

The complaint

Mr P is unhappy that BMW Financial Services (GB) Limited (BMWFS) delayed the delivery of a car supplied under a hire agreement but did not amend the contract start date.

What happened

In September 2023 Mr P entered into a hire agreement with BMWFS for a new car. The agreement was for 48 months, with an advance rental of £1,500 followed by 47 monthly payments of £420.53.

The car was due to be delivered to Mr P on 9 September 2023 but due to an administrative error by the supplying dealer, they didn't deliver the car to him until 1 November 2023.

Mr P said that BMWFS are in breach of contract for failing to deliver the car on 9 September 2023, and by depriving him of the use of the car until 1 November 2023. He said BMWFS have also deprived him of the full four years use as the agreement ends on 8 September 2027.

He's also unhappy that BMWFS wrote to him about a missed payment on his account. He said this was for a payment BMWFS said was due in October 2023. He made the payment, and said this was later refunded to him by the supplying dealer whose administration error had caused the issue that gave rise to the delay.

But he said this didn't mean BMWFS were not in breach of contract. He said BMWFS are responsible because they insisted the agreement started on 9 September 2023, the same date it was registered. He feels he should be compensated for that breach.

BMWFS didn't uphold his complaint. They said that Mr P had accepted the supplying dealer's refund of two monthly payments. They also said that a payment had been due on 9 November 2023 and an automatic arrears letter had been issued as the payment wasn't received until 15 November 2023. They confirmed the agreement was no longer in arrears and no adverse markers had been raised with the Credit Reference Agencies.

They didn't address his complaint that they were in breach of contract.

Mr P was unhappy with this response, so he referred his complaint to our service for investigation.

Our investigator said BMWFS were not to blame for the car being registered incorrectly, and Mr P had been refunded the payments made for the period he didn't have the car. So she didn't think it was fair to ask BMWFS to pay any compensation.

Mr P didn't agree with the investigator. He said the arrangement for the supplying dealer to repay the monthly payments did not involve BMWFS. He said they were in breach of contract by depriving him use of the car from 9 September 2023, the start date of the agreement. He's also unhappy that he's entered into an agreement for 48 months but

BMWFS have only given him use of the car for 46 months – he says that is a breach of contract that he needs to be compensated for.

Because Mr P didn't agree, this matter has been passed to me to make a final 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 P was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The issue I need to consider is whether or not Mr P should be compensated for what he says is BMWFS' breach of contract.

There appears to be no dispute that the delivery of the car that is the subject of this agreement was delayed because of an administration error. And it appears to be accepted that the supplying dealer acknowledged responsibility for this error. It was its mistake in the DVLA registration process that meant Mr P didn't receive the car until 1 November 2023, around seven weeks later than all parties expected.

BMWFS said the agreement started on 9 September 2023. That is the date given in the agreement. It states that the start date of the agreement is "*the date the Vehicle is first registered with the DVLA*".

That is what was expected when Mr P signed the agreement, dated 8 September 2023. It was after this that the dealer told Mr P of its error, and this meant that he'd need to wait until the car had been properly registered with DVLA before they could hand over the car.

I'm satisfied it was reasonable for BMWFS to start the agreement on 9 September 2023 as set out in the agreement Mr P had signed. That's because there was no error on their part, and the car was first registered with DVLA on that date.

Mr P is also unhappy that he will not have use of the car for the full 48-month period. I agree that is unfortunate – but he is not being charged for 48 months use, so I can't say that it is unfair or unreasonable. So I won't be asking them to do anything more to resolve this part of his complaint.

I've seen no evidence that Mr P has suffered a direct financial loss arising from the dealer's error. Mr P has confirmed that he has been refunded the payments he made. He said that was between him and the dealer, and he should be further compensated by BMWFS. I disagree – my role is to ensure things are put right, and resolve this dispute in a fair and reasonable way.

So, whilst I accept that Mr P feels that he has been deprived usage, and whilst there was an error, I'm satisfied that BMWFS have resolved this complaint fairly. It wasn't their error, and they haven't treated Mr P unfairly.

He has been refunded the payments made before the date he got the car. So he has not suffered any financial loss. I think what is important here is that the payments were refunded, not who made the refunds.

I've also considered Mr P's complaint about receiving an arrears letter. Again, I'm satisfied that there has been no financial loss or impact on Mr P. Like him, I don't fully understand BMWFS' explanation of why an arrears letter was generated as he had a bank mandate properly set up. But they have confirmed his account is not in arrears, and no negative markers were recorded on his credit file.

I'm satisfied that BMWFS have put Mr P back in the position he would've been had the initial error not been made. He has a hire agreement ending in September 2027, and payments on the agreement started from when he received the car. So BMWFS don't need to take any further action.

My final decision

For the reasons explained, I don't uphold Mr P's complaint about BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 November 2024.

Gordon Ramsay
Ombudsman