She is also able to invest the money elsewhere and earn interest on the amount. So, I'm not asking BMWFS to accept the partial payment.

Ultimately, I think compensation of £400 is sufficient to cover the distress and inconvenience caused.

My final decision

For the reasons I've given above I uphold this complaint in part and tell BMW Financial Services (GB) Limited to pay Mrs S £400 in compensation less anything they have already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 7 January 2025.

Phillip McMahon
Ombudsman