

The complaint

Mr H complains about a car that he acquired using a hire purchase agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services ("BMWFS"). He says the car he acquired wasn't as advertised.

What happened

In July 2022, Mr H entered into a hire purchase agreement with BMWFS for a car. He complained to them in February 2024 saying the car which was advertised and sold to him was a premium version, but he had recently discovered this wasn't what he was given. Mr H said the car didn't match its description and asked BMWFS to give him a full refund of what he'd paid under the hire purchase agreement.

BMWFS didn't uphold Mr H's complaint. They said there was no evidence to show that the car Mr H acquired was a premium model and the documentation from the dealership confirmed this, as did the hire purchase agreement.

Mr H remained unhappy and so he referred his complaint to our service. One of our investigators looked into what happened but didn't think that BMWFS needed to do anything. He didn't think the car had been misrepresented or mis advertised. And he didn't think there had been a breach of contract in relation to the car's description.

Mr H didn't agree and says the car was described as a premium model and that's why he entered into the contract. Mr H also said that someone at BMWFS had told him the car had been mis-sold. And he said that he couldn't obtain a fair value for the car now as dealerships wouldn't offer him the value for a premium model.

As the matters remains unresolved, Mr H's complaint 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. Section 56 of the Consumer Credit Act 1974 ("s56") is relevant to this complaint. This sets out that, under certain circumstances, a finance provider is liable for what was said by a credit broker or supplier before a credit agreement is entered into. I'm satisfied s56 applies here. So, I can consider what Mr H says he was told about the car by the dealer before he entered into the finance agreement with BMWFS.

Mr H's complaint is that he wasn't provided with a premium version of the model of car despite this being advertised as one. So, I've considered if a misrepresentation occurred here, from the information given to Mr H by the dealer which includes the advert for the car.

I would consider a misrepresentation to have taken place if Mr H was told a 'false statement of fact' that induced him into entering into the hire purchase agreement when he otherwise

would not have.

Mr H has sent us a copy of the advert for the car. I've looked at this and note that it describes the car in brackets as "premium". Mr H has taken this to mean that the car was advertised as being a premium version of this particular make and model.

BMWFS however says that the word 'premium' here means that the car was sold with a 'premium package'.

Although I can't be certain, I think that BMWFS is likely correct. I note that the detailed specification for the car included a 'premium package' which presumably doesn't come as standard with these particular cars, hence why this is added on. I've also seen evidence provided by the dealership that other dealerships advertise these models of cars as either 'premium' or 'premium plus' and that these words aren't shown on the HPI checks for these cars. It would seem unlikely that all those dealerships are misrepresenting and misadvertising these cars as 'premium' when they aren't, and that again makes me think it more likely that the word 'premium' relates to the optional package that is applied, which from what I've seen, was applied to the car Mr H acquired.

Having considered the matter, I don't think the dealership misrepresented the car to Mr H.

I've also considered the relevant provisions of the Consumer Rights Act 2015, and in particular the requirement that goods are to be provided 'as described'. Bearing in mind the points I've made above about the description and advertising of the car, I don't think it likely that the car wasn't 'as described'. And I've not seen any evidence that certain elements of the car that should have been present, weren't present when it was supplied to Mr H, or that any agreed extras or add-ons weren't included.

So, for the reasons I've set out above, I won't be upholding this complaint. That's because I don't think it likely that the car was misrepresented or mis advertised to Mr H and because I'm satisfied that it was provided to him 'as described'.

My final decision

I don't uphold this complaint,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 February 2025.

Daniel Picken
Ombudsman