

The complaint

Mrs M is unhappy with charges she was invoiced for by BMW Financial Services(GB) Limited ('BMWFS') when she decided to voluntarily terminate ('VT') her agreement.

What happened

In October 2017 Mrs M acquired a used car funded by a hire purchase agreement taken with BMWFS. The car had a recorded mileage of around 9,960 and the agreement had a mileage allowance of 8,000 a year.

Around April 2021 Mrs M says she wasn't using the car as much as she expected to and so agreed to VT the agreement, returning the car.

In August 2021 BMWFS got in touch with Mrs M and said it believed the mileage of the car had been tampered with – commonly referred to as 'clocking'. It said from October 2020 there were suspicious "*jumps*" in the odometer reading where it increased and then decreased. It said this was a clear indicator of mileage tampering.

BMWFS said the car was returned with a mileage displayed of 27,021, but believed it had actually covered over 52,000 miles.

BMWFS said a technician had to investigate the issue and it was charging Mrs M £469.04 for these costs. And it said the car had sold at auction for £1,250 less than what it was expecting. So BMWFS said Mrs M owed £1,719.04.

Mrs M complained to BMWFS and said she hadn't tampered with the car. She said she acquired the car from a manufacturer's garage and had it serviced there. She explained she had been on holiday in October 2020 and bought a second home around the same time for which she had been driving regular 200 mile round trips. She said this would explain any irregular journeys in this period. She said if the car had been tampered with, it must have been before she got it.

BMWFS issued its final response in September 2021. It said, in summary, that the car had been tampered with. It sent Mrs M a graph which it said showed the mileage barely increased between July 2020 and April 2021. But it said it then showed "*huge increases*" before dropping back down. And it said the mileage on the odometer was "*more or less the same number*" from October 2020 to when the car was returned, which it said wasn't in line with what Mrs M told it about the car's use.

Mrs M remained unhappy and brought the complaint to our service. She said, in summary, that she was a "*low mileage user*" and had returned the car as she wasn't using it due to working from home. She said she hadn't tampered with the car and had no idea how to do this. She said the car had been serviced and repaired at a main dealer. And she said she had set up a repayment plan with BMWFS for the charge as she didn't want it to impact her credit rating.

Our investigator issued an opinion and explained she didn't think the complaint should be

upheld. She said, in summary, that she didn't think the car's odometer reading from around October 2020 showed the use of the car Mrs M had told BMWFS about. So she said she thought it was reasonable for BMWFS to charge her for the cost of the technician and for the loss in value due to the car having an unverified mileage.

Mrs M disagreed. She said, in summary, that she didn't have a record of the mileage she'd covered so couldn't prove this. She said the trips to the holiday home were probably mainly in her partner's car. And she said she had no way of getting a second opinion on the car to refute the diagnostic BMWFS had done as she no longer had it.

Our investigator explained this didn't change her opinion, so the case was passed to me to decide.

I asked BMWFS for some more details and evidence which I'll mainly comment on below. It confirmed it believed the car had covered specifically 52,000 miles. And it confirmed there was no physical evidence of tampering nor a device being fitted to the car.

BMWFS provided some further reports it said showed further evidence of tampering. And it said the car had an additional oil change and brake fluid change to what it would've needed if it was returned with a mileage of 27,021. BMWFS also confirmed it believed the mileage was tampered with from May 2019.

Mrs M also sent some information about the car's servicing, which showed it was returned to a main dealer.

I sent Mrs M and BMWFS a provisional decision on 20 December 2022. My findings from this decision were as follows:

Mrs M complains about charges at the end of a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mrs M's complaint about BMWFS.

It's firstly very important to note what I'm considering here. It's not my place to decide legal issues, and I should make it clear to Mrs M and BMWFS that I'm not deciding whether the car was 'clocked' or not. What I need to consider here is whether BMWFS have acted fairly and reasonably by charging Mrs M for the additional cost of the car being returned with a higher mileage than was on the odometer. In other words, what I need to decide here is whether BMWFS has shown it's most likely the car was returned with the specific mileage of 52,000.

BMWFS has provided some evidence on this case that it has said is commercially sensitive. I've thought about this, but I don't think I need to discuss the evidence itself in detail to explain my reasoning here. Where I haven't gone into a lot of specifics about the evidence itself, I want to reassure BMWFS and Mrs M that this doesn't mean I haven't fully considered it. This just reflects the informal nature of our service.

I've firstly considered the mileage BMWFS said the car covered. I asked BMWFS to provide the precise mileage it believed the car had covered and it confirmed this was 52,000. It does seem like a rather large coincidence to be such a round figure here. And I've also considered that in its earlier communication with Mrs M it referred to 52,000 or 'over'. I'm concerned here, given BMWFS are charging Mrs M for the reduction in value from the higher mileage, that the mileage appears to be something of an estimate.

If BMWFS has technology that is able to identify mileage that it believes to have been tampered with, I might have expected that technology to have been able to accurately record

the mileage it believes the car has actually travelled. I think it highly unlikely that the car would have travelled exactly 52,000 miles at the point of return and I'm concerned that BMWFS believes the mileage may be over 52,000, but cannot say exactly what it thinks the mileage is, nor is it able to provide supporting evidence.

I'll come onto the evidence provided, but I have also noted there is a lack of a physical inspection of the car here. So there is no commentary around parts of the car or interior that may have suffered wear and tear from any additional mileage. There also isn't any physical evidence of a device that was fitted – although I appreciate BMWFS's point that it's likely any device would've been removed when the car was returned.

