

The complaint

Mr S complains that a car he acquired through a hire purchase agreement with BMW Financial Services(GB) Limited (BMWFS) was misrepresented to him.

What happen

In September 2020 Mr S acquired a used car from a dealer (D) financed by a hire purchase agreement with BMWFS. Mr S said he wanted to purchase an Ultra Low Emissions Zone (ULEZ) compliant car so that he could commute into London. He said he made this clear to the sales advisor.

Initially when Mr S visited D he signed an agreement for a different car. Before leaving the premises, he looked online at a trusted website which contained relevant information relating to car emissions, W, and discovered the car wasn't ULEZ compliant. He immediately cancelled the agreement. He said he made staff at D aware that this was a deal breaker.

Mr S said after that D made him aware of other cars, including emailing details of one the same day. The email said "this car is EURO 6 I think it's going to work". EURO 6 is the current ULEZ emissions standard for diesel cars. Mr S said this proved the team at D was aware of his intentions to purchase a ULEZ compliant car.

Mr S found a second car. He said he checked W and it said it was ULEZ compliant. He notified D that he was interested in this car and on 16 September went to view it. He said he double checked on W that it was ULEZ compliant and the website said it was. He went ahead with the car using finance provided by BMWFS.

On 23 November Mr S said he randomly checked W by chance to see if his car was ULEZ compliant and discovered it wasn't. He said he double checked again and it wasn't. He complained to D. He said he was led to believe he was purchasing a ULEZ compliant car but the one he bought was only EURO 5 and not EURO 6. He said important information about the car – that it is a EURO 5 not a EURO 6 – had been withheld from him during the sale.

In its final response BMWFS said it hadn't seen sufficient evidence to show that Mr S has been mis-sold the vehicle. It said the information provided suggested that the circumstances had been outside its control. Mr S wasn't satisfied and brought his complaint to this service. He said he was misled into purchasing a car which he had not been given all the information about.

Our investigator concluded that there wasn't enough evidence that the car was misrepresented. Mr S didn't agree so he asked for a decision from an ombudsman. He said vital information was deceitfully withheld.

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 realise this will come as a disappointment to Mr S but having done so I won't be asking BMWFS to do anything further.

I don't apply the law - directly - but I do take it into account. Relevant legislation here includes the Consumer Credit Act 1974 (CCA). The effect of section 56 CCA means that if there's been a misrepresentation by the dealer or credit broker, D, regarding the agreement or the goods, BMWFS would potentially be liable for any losses Mr S incurred as the result of the misrepresentation. A misrepresentation is a false statement of fact which induces a consumer to enter an agreement and, as a result of the misrepresentation, to suffer a loss.

I wasn't present during negotiations about the car. So I must rely on available evidence and testimony provided by both parties. Where information is unclear, incomplete or contradictory - as is the case here I must make a decision on the balance of probabilities - that is - what I think is most likely to have happened.

In its final response BMWFS said the ULEZ regulations changed on the 26 October 2020, after Mr S purchased the vehicle in September and it was unable to predict that would happen. It said Mr S's vehicle was ULEZ compliant as per the W website at point of sale. I've looked at the relevant regulations for ULEZ. I can see that BMWFS made an error in its response to Mr S. The changes on 26 October 2020 relate to buses, coaches and lorries and not diesel cars. While this mistake is not helpful it's not evidence the car was misrepresented.

Was there a false statement of fact?

Mr S has said he was deceived, and that information was withheld from him. He said D sent him an email on the same day he rejected the first car containing the profile of an alternative car Mr S might be interested in, saying it was a EURO 6 car and so D knew he intended to buy a ULEZ compliant car. I've seen the email D sent and I agree that it does acknowledge the car as EURO 6. But this is not the same car Mr S went on to acquire. And this was two weeks before Mr S eventually signed an agreement. I'm not disputing D discussed with Mr S his need for an ULEZ compliant car, but I've not seen any evidence D specifically stated the car Mr S eventually acquired was EURO 6.

Mr S said the registration certificate was sent to him (V5C) six days after the sale by D and it clearly states the car as EURO 5 not EURO 6. He said D, as a dealer, knew or should have known the car was EURO 5 and he wasn't given all the information. I've seen a copy of the V5C and I can see the car is EURO 5 standard which means it isn't compliant with ULEZ and therefore would be liable for daily charges were Mr S to drive it in central London. I accept that this information was likely available to D at the time. But I've seen no evidence that D specifically told Mr S the car was EURO 6 or ULEZ compliant nor have I seen any evidence Mr S was deceived. Mr S received the V5C within the 14 days cooling off period for the credit agreement. During this time Mr S could have withdrawn from the agreement.

In his complaint to both BMWFS and this service Mr S said he found a second car he liked and checked with W that it was ULEZ compliant. W said it was. He said he told the sales person he was interested in the car and on 16 September he went to view it with a friend. He said he then double checked that the car was ULEZ compliant on W. He said W was a trusted source and it confirmed the car was compliant, so he went ahead with the finance agreement.

I've visited the website W and I can see it is set up as an independent authority on which vehicles are or would be ULEZ compliant. I'm satisfied that a reasonable person would consider this a trusted source for this kind of information. I'm satisfied D also would have considered this a trusted source for ULEZ compliance. But I can also see that it checks

every car make and model and not just the type Mr S has acquired. And, while I can't say for certain, it's possible there was a mistake within the website which indicated the car was compliant, and by the time Mr S said he went to check again, in November, it had been corrected.

So, on balance I think it unlikely D misrepresented the car.

Did this induce the customer to enter an agreement?

Had I determined that D had misrepresented the car I would also need to be persuaded that this misrepresentation induced Mr S to enter the agreement. Mr S hasn't said specifically what the sales advisor said about the car concerning its EURO status or ULEZ compliancy. But he said he wasn't told what was on the V5C and he said D knew he intended to buy a ULEZ compliant car. I must be satisfied Mr S relied on D's misrepresentation. It's not misrepresentation if Mr S relied on his own judgement or his own research.

Mr S has said this is his first car so I wouldn't expect him to know all about cars. I would expect a reasonable first-time buyer to do research about what kind of car he would need or want. I can see Mr S did this, including using W which he said he trusted as a source of information for ULEZ compliancy. W is not connected to D or BMWFS in any way. It is an independent website available to all. While I accept that D could and perhaps should have been more helpful in checking the exact specification of the car for ULEZ compliancy on the V5C I'm not persuaded Mr S relied on D to make his decision. I am more persuaded he relied on W to confirm the car was compliant and, having done so, he felt confident to sign the agreement.

Mr S is concerned that we are blaming him for not being thorough in his research. I want to reassure Mr S that this is not the case. I'm persuaded that he, and likely D also, relied on a source of information that a reasonable person would expect to contain accurate information about ULEZ compliancy and, while I can't say for certain, it appears it may not have.

I don't think it likely D made a false statement of fact, and I'm persuaded Mr S relied on other information.

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 Mr S to accept or reject my decision before 9 August 2021.

Maxine Sutton
Ombudsman