

The complaint

Mr T has complained BMW Financial Services (GB) Limited (BMWFS) gave him an incorrect settlement figure.

What happened

Mr T entered into two agreements with BMWFS in December 2019 when acquiring a car – a hire purchase agreement to finance the acquisition; and a fixed sum loan agreement to cover the negative equity from a part exchange vehicle. The hire purchase agreement was for around £10,700 with monthly payments of nearly £200. And the fixed sum loan was for around £3,800 with monthly payments of nearly £100. Both agreements were over four years.

Towards the end of 2022, Mr T asked BMWFS for a settlement figure because he wanted to arrange to sell the car to a dealer. BMWFS sent the settlement figure for the hire purchase agreement, and I understand the dealer settled it. BMWFS confirmed it held no interest in the car.

The following month Mr T was surprised to receive contact from BMWFS saying he'd missed a payment to the fixed sum loan agreement. Mr T complained because he said he'd asked to find out what he owed to BMWFS and it didn't tell him about his fixed sum loan balance.

BMWFS responded to Mr T's complaint and said he had signed to enter into two agreements. It acknowledged its advisor didn't tell Mr T or the dealer about the fixed sum loan agreement. But it said the money was owed. It did agree to cover one of the monthly payments for £94.50.

Mr T wasn't happy with the resolution so brought the complaint to our service. To resolve the complaint Mr T requested BMWFS waive the outstanding balance on the fixed sum loan. He said it should do this because it didn't give him the complete settlement figure he was looking for; if he'd been given the correct figure he would have sold the car for more; having to pay more than he expected impacts him financially; and BMWFS gave him a letter of clearance.

Mr T did however tell us that he received a £900 payment from the dealer he sold the car to in relation to the profit from the dealer's sale of it.

Our investigator looked into things and asked BMWFS to consider making a further award. BMWFS offered a further £150 which our investigator thought was fair. Mr T didn't agree. He expected BMWFS to at least reduce the outstanding amount of the fixed sum loan by 50%. As things couldn't be resolved, the complaint 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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr T and BMWFS that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr T is unhappy BMWFS didn't give him the settlement figure for his fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

I've seen Mr T signed both the hire purchase agreement and the fixed sum loan. The hire purchase agreement was settled, but the fixed sum loan agreement wasn't. Unlike the hire purchase agreement, the fixed sum loan isn't tied to the car that Mr T acquired. So by having confirmation BMWFS held no interest in the car, this doesn't mean the fixed sum loan wasn't payable. Mr T hasn't disputed the amount owed under the fixed sum loan. He's unhappy it wasn't included when he asked for a settlement figure. From what I've seen, the amount BMWFS says is outstanding is correct. So I think it's fairly payable under the agreement.

On the one hand, there's an argument Mr T ought to have known he had two agreements, and what was roughly owed under each of them. But on the other hand, I do sympathise with Mr T. BMWFS has said its agent had access to both settlement figures. I don't know exactly what was requested by Mr T or the dealer, but I can understand why Mr T is unhappy the agent didn't provide both figures. It must've been frustrating to find out he still owed money under the fixed sum loan when he thought everything had been paid off.

I don't think it's fair on BMWFS to write off the fixed sum loan because it didn't include it in the settlement. Similarly, I wouldn't generally ask a business to honour a misrepresentation that it had made. I need to consider the impact on Mr T. I don't find I have the grounds to direct BMWFS to reduce the debt by 50%. BMWFS has acknowledged things could have gone better. It covered one monthly payment. And it's also offered a further £150. In all the circumstances, I agree this is broadly a fair way to put things right.

Mr T was made aware the fixed sum loan agreement was in arrears as soon as the payment was missed after he'd cancelled his direct debit. So things didn't drag out for a long time. BMWFS responded to him within a reasonable amount of time setting out its position. And I've not seen enough to show Mr T would have fundamentally ended up in a better position had the fixed sum loan been included in the settlement. He's said he would have sold the car for more, but I've not been shown sufficient evidence of that.

All things considered, I think BMWFS' offer is fair and reasonable in all the circumstances of this complaint. I'm not going to direct it to do more.

If Mr T is having difficulty making repayments to the fixed sum loan agreement, I'd remind BMWFS to treat him with forbearance and due consideration.

My final decision

My final decision is that BMW Financial Services (GB) Limited should, to the extent it's not done so already:

- Cover the £94.50 monthly payment towards the fixed sum loan.
- Compensate Mr T £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 30 March 2023.

Simon Wingfield
Ombudsman