

The complaint

Ms S has complained that BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS) allowed her to enter into a hire purchase agreement to acquire a car.

What happened

In July 2019 Ms S acquired a car under a hire purchase agreement with BMWFS. As part of the deal Ms S part exchanged another car she had with a different finance company.

It looks like the supplying dealer paid Ms S £17,000 for the car she part exchanged. She owed around £21,500 to the finance company. So there was about £4,500 of negative equity brought to the deal.

The car that Ms S acquired under the hire purchase agreement with BMWFS cost around £20,000. This meant that in total she needed to provide the supplying dealer with around £24,500 for the car that she acquired and the negative equity for the car she part exchanged.

BMWFS financed Ms S around £22,500 under a five-year hire purchase agreement. And it lent her around £2,000 under a five-year fixed sum loan agreement. I understand the car was registered to Ms S' partner at the time – who was the main user of it.

It looks like Ms S contacted BMWFS in February 2020 to ask for a settlement figure because I believe she was splitting up with her partner at the time, and so they wanted to know what the situation was. I understand at this point Ms S told BMWFS she was not insured on the car, and it was registered to her partner. And BMWFS told her this wasn't allowed under the agreement. So, from what I can see, Ms S' partner intended to pass the registration to Ms S to resolve the issue. BMWFS' notes also say around this time Ms S explained since she was splitting up with her partner she was concerned because she couldn't afford the finance any more.

Things took a turn when Ms S requested the sales documentation. She said that upon reviewing the documents she noticed the supplying dealer had supplied a copy of a driving licence in her name that wasn't hers. She says she held a provisional licence but the licence the supplying dealer had copied was a full driving licence. She also said the picture on the licence wasn't hers.

She also complained the supplying dealer had registered the car to her partner, when it should have been registered to her – as BMWFS' customer.

Finally, she complained that she didn't sign the fixed sum loan agreement for around £2,000. She also says she later found out that BMWFS wouldn't have accepted her as a customer had it known she only held a provisional licence. So she thinks something has gone very wrong and that the dealership has committed fraud and set up a fronted agreement in order to achieve the deal.

BMWFS didn't uphold the complaint. It said it hadn't found the supplying dealer had acted fraudulently. And that if the deal was fronted it would request the car's registration is transferred to the finance holder's name. It didn't think unwinding the deal would be appropriate.

More recently, I understand the car was repossessed because Ms S had stopped making payments from March 2020.

Our investigator looked into the complaint, but she didn't recommend BMWFS take any action. She said the supplying dealer had explained it had seen and verified the driving licence. And that she'd seen a copy of the licence taken by the supplying dealer and the date it was signed and certified by the sales person was the date Ms S entered into the hire purchase agreement. She didn't think there was enough evidence to say the supplying dealer fraudulently provided the full driving licence. She agreed that BMWFS wouldn't have offered finance in this way on the basis of a provisional licence. But she noted it wasn't in dispute Ms S wanted to enter into the agreement to acquire the car.

Our investigator also considered the fixed sum loan. She noted Ms S had acknowledged she was aware she'd have two payments to make. And that Ms S could have queried this sooner if she had any concerns. She said the fixed sum loan was taken out in order to clear the negative equity on Ms S' previous car. So she didn't think BMWFS needed to take any action in relation to it.

Finally, our investigator turned to the fact the car wasn't registered to Ms S. But she thought Ms S was happy with the arrangement for her partner at the time to be the person that used the car and be the registered keeper. And she thought that if there was an issue, the car could've been transferred back in to Ms S' name. But she didn't think the agreement should be unwound as a result of the way it was registered.

Ms S didn't agree. In summary, she highlighted she'd not received any pre-contract agreement to look over. And she said the picture within the full driving licence wasn't of her and that it had a different expiry date. She reiterated the car's registration should not have been put into someone else's name. She also complained again about BMWFS' response to the complaint.

As things couldn't be resolved, the case has been passed to me 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.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Ms S acquired the car using a regulated hire purchase agreement. And our service is able to consider complaints relating to these sorts of agreement. Section 56 of the Consumer Credit Act 1974 (CCA) says BMWFS can be held responsible for antecedent negotiations carried out by the credit broker – in this case the supplying dealer.

I think the main things I need to decide are whether BMWFS needs to take any action in relation to:

1. The driving licence issue.

2. The fixed sum loan agreement and pre-contract documentation.
3. The car not being registered to Ms S.

Turning to the first point. Like our investigator pointed out, it's difficult to know what's happened with the driving licence. On the one hand, Ms S has shown she only has a provisional licence and has provided a copy of it. And on the other hand the supplying dealer has said it took a copy of the licence that was given to it. The recollections are conflicting. So I think there are only two viable explanations for what's happened:

- Ms S provided the full licence.
- Ms S provided the provisional licence and the supplying dealer forged a full licence using some of the details.

The copy of the licence from the supplying dealer was signed on the day Ms S entered in to the agreement. So I think it would be unlikely the supplying dealer would've been able to forge the full licence straight away. But I take Ms S' point that it may have forged it at a later date.

I find it concerning that the dealership has said its process is to use an ultraviolet light and then certify it and send a copy to the lender, and that a fake licence wasn't spotted – particularly given the expiry dates didn't match and the picture wasn't of Ms S.