I've considered what BMWFS said about the brake fluid and oil changes, which it said means that the car has completed a higher mileage than recorded. There's limited information about this. But, I don't agree the only explanation for this is that the mileage of the car has been tampered with. And I haven't seen anything that shows this means the car had completed specifically 52,000 miles.

Had Mrs M tampered with the mileage and then sold or returned the car without disclosing this she may have been committing a criminal offence. I think it unlikely in the circumstances that someone who was at the time tampering with the mileage would have removed any device and returned to a franchised dealer to have the car serviced, which Mrs M has shown she did, potentially then risking being caught having tampered with the car.

I've looked at the report BMWFS provided that shows icons highlighted in red. BMWFS says this shows evidence of tampering. But, there are red icons prior to the date BMWFS says it believes the tampering began. And nothing in this report shows the car had covered a mileage of 52,000 when it was returned.

I've then considered the graph BMWFS has provided and shared with Mrs M. BMWFS says it believes the mileage tampering began in May 2019. But, I can't see anything on this graph that suggests this was the case. BMWFS says the mileage barely increases between July 2019 and April 2021, but I don't think this is correct. The mileage, apart from the 'jumps' seems to increase steadily. And it appears to increase by around 6,000 miles from May 2019 to October 2020. It's difficult to see from the graph, but it doesn't appear to show any times when the mileage doesn't increase for any significant amount of time.

It appears the mileage 'jumps' on the graph occur around the time Mrs M told BMWFS and ourselves she bought the holiday home. But I'm unsure why a device would be fitted five months before this, if the intention was to cover the increased mileages involved in the purchase.

I've considered the jump in mileage here. It's difficult to tell the precise figures from the graph. But it appears the initial 'jump' around October 2020 is an increase of roughly 23,500 miles in around a month. I appreciate Mrs M said she was making a 200 mile round trip around this time, but this increase doesn't seem feasible in such a short timeframe. Over a period of 30 days, this would mean the car was covering around 785 miles a day – or in other words around four round trips a day, every day, to Mrs M's holiday home – including weekends.

Apart from this 'jump', the mileage seems to increase fairly consistently for the time Mrs M had the car – which isn't necessarily what I'd expect if it was being tampered with. And this also suggests to me the mileage, if what BMWFS says is correct, increased very dramatically in a very short space of time and then returned to 'normal'. Which as above, doesn't seem feasible.

I also don't agree with BMWFS that the mileage the car was returned with was the same as showing in October 2020. I can see the mileage has increased steadily from this point – both on the 'true' readings and the allegedly tampered ones.

I appreciate BMWFS have said Mrs M told it she was making longer journeys to her holiday home and these don't appear to be reflected by the odometer readings. But I can't see, if Mrs M was tampering with the mileage of the car and making these long journeys, why she would specifically then tell BMWFS that the car was being used like this. And, Mrs M said they may have used her partner's car for these trips – which doesn't seem unreasonable.

BMWFS have explained they believe the mileage 'jumps' as a device may have been switched on and off – it said Mrs M may have been deciding whether to tamper with the mileage or not. But, I can't see why someone would do this.

I've also considered Mrs M's testimony here. She's been adamant and consistent that the mileage of the car hasn't been tampered with.

I appreciate this case is somewhat finely balanced. But, thinking about what I need to consider here, which is whether BMWFS has done enough to show the car had likely covered a specific mileage of 52,000, I don't think it has. It follows that I don't think it's reasonable to charge Mrs M for the cost of the technician, nor the reduction in the value of the car at auction.

I want to reassure BMWFS that I've carefully considered all of the other comments and evidence it has provided. And I've thought very hard about what it said about the fact there is no other explanation for the graph and other evidence. But, I haven't seen enough to make me think there couldn't be another explanation, such as an IT issue here. Considering everything, this still doesn't change my opinion that BMWFS hasn't shown the car had completed a specific mileage of 52,000.

It's also worth noting here that even if I reached the opposite conclusion about the mileage, I would not be convinced BMWFS has acted reasonably by charging Mrs M £1,250 for the reduction in the car's value. The car was sold at auction, and BMWFS says it received £1,250 less than it predicted. But, there are many reasons a car at auction might sell for less than a seller expects, such as the condition of the car, what other cars are available, what demand there is for that particular model on the particular day etc. I haven't seen evidence here that the amount received was lower than expected specifically because of the mileage and not for some other reason.

In order to put things right, BMWFS should write off any outstanding balance from this charge. It should reimburse Mrs M for any payments made towards it. And it should remove any adverse information from Mrs M's credit file about this charge.

I've also considered that Mrs M has suffered distress and inconvenience because of what happened here. She's described how the situation has been very upsetting and stressful.

And she's had to take time out to deal with the issue. I think BMWFS should pay her £150 to reflect this.

I gave both parties four weeks to come back with any further comments or evidence for me to consider. Mrs M responded and said she didn't have anything further to add. BMWFS didn't respond.

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.

Having thought about all of the information in relation to this complaint again, I still think it should be upheld. This is due to the same reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint and instruct BMW Financial Services(GB) Limited to put things right by doing the following:

- Write off any remaining balance from this charge
- Reimburse Mrs M any payments made towards this charge*
- Remove any adverse information from Mrs M's credit file in relation to this charge
- Pay Mrs M £150 to reflect the distress and inconvenience caused

*These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If BMWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 15 February 2023.

John Bower
Ombudsman