

## **The complaint**

Mr B is unhappy that the cash price of the car supplied to him through a Hire Purchase Agreement with BMW Financial Services(GB) Limited, trading as Alphera Financial Services (BMWFS), was more than the cash price he'd been told by the dealer.

## **What happened**

In March 2022, Mr B was supplied with a used car through a Hire Purchase agreement with BMWFS. The agreement was for £35,438.40 over 49 months; with 48 monthly repayments of £301.30, and a final payment of £12,476 if he wanted to keep the car.

Mr B says he bought the car from a dealer through an online website. He said the cost of the car was £28,295. But he was sent an invoice that showed the price was £29,610, and it was this price that was on his hire purchase agreement. He said he contacted the supplying dealer and was told by them that they would correct the error. He said the dealer didn't fix the issue, so he complained to BMWFS. He was unhappy because they told him they weren't responsible for the mistake.

He said he never actually signed the agreement. He said he was within the cooling off period and should've been allowed to return the car.

He has supplied images of the advert for the car. This provides the car registration number on the first page, with the mileage of 31,131 miles and the price shown as £28,295 on the linked page.

BMWFS said that they couldn't determine from the advert Mr B provided if it was for the same vehicle. They also said that the third party who advertised the car had a term that said that the material on their website was for information purposes only, and customers should not rely on it to make any decision.

They also said that Mr B had signed the finance agreement and associated documentation. They said this included the sale price of the car as £29,610. And they said the pack also included a copy of the invoice which confirmed the same price as the agreement. So, they didn't agree that Mr B had been mis-sold the car.

Mr B was unhappy with BMWFS's response and brought his complaint to us for investigation. Our investigator explained that the car would've been misrepresented if there'd been a false statement of fact, and if that false statement of fact had induced Mr B to choose that particular car.

She said that the advertisement was for the same car, and the car had been advertised at a price of £28,295 – so she was satisfied a false statement of fact had been made.

And she was satisfied the false statement had induced him to buy the car. She said she believed this because Mr B had contacted the dealer as soon as he received the sales invoice showing the higher amount. And she didn't think he would've signed the agreement if he'd noticed the higher sale amount.

BMWFS didn't agree with the investigator and asked for an ombudsman to make a final decision. They repeated their stance that the advert couldn't be relied on for decision making purposes. And they said that the advert may have induced Mr B to '*view the car*' but not to purchase it.

They also said Mr B would've been aware of the selling price when he signed the agreement, unless he hadn't read the agreement before signing it.

### **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 considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr B was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

This complaint is mainly about misrepresentation. And, as explained by the investigator, when considering misrepresentation, I'm looking at two things – whether there was a false statement of fact and, if there was, whether or not the false statement of fact induced Mr B to choose this particular car, and enter into the hire purchase agreement.

#### *Was the cash price of the car misrepresented?*

The first thing I need to consider is whether or not the cash price for the car Mr B acquired under the hire purchase agreement was misrepresented. I think it was. I'll explain why.

This was a distance purchase. Mr B saw the car on an online car buying website. Mr B has provided a copy of the advertisement that he obtained direct from the website. It confirms the car registration number, the mileage, and the price of the car. I'm satisfied that the advertisement is for the same car as the one supplied under this agreement. The price is shown as £28,295.

Mr B raised this with the supplying dealer when he received the invoice showing the higher amount of £29,610. I've seen the exchange of messages he had with the dealer. In this exchange the dealer said they will "*sort it*". This appears to me to be an acknowledgment that the price was wrong. And so, I'm satisfied this was the price the dealer agreed with Mr B.

Section 56 of the Consumer Credit Act 1974 explains that finance providers like BMWFS are liable for what they say and for what is said by a credit broker before the consumer takes out the credit agreement

BMWFS suggest that Mr B shouldn't have relied on the information in the advertisement. I disagree. This was a distance sale, and the information in the advertisement forms part of the "antecedent negotiations". And it appears from the exchange of messages that Mr B and the dealer had agreed the price of the car at £28,295, and the dealer accepted that the higher figure on the invoice was wrong.

BMWFS also said that Mr B signed the agreement and should've been aware of the price. But as I've explained, I'm satisfied that he expected the dealer to arrange for this to be resolved with BMWFS. And when it wasn't, he raised it directly with BMWFS.

*Did the false statement of fact induce Mr B to enter into the agreement?*

I'm satisfied that Mr B entered into the agreement on the basis of the cash price of £28,295. I say this because he contacted the dealer as soon as he received the invoice with the higher price.

I'm also persuaded that he wouldn't have entered into the agreement if he'd been aware that the price had increased. I say this as he said he would've returned the car to the dealer if he'd been aware that they wouldn't change the price. The only reason he didn't return it within that time was because he believed the dealer was correcting the price that was on the invoice. And it's reasonable for Mr B to have expected that correction to be reflected in the hire purchase agreement.

So, I'm satisfied that the price of the car was misrepresented, and this lower price induced Mr B to enter into the agreement.

### **Putting things right**

Section 56 of the Consumer Credit Act 1974 explains that finance providers are liable for what is said by a credit broker before the consumer takes out the credit agreement. So, if Mr B was told something that was false by the dealer who supplied the car, and that led him to enter into an agreement he wouldn't otherwise have entered into, I would think the agreement had been misrepresented to him and I'd ask BMWFS to take some action.

In this matter, BMWFS should take the necessary steps to amend the agreement to reflect the cash price of £28,295 plus £184.50 delivery charge, including making the necessary adjustments to the monthly repayments, and the optional final repayment.

### **My final decision**

For the reasons explained above I uphold Mr B's complaint against BMW Financial Services(GB) Limited trading as Alpheria Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 April 2023.

Gordon Ramsay  
**Ombudsman**