

The complaint

Mr S is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alphera Financial Services ('BMWFS') was misrepresented to him.

What happened

In February 2022, Mr S was supplied with a used car through a hire purchase agreement with BMWFS. He paid an advance payment of £4,695 and the agreement was for £42,255 over 49 months; with 48 monthly payments of £689.58 and a final payment of £20,267. At the time of supply, the car was around a year and a half old.

When the car was supplied to Mr S, the odometer showed the car had done 2,577 miles. In October 2023, Mr S wanted to sell the car. However, before the sale of the car could be completed, a mileage discrepancy was identified. A subsequent HPI check, dated 9 November 2023, identified the following mileage record:

- 16 July 2021 – 12,044 miles
- 16 November 2021 – 2,353 miles
- 23 June 2023 – 13,889 miles

Mr S says he stopped using the car for around three months once he found this out, and he complained to BMWFS that the car had been mis-sold. BMWFS investigated matters, and said the mileage for 16 July 2021 was incorrect, and should've been 2,044 miles. They also confirmed there had been no technical manipulation of the mileage on the car itself, so they took steps to correct the car's mileage on the National Mileage Register ('NMR').

Mr S wasn't happy with BMWFS's response, and he brought his complaint to the Financial Ombudsman Service for investigation. To resolve his complaint, Mr S asked to be able to reject the car and receive a full refund of all the payments he'd made.

Our investigator said that, although there was a mileage discrepancy, there was no evidence the mileage on the car had been manipulated i.e., the car's mileage hadn't been 'clocked' and was correct. As the mileage had been correct when the car was supplied to Mr S, it hadn't been misrepresented, so there was no reason to allow him to reject the car.

The investigator said that BMWFS's correction of the historic mileage record was fair and reasonable in the circumstances, but this issue caused Mr S some distress and inconvenience. So, they thought BMWFS should pay Mr S £150 compensation for this, as well as refund him for the cost of the two HPI reports he'd paid for.

Mr S didn't agree with the investigator's opinion. He said that he wouldn't have bought the car if he'd been aware of the mileage discrepancy, as it fettered his ability to sell the car when he wanted to. He also said that, when he originally looked to sell the car he was offered £30,159, but he eventually sold the car for £29,284, so he suffered a loss. So, he asked that an ombudsman 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Mr S has complained that the car was misrepresented to him due to the mileage. When considering misrepresentation I need to consider two things – if there was a false statement of fact and, if so, did that false statement of fact induce Mr S to choose this particular car.

Based on the evidence I've seen, the mileage that was showing on the odometer for the car, when it was supplied to Mr S, was the correct mileage. There is no evidence that the mileage had been tampered with. As such, as Mr S was provided with a car that had the correct mileage showing on the odometer, there has been no false statement of fact. Given this, the car wasn't misrepresented to Mr S.

However, this doesn't alter the fact that the mileage on the car had been incorrectly recorded on the NMR in July 2021 - almost a year before Mr S was supplied with the car. This fact isn't disputed, nor is the fact that, once BMWFS were made aware of the issue, they took the appropriate steps to correct the NMR. But I think this issue should've been identified when the car was supplied to Mr S, and BMWFS didn't consider the impact of this error on him. As the facts of this case aren't in dispute, my decision will focus on what I think BMWFS should do to put things right.

Putting things right

When making his complaint, Mr S asked for a full refund of the payments he made to the car throughout the lifetime of the agreement. I don't think this is a fair resolution, and I won't be asking BMWFS to refund any payments. I say this because Mr S has had full use of the car while it was in his possession, and it's only fair that he pays for this usage.

The incorrect recording of the mileage on the NMR didn't make the car of an unsatisfactory quality, nor was it illegal for Mr S to drive a car with a mileage discrepancy. Even though he chose not to drive the car for a period after finding out about the error on the NMR, this doesn't mean the car wasn't available for him to use – the payments he made to BMWFS were based on the period of time Mr S was in possession of the car and it was available for him to use, not based on the amount of time the car was actually used i.e. it wasn't a pay-per-mile agreement.

Mr S has also said that the price he obtained when selling the car in March 2024 was £875 less than he was initially offered in October 2023. So, he thinks he should be compensated for this loss. While I appreciate Mr S eventually sold the car for less than he could've, the sale price of a car is determined by a number of factors, a chief one of which is mileage.

While Mr S hasn't provided a copy of the offer he received in October 2023 that confirms the mileage; the MOT record for 23 June 2023 shows 13,889 miles and the MOT record for 12 March 2024 shows 15,875 miles. Based on this, and Mr S's testimony that he didn't use the car between October and December 2023, the likely mileage in October 2023 was around 14,600 miles. So, Mr S had use of the car supplied by BMWFS for a further 1,200 miles between the valuation dates, and that additional mileage is likely a major contributing factor in the reduction in sale price. As such, I won't be asking BMWFS to refund Mr S the difference between the two valuation figures he received.

Notwithstanding this, Mr S had to pay for two HPI checks, at £19.99 each, that he otherwise wouldn't have needed to do had BMWFS identified and rectified the NMR discrepancy when the car was supplied to Mr S. So, I think it's only fair they refund these payments to him.

I also think Mr S should be compensated for the distress and inconvenience he was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended BMWFS pay Mr S an additional £150, to recognise the distress and inconvenience he'd been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mr S would've felt by discovering the mileage discrepancy and not initially knowing if the odometer on the car had been tampered with. But I think it also fairly reflects the fact that the issue didn't stop Mr S being able to use the car, and that BMWFS took steps to rectify the matter once it had been brought to their attention. So, this is a payment I'm directing BMWFS to make

Therefore, BMWFS should:

- upon receipt of proof of payment, refund the payments Mr S made for the HPI checks;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr S made the payments to the date of the refund[†]; and
- pay Mr S an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (BMWFS must pay this compensation within 28 days of the date on which we tell them Mr S accepts my final decision. If they pay later than this date, BMWFS must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires BMWFS to take off tax from this interest, BMWFS must give Mr S a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr S's complaint about BMW Financial Services (GB) Limited trading as Alphera Financial Services. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 January 2025.

Andrew Burford

Ombudsman