

The complaint

Mr I has raised a number of concerns over the arrangements relating to a car he acquired using a hire-purchase agreement with BMW Financial Services (GB) Limited ("BMWFS").

What happened

In July 2018 Mr I got a used BMW X6 he'd seen at a dealership. The arrangements were funded by a BMWFS hire-purchase agreement arranged through a third party credit broker A, and a deposit Mr I paid by card. Mr I subsequently raised a query over the deposit payment, which was resolved in conjunction with his card provider.

As I understand it, Mr I made the monthly payments under the agreement for around two years, before paying a lump sum to take ownership of the car. He has since raised concerns with BMWFS relating to the actions of the dealer, the finance sale, paperwork and details of the hire-purchase agreement.

Mr I says that the finance was the only option he was given, and that he'd have been better off using an alternative source of funding such as a bank loan. He also says the vehicle mileage was incorrect, that the dealer forged his signature, that he wasn't given any paperwork or a cooling-off period, and that he was unaware that a lump sum 'balloon' payment formed part of the purchase arrangements.

BMWFS didn't accept Mr I's complaint. It said it had verified the car mileage by reference to key readings and telephone conversations between A and Mr I. BMWFS referenced Mr I's email to A in which he stated he had signed the hire-purchase agreement that set out the finance details.

Our initial assessment

Our investigator wasn't minded to recommend that the complaint should be upheld. He was satisfied Mr I was provided with the finance agreement, which he signed, accepting the hire-purchase terms. The investigator felt Mr I had the opportunity to seek alternative sources of finance, and that he'd been provided with appropriate cancellation rights which he hadn't exercised. The investigator also thought that provisions within certain legislation meant Mr I was out of time to complain about the finance sale.

Mr I didn't agree, and has asked for this review. In doing so he's referenced errors and discrepancies in the hire-purchase agreement and associated arrangements that he says mean it is null and void. He wants BMWFS to compensate him.

My provisional findings

I recently issued my provisional decision to both parties, setting out my thoughts on the key complaint points and why I wasn't minded to require BMWFS to take any action to resolve matters. My provisional findings were as follows:

"Mr I's assertion that the finance was mis-sold to him

It's unclear from Mr I's correspondence with BMWFS whether his original complaint incorporated his concerns over the type of finance provided to him. However, it was part of his complaint to us which we shared with BMWFS, and included in the investigator's assessment. As BMWFS has not raised any concern over this aspect, I propose to include it in my determination.

I'm aware Mr I has said that it is factually incorrect to say that he used a broker to facilitate the credit agreement. He says this was done by the dealer. For the avoidance of any doubt, my finding – based on the documents I've seen and the correspondence between Mr I, A and BMWFS – is that his credit agreement was brokered by A, rather than by the dealer.

Under section 56 of the Consumer Credit Act 1974 ("CCA1974") a creditor may, in certain circumstances, be responsible for pre-contract negotiations conducted by the credit broker. However, I don't consider that section can be correctly applied to A's arrangement of the car finance. That arrangement was not a negotiation "conducted by the credit-broker in relation to goods sold or proposed to be sold by [A]..." as required under section 56(1)(a) of the CCA1974. A was not the car dealer and did not own or sell the car to BMWFS.

I've seen nothing that might suggest that in providing hire-purchase finance to Mr I to acquire the car, BMWFS was under a duty to establish whether this was the best way for Mr I to fund things. That was, in my view, a matter for Mr I to establish for himself. I am, however, satisfied that the hire-purchase arrangement BMWFS provided was an appropriate means of enabling him to acquire the car he wanted. I therefore don't propose to uphold this aspect of Mr I's complaint.

Information about the hire-purchase agreement and Mr I's entry into it

Mr I says that he didn't receive any details of the hire-purchase agreement or its content, and that his e-signature was forged on the document. I've seen the email exchange between Mr I and A dated 28 July 2018 and referenced by BMWFS in its response to his complaint. In it, Mr I clearly states that he has signed the agreement. I've asked him about this apparent discrepancy. He's said the dealer told him to say this to A, and that he was vulnerable at the time. Mr I has also placed a good deal of weight on the question of whether the paperwork was completed onsite; that is, at the dealer's premises.

I've thought about all that Mr I has said, but on balance of the available evidence here I intend to conclude that Mr I was provided with the hire-purchase agreement prior to his entry into it, and that he agreed to be bound by its terms. I don't consider whether the dealer completed Mr I's e-signature on the form or whether it was completed on or off-premises to be materially relevant to this finding. Mr I's actions both before and after the finance commenced are consistent with his having received the agreement and with his intention to be bound by it.

The hire-purchase agreement contains all the material information required by the CCA1974. It sets out the term, interest rate, monthly payment and total payable under the agreement. It also tells Mr I about his right to withdraw from the agreement. I make the observation that Mr I does not appear to have sought or intended to withdraw from the agreement. Rather, he made the payments and enjoyed the use of the car for over two years before taking ownership.

Are there any circumstances that support Mr I's position that the hire-purchase agreement is void?