I'll never know what happened here. But, like our investigator has pointed out, it's not in dispute that Ms S wanted to enter into the agreement. Had her argument been that her identity had been stolen and that she'd not agreed to enter into the contract then there would be grounds to say she shouldn't be held liable for it. But she's not saying that. She's saying she did agree to enter the contract, but the documentation was tampered with so that she'd be accepted by BMWFS – because it wouldn't have offered her finance otherwise.

I have to bear in mind that it's not impossible for someone with a provisional licence to enter into a car finance agreement in order for someone else to use the goods that are being financed. Indeed – that sounds like what happened with Ms S' previous car. Also, while I appreciate it's a different scenario to Ms S', BMWFS itself has said it may have in fact considered offering finance to a customer with a provisional licence if there was a guarantor and the customer provided documentation showing when their driving test was. So the fact Ms S only has a provisional licence doesn't automatically mean she could never get a car finance agreement.

Considering everything above, it's not in dispute that BMWFS offered to contract with Ms S. And it's not in dispute that Ms S agreed to contract with BMWFS. The acceptance of a customer's driving status is a question for BMWFS. So, in this case, I don't think I have the grounds to say it acted unfairly by deciding not to end the contract on the basis of the issue with the licence.

Turning to the second point. Ms S has said she didn't sign the fixed sum loan agreement. And that she was willing for a handwriting expert to look in to things. But Ms S has indicated she was aware there would be two payments she'd have to make. And she hasn't made the argument she wasn't aware there was negative equity for her part exchanged car. So taking my calculations into account I don't think Ms S has been asked to pay something back she didn't fairly owe. That is, she was asked to pay the finance for the car, and the negative equity from her previous car.

I'm not a handwriting expert. But I would say that to the untrained eye, the signatures on the hire purchase and fixed sum loan agreement both look very similar, and indeed look similar to Ms S' provisional licence. But even if that weren't the case, I think the key thing here is

that Ms S has acknowledged she would have two payments to make. The finance and credit was fairly owed by her.

Ms S also said she didn't receive the pre-contract information. Again, I'll never know for sure what happened. But for the same reasons, I think, on balance, she did agree to enter into the finance agreement and credit agreement on the terms given. So I don't find I have the grounds to say BMWFS should have offered to end the agreement on the basis of Ms S' arguments about the signature on the fixed sum loan agreement or the pre contract information.

I turn now to the final point. Ms S is unhappy the car wasn't registered to her. And here I can understand her concerns. From what I've been told, the car was registered to her partner at the point of supply. 4(g) of the terms and conditions of the agreement set out that you (Ms S) must:

keep the Vehicle in your possession and under your control and not sell, rent or dispose of it or attempt to do so or allow someone other than you to become registered at the Driver and Vehicle Licensing Agency as the Vehicle's registered keeper

And 5(b) of the terms and conditions set out:

you must pay for and maintain comprehensive insurance cover for the Vehicle's full value against all insurable risks (including fire, theft, damage, loss in transit, seizure and the cost of repatriation if the Vehicle is taken outside of the UK)...

Ms S wasn't the registered keeper, and she wasn't insured on the car. So, like she's pointed out, she was breaking the terms of the agreement the moment her partner (presumably) drove it away. Moreover, when Ms S spoke to BMWFS in February 2020 and told it she wasn't the registered keeper it told her she was breaching the agreement and that it might start taking steps to default the agreement if the breach wasn't remedied. This would have likely been very concerning for her. Given it looks like Ms S freely told BMWFS she wasn't the registered keeper of the car it doesn't look like she was trying to pull the wool over its eyes, I think it's more likely that she didn't realise she'd done anything wrong. Indeed – it sounds like she'd had the same arrangement with the previous finance company on the car she part-exchanged.

If the supplying dealer (as BMWFS's agent) set up the agreement and registered the car in Ms S' partner's name *and* if BMWFS were looking to default the agreement because of that – it wouldn't sound very fair on Ms S to my mind. But it looks like Ms S agreed to arrange to get the car registered to her in February 2020. And, aside from that, from looking at BMWFS' contact notes, it said it would not issue a default notice because Ms S and her partner lived together at the point of supply, so it didn't consider it a fronted deal.

Taking all this into account, I think it would've been a problem here if BMWFS was looking to default the agreement on the basis of the way it was set up by its agent – the supplying dealer. But that's not what happened. I think Ms S was struggling to pay the agreement since she split up from her partner that used, and possibly paid for the car. It looks like she told BMWFS her partner had transferred the registration of the car back to her. And BMWFS was happy with that. So I don't think I can say that BMWFS should have offered to end the agreement on the basis of the car originally being registered to Ms S' partner's name.

Summary

What's in dispute is whether Ms S signed the fixed sum loan, and where the fake driving

licence originated from. But what's not in dispute is that Ms S agreed to acquire the car and enter into a contract with BMWFS. She knew she had two payments to make. And she agreed to have her partner at the time as the registered keeper of the car – as per her previous arrangement.

As BMWFS wasn't looking to default the agreement on the basis of how it was set up, I'm not going to direct it to take any action. Things have now moved on. Ms S stopped paying towards the agreement. This could have been because she refused given the dispute, or because she couldn't afford it. Or it might have been a combination of both of these things. The car has been repossessed since the complaint has been with us. I'd remind BMWFS to treat Ms S with forbearance and due consideration when discussing repayment of any outstanding liability.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 12 January 2022.

Simon Wingfield
Ombudsman