

The complaint

Mrs K complains that BMW Financial Services (GB) Limited trading as MINI Financial Services ("BMWFS") overcharged her when she settled her agreement early.

What happened

Mrs K acquired a used car under a 36 month hire purchase agreement with BMWFS in early December 2023. The cash price of the car was £25,200 and Mrs K paid £19,000 as a deposit. Mrs K acquired the car at a time where a special campaign was running and which saw customers taking out finance with BMWFS receive a finance deposit contribution of £700. This was deducted from the total amount Mrs K had to pay which meant that BMWFS lent Mrs K £5,500 to complete the purchase with interest payable of £891.44. The total amount payable was £26,091.44 which included the deposit and the deposit contribution I've referred to. The car was supplied by a dealership I'll refer to as "D."

In late December 2023, Mrs K contacted BMWFS and asked it for a settlement quote. Mrs K settled the agreement, but later complained and said she was unhappy that 58 days interest was added to the amount lent. Mrs K said she had been told there was no penalty for settling the agreement early, the agreement didn't state any additional fees would be charged for settling the agreement early and that it said interest would be charged until the date of payment, but the settlement figure hadn't been calculated like this.

BMWFS issued its response to Mrs K's complaint in February 2024. It said it had correctly calculated the settlement figure in line with relevant regulations. It confirmed the interest charged was 10.5% and the settlement quote was based on it being entitled to charge 58 days interest.

Unhappy, Mrs K referred a complaint to this service. She reiterated her complaint and said she told D prior to acquiring the car that she would want to repay the finance early, as she would be receiving payment for shares at an unknown future date. She said taking the car out on finance as opposed to waiting was attractive due to the £700 deposit contribution. She said D explained that interest would be charged up until the date of payment on a day by day basis. She said the amount she had to pay to settle the finance was higher than expected and she said she had overpaid by £87.89. She said she had been caused distress, frustration and anxiety due to the issue. She said she had invested a number of hours attempting to resolve the issue and raising a complaint and she expected to be compensated for this. She said she wanted to be reimbursed a payment of £787.89 plus interest. Mrs K said she wasn't complaining about the calculation of interest but instead how the information was presented at the point she entered into the agreement.

Our investigator looked into the complaint but didn't think BMWFS had acted unfairly. She said the section Mrs K had referred to related to withdrawal rights, which only applied within 14 days of the agreement being entered into. In this case, Mrs K settled the agreement outside of 14 days, so this section didn't apply. She said it wasn't expected for firms to include every eventuality within the terms and conditions, as the agreement wouldn't be easy to understand and she didn't think BMWFS had done anything incorrectly when it couldn't explain the calculation used or why additional interest was payable. She said she didn't think it needed to do this and it used a system to generate an accurate settlement figure.

Mrs K disagreed. She said our investigator acknowledged that she was provided with factually incorrect information, as D directed her to the wrong section of the contract and provided her with an incorrect explanation that she would only pay 15 days of interest. She said D should have specifically pointed out relevant regulations.

Our investigator looked into Mrs K's additional comments and said that she didn't think the agreement had been misrepresented. She said whilst she was inclined to accept Mrs K was misled by D about the amount of interest she would need to pay and that this was a false statement of fact, she didn't think that false statement induced Mrs K to enter into the agreement. This was because Mrs K has said she entered into the agreement earlier due to a £700 incentive which was dependent on Mrs K entering into the finance agreement. She said as the £87.89 was significantly less than the £700 Mrs K had benefitted from, she said it was more likely than not that Mrs K would have proceeded with the agreement had she known she would have to pay additional interest. Our investigator reiterated her previous comments about the information BMWFS included in the contract and the information it provided and said if Mrs K had exercised her right to withdrawal, it's likely the £700 dealer contribution would have been clawed back.

Mrs K disagreed. She said that it wasn't acceptable to her that we could say an agreement was mis-sold but not suggest that BMWFS should repay her the additional interest she says she was charged. She said she wouldn't have purchased the specific car and she wouldn't have purchased a car on finance if she had been made aware of the interest charges. She said the information induced her into making the purchase. She said BMWFS should compensate her for failing to investigate and identify the mis-selling and to acknowledge their error.

As Mrs K remains in disagreement, the case has been passed to me to decide.

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.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mrs K has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

Mrs K 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.