Mr I has referenced what he holds to be errors and discrepancies in the hire-purchase agreement. He seeks to argue that as a consequence, the agreement is null and void. In law, a void contract is one that is wholly lacking in legal effect. By way of example, a contract is void where the parties enter into the contract on the basis of a common mistake that is key to the arrangements, or where the subject matter of the contract is illegal.

I'm not minded that any of the points Mr I has cited would be likely to make the hire-purchase agreement void. Although he's mentioned the car registration number on the agreement was incorrect, I don't understand Mr I to be suggesting the car itself was other than the one he viewed, took delivery of, and used throughout the finance term.

It's possible what Mr I intends is that the agreement was voidable, which isn't quite the same thing. A voidable contract is one which has the potential for a court to declare the agreement unenforceable. But if the contract has been completed and Mr I has paid all the amounts BMWFS has sought from him, I can't see a situation in which BMWFS is going to seek to enforce any of the terms of the hire-purchase agreement. It's also quite possible the court might conclude that the discrepancies Mr I has identified are insufficient to support the argument he's making, or that he has in any event ratified the agreement by his actions after entering into it.

I've thought carefully about what Mr I has said in his complaint correspondence, and in my own communications with him. But I'm afraid I'm not currently minded to require BMWFS to pay him any compensation. As far as I can see, he's received what he expected to receive under the hire-purchase agreement, and has been charged in accordance with what he might expect to pay. The discrepancies Mr I has identified haven't had any material impact on him such that he's been caused any financial loss, material distress or inconvenience. Any award made simply because of a discrepancy or error would be tantamount to a fine or penalty against BMWFS, rather than compensation for the impact that error or discrepancy has had on Mr I. Under our rules, I have no power to make awards of a punitive nature."

Response to my provisional findings

BMWFS didn't make any further comments in response to my provisional findings. But Mr I has made additional submissions and remains unhappy with a number of aspects. As well as his previous points, he says:

- BMWFS should be able to provide evidence that he received and electronically signed the hire-purchase agreement containing cancellation rights and complaint details. It was unfair to base my decision on the principle of the balance of probabilities
- It wasn't merely the vehicle registration number that was incorrect on the agreement, but the cash price of the car and the deposit. The advertised price was £43,975 yet the hire-purchase agreement showed the cash price as £44,000. And the deposit sum wasn't shown at all
- He had been treated unfairly as a result and drew an analogy with that of mis-sold payment protection insurance (PPI), referencing that our service has previously upheld complaints with similar arguments. The fact he'd had the benefit of the arrangements didn't make right BMWFS's wrongs

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.

In doing so, I've thought about what Mr I has said in response to my provisional decision. But I don't think he's said anything that offers me a persuasive reason to change my findings. In light of his comments, however, I think it's appropriate to make the following observations.

The complaint Mr I brings is in some ways equivalent to a civil claim, where the court standard is the balance of probability. It would be unreasonable for an informal dispute resolution service such as ours to place a higher burden on the parties than the standard used by the court. But balance of probability doesn't mean mere guesswork. Rather, it involves making findings on what I consider is most likely to have happened in the light of the evidence.

Here, there is a body of evidence to support that Mr I was supplied with the hire-purchase agreement (which included all the key information I've already mentioned) and that he accepted the terms of that agreement. Mr I's own contemporaneous emails are part of that evidence.

In addition, A has provided extracts from its records relating to emails between it and Mr I from the time of his entry into the agreement. Those emails indicate that Mr I queried the purchase price at that time and was referred to the dealer for clarification, and that he emailed the following day to say he had done so.

I find these exchanges inconsistent with Mr I disputing receiving or signing the agreement. Rather, they are consistent with him having received it. He would not have had cause to question the purchase price on an agreement he never received. And if Mr I questioned the figures but subsequently went ahead anyway, then that was the agreement he entered into. I'm not inclined to rewrite or interfere with those arrangements on the evidence available to me.

I'm conscious that there was a dispute over the deposit. Indeed, I said as much in my provisional decision, noting that Mr I resolved this at the time with his card provider. And I accept there were other details that weren't entirely accurate, such as the £25 discrepancy on the purchase price and the vehicle registration details.

I don't doubt Mr I's sincerity in bringing the complaint. He clearly feels that errors – however minor – shouldn't happen and ought to be addressed. And I have some sympathy with him on that. But there are clear differences between the sales practices adopted by some PPI providers that led people into contracts they might otherwise not have taken out and what are essentially minor discrepancies that have had no real bearing on the operation of his hire-purchase agreement.

I appreciate Mr I firmly believes that the discrepancies he's identified should in some way invalidate the agreement or entitle him to receive compensation. But as I also said in my provisional decision, Mr I hasn't been put to any loss, material distress or inconvenience as a result of those discrepancies. So I'm afraid I just don't agree with him on this point.

My final decision

For the reasons I set out here and in my provisional decision, which I've reproduced and which forms part of my determination, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 22 March 2022.

Niall Taylor
Ombudsman