The hire purchase agreement confirms that the cash price of the car is £25,200 and that an advance payment of £19,700 was paid, which included a £700 dealership finance contribution. This means the amount of credit was £5,500. The interest payable over the term of the agreement for Mrs K borrowing this amount was £891.44. If Mrs K's agreement ran to term and all the repayments were made as per the agreement, Mrs K was due to pay a total of £26,091.44 for the car.

Mrs K settled her agreement around after 15 days of acquiring the car. Mrs K says she has been overcharged by £87.89. Mrs K says that since settling the agreement she has reviewed relevant legislation and accepts that BMWFS is entitled to charge her 58 days interest. However, she says it is unfair for her to have to pay this interest as the agreement was mis-sold to her. She says, given the discussions at the time of the sale, D should have pointed

out that she would be charged interest for 58 days if she settled the agreement early, but it didn't do so. She has also said that the contract didn't state this.

So, what I need to decide in this case is whether D misrepresented the agreement to Mrs K and whether BMWFS has acted unfairly or unreasonably in any other way. If I think BMWFS has acted unfairly or unreasonably, I'll need to consider what, if anything, it needs to do to put things right.

Was the agreement misrepresented to Mrs K?

When I consider whether a misrepresentation has been made or not, I need to be satisfied that D made a *'false statement of fact'* about the agreement, and that statement induced her into entering the contract to acquire the car, when she otherwise wouldn't have.

Mrs K has provided an email chain between her and D which began after Mrs K had already settled the agreement. Nonetheless, I do think that the content of this email chain sheds some light on the discussions that took place in the showroom prior to Mrs K acquiring the car. In this email chain, Mrs K explains her complaint about the interest that might be charged and D responds saying, *"can you let me know when you paid the finance off was it the 14th day as discussed? We have had so many people settling finance as you can imagine with the offer and not had a single issue!."*

Mrs K responded and said she had settled the finance after 15 days and the correct amount of interest she should have been charged was closer to £20. She also said D's explanation of the finance agreement was identical to the policy wording¹, but BMWFS had charged a minimum of two months interest, which wasn't referenced anywhere in the policy document. D responded and said, *"Some people have not settled so early so would be correct I guess. I will adjust my wording. On the bright side it was still well worth your while taking in in terms of the saving you would have had."*

I've reviewed the agreement and other documentation provided to Mrs K. The pre-contract information states, *"You have the right to withdraw from the credit agreement without giving any reason. This right begins on the day after the day on which you receive a copy of the agreement (after you have signed it) and ends 14 days later. If you do not receive a copy of the agreement after you have signed, the 14 days will start on the day after the day on which we confirm in writing that the signed agreement is in identical terms to the copy that was given to you before you signed."*

The explanation document states, *"Important: if you withdraw after the credit has been provided, you must, within 30 days after giving us notice, pay us the amount of credit, plus the interest accrued from the start of the agreement to the date you pay the amount of credit (the daily amount of interest is stated on the agreement). You will become the owner of the vehicle when you make this payment. If you do not make this payment, we will be entitled to repossess the vehicle and sell it."*

Mrs K signed the hire purchase agreement on 2 December 2023. This would mean the 14 day withdrawal period ended on around 16 December 2024. The welcome letter was sent to Mrs K by BMWFS on 7 December 2023 and 14 days from this date is 21 December 2023. And so in either scenario, Mrs K didn't have withdrawal rights at the time the agreement was settled, as she made the payment from her account on around 22 December 2023 and it was received by BMWFS on around 27 December 2023. This also means the references to withdrawal and the interest being charged to the *"date you pay the amount of credit"*, did not apply.

¹ Mrs K has used policy wording in her submissions. But I've taken her arguments to be in relation to the terms and conditions of the hire-purchase agreement as there was no insurance policy that was part of this sale. So where I refer to policy wording to reflect the submissions that have been made, I have taken this to be the terms and conditions of the hire-purchase agreement.

The initial email correspondence seems to suggest that D provided information around the interest based on the understanding that the finance would be settled within 14 days and so, withdrawal rights would apply. And at the time, Mrs K has said she didn't know when the agreement would be settled as she was waiting on a payment for shares. So I don't think D provided a false statement of fact in relation to the amount Mrs K may have to pay if she withdrew from the agreement within 14 days.

However, I'm prepared to accept that D's statement which states, "*I will adjust my wording*", seems to suggest that it's unlikely that D told Mrs K what would happen if she settled the agreement after 14 days. So, I accept on balance that it's more likely than not that D didn't clearly explain the impact of Mrs K settling the agreement after 14 days.

I've considered whether the lack of this information induced Mrs K to enter into the agreement.

Mrs K told this service in response to our investigator's view that she was induced to enter into the agreement because of the information provided by D about the interest charge. She said she wouldn't have purchased the specific car and she wouldn't have purchased the car on finance. However, when Mrs K referred her complaint to this service, she said that taking the car out on finance as opposed to waiting to purchase the car was attractive, due to the £700 dealership finance contribution. Miss K later said that the £700 contribution was independent of her complaint and was factored into the affordability of the car and that without this, other cars would have been more appealing and she would have purchased a car from another dealership.

I've considered all of this carefully. The £700 dealership contribution was only available to Mrs K if she took out the car on finance and this is something Mrs K was aware of. If Mrs K had withdrawn from the agreement, it would have been treated as if she never entered into it and so, it's more likely than not that the £700 dealership contribution would have been clawed back as this payment was contingent on the finance agreement being entered into. And if no finance agreement had been entered into, then no dealership contribution would have been provided. So Mrs K would have had to pay around £700 more for the car.

In taking out the finance agreement, whilst Mrs K has paid a total of £111.62 in interest charges, she has benefitted from the dealership contribution. And so, despite Mrs K paying interest charges due to the agreement likely not being explained sufficiently, she has saved around £588.38 by entering into the finance agreement.

So whilst I'm satisfied that Mrs K was likely mis-advised about the agreement by D, I don't consider that Mrs K has had a financial loss by entering into the hire purchase agreement. In

Mrs K says it's unfair this service can say an agreement is mis-sold but not tell BMWFS to put things right. However, the remedy for misrepresentation is not for BMWFS to perform the false statement as if it were true. Instead, Mrs K would be put back into the position as if the misrepresentation hadn't occurred, not that she would receive the difference in the interest paid. Whilst Mrs K says this is unacceptable, I don't think it would be fair for me to suggest that BMWFS should treat the agreement as withdrawn, apply the withdrawal terms, only apply interest for the 15 days until Mrs K settled the agreement and claw back the £700 instead. I acknowledge Mrs K's comments about purchasing another car if the £700 dealership contribution hadn't been paid, but I'm not persuaded on balance that Mrs K would have acquired a different car.

It follows that I'm not asking BMWFS to pay Mrs K any pro-rata refund of charges for the interest she paid for settling the agreement early.

I also acknowledge that Mrs K has said that she accepts BMWFS is entitled to apply an early settlement charge in the circumstances. But, she says the agreement doesn't state this. However, it does make reference to an early interest settlement charge.

The pre-contract information states under early repayment, *"You have the right to repay the credit early at any time in full or in part."*

The explanation document states, *"You can repay the credit early in full or in part at any time by giving us notice. Please see under "Early Repayment" in the agreement. If you make a full or partial early repayment, we will be entitled to charge you interest in accordance with consumer credit legislation."*

Mrs K's hire purchase agreement is regulated by The Consumer Credit Act 1974. The Consumer Credit Act 1974 allows for early payment of an agreement by a debtor. It says that an early settlement figure should be calculated in line with The Consumer Credit (Early Settlement) Regulations 2004.

Whilst I appreciate there aren't any specific references within the agreement as to how any additional amounts would be charged should the agreement be settled early, I'm satisfied the information provided does state that BMWFS would be entitled to charge interest in accordance with consumer credit legislation.

Did BMWFS act unfairly or unreasonably in any other way?

Mrs K said that BMWFS failed to record her complaint correctly and instead reiterated the calculation of the early settlement interest charge. She said the call handlers at BMFS couldn't explain the calculation and she was unhappy with the waiting time to raise a complaint.

BMWFS has provided call notes which confirm Mrs K called and said she was unhappy with the 58 day interest charge despite being advised there was no extra penalty charge. So I think Mrs K's complaint was recorded correctly as the notes reflect Mrs K's complaint. I can see that BMWFS sent Mrs K an explanation of the early settlement interest charge in her settlement quotation and the final response letter it issued. So I don't think BMWFS acted unfairly here.

In relation to the way in which BMWFS responded to Mrs K's complaint in the final response it issued and the call waiting time, this concerns complaint handling. This isn't a regulated activity that our service can consider a complaint about. And so, I'm unable to comment on this.

My final decision

I do not uphold Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 21 February 2025.

Sonia Ahmed
Ombudsman