

The complaint

Mr S complains the car supplied to him by BMW Financial Services(GB) Limited trading as Alphera Financial Services (BMWFS) was misrepresented – he says it doesn't achieve the stated mileage range.

What happened

In July 2023, Mr S entered into a 36 month personal contract purchase (PCP) agreement for a used electric car. Its cash price was £27,995 and it was first registered in November 2021. He paid a £4,000 deposit. The monthly payments were £332 with a final optional payment of £18,412 should he decide to keep the car at the end of the agreement.

In October 2023, Mr S complained the car had been mis-represented to him. He said when he bought it, the online advert said it had a mileage range of 312 kilometres (around 196 miles) on a full battery charge so he agreed to purchase the car on that basis. However he said since purchasing it, it only achieves around 111 miles which is significantly less than advertised and what he was told by the dealership.

Mr S says the car has been returned to the supplying dealership or manufacturer approved garage on at least three occasions and he's had to be recovered by a breakdown service several times. When inspected, the garages have found no fault and said the car was performing as it should.

BMWFS says the advert stipulates that the electric range given is to be used as a comparison with other cars that have been tested to the same technical procedures. They stressed the mileage range is based on official testing during the car's production and the mileage range is impacted by a number of factors such as driving style, speed, vehicle load, attached accessories, etc. They said the car hadn't been mis-sold to Mr S.

Unhappy with their response, Mr S referred the complaint to our service. The investigator recommended the complaint wasn't upheld. She said the car hadn't been mis-represented to Mr S and there was no evidence it was faulty. She also said as this was a used car that may also impact the mileage achieved.

Mr P disagreed and maintained his stance.

As an agreement couldn't be reached, the complaint has been referred 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.

Having done so, I've decided not to uphold Mr S' complaint. I'll explain why.

Was the car mis-represented?

At this point, I wish to outline that a misrepresentation is when:

1. A false statement of fact has been made; *and*
2. This false statement induces a customer.

Both points need to be satisfied for me to say a mis-representation has been made.

Under section 56 of the Consumer Credit Act 1974, the finance provider (BMWFS) can be held responsible for what they say and for what is said by a credit broker or a supplier before the consumer takes out the credit agreement. So I've taken this into account when considering this complaint.

For obvious reasons, I wasn't present for the discussion between Mr S and the supplying dealership so I've relied on Mr P's version of events and the point of sale documentation.

Neither party has been able to provide a copy of the exact advert Mr S saw online so I can't see what was said about the mileage. However Mr S has provided a link to the dealership's current online adverts for the same model car as Mr S'. Having reviewed the same, I can see it is advertised with a mileage range of 196 miles. Mr S has also provided a vehicle certificate and it outlines that the mileage range is 312 km. Based on this evidence and testimony, I'm persuaded Mr S was told the car's mileage range was around 196 miles as he's alleged.

However when looking at the online advert for the same model car, where the mileage range is provided there is an icon logo which says "More information about the vehicle's range". This goes on to explain the mileage range can be impacted by a number of factors such as weather conditions, vehicle load, usage of heating and air-conditioning, battery degradation over time. Based on this, it's clear that the mileage range advertised isn't guaranteed and can be impacted by other factors.

Further down on the same page there is a section titled "How often will I need to charge?". In this section, it further reiterates the mileage can be impacted by a number of factors. More importantly, it also says the estimated charging time of seven hours per week is based on a new vehicle with optimum driving conditions. In this case, the car was used so I must take this into consideration when thinking about the case. It's unclear whether Mr S read these sections when he saw the online advert but I find it was readily accessible and provided clear information so I can't say the supplying dealership gave mis-leading information.

I've also referred to the manufacturer's website to see what is said about the mileage range for this model of car. Having done so, it explains that the mileage range given is an estimated measure based on the WLTP (Worldwide Harmonised Light Vehicle Test Procedure) and the actual range can vary based on selected grade and transmission, fitted accessories, driving style, weather conditions, speed, battery age and vehicle load. It goes on to say these figures should be used to compare electric range figures with other cars tested in the same technical procedures. It concludes by saying the figures advertised may not reflect real life driving conditions. This is common practice within the motor industry.

Mr S has provided detailed commentary about the long distance journeys he's taken, the mileage achieved and the number of times he's had to charge it. Having looked at this evidence he's provided, I accept it's less than what was advertised. I also note he says the heating was off, the car was in eco mode and the internal display off but he says it was only able to achieve 110 miles on a full battery charge. While I accept the adjustments he made, as mentioned above there are a number of other factors that impacts the mileage achieved.

I appreciate Mr S feels very strongly about this situation and says he wouldn't have bought the car had he known the mileage achieved would be less than advertised, but for the reasons above, I'm not persuaded a false statement of fact was made to him therefore I won't consider the secondary point of inducement. Meaning the above points for a misrepresentation haven't been met.

On balance, I find the information that was likely shown on the advert, the published information on the manufacturer's website and what was most likely said by the dealership to be fair and accurate based on industry wide measures. I find it reasonably describes the impact on the mileage range achieved within real world conditions. Overall, I haven't seen sufficient evidence that leads me to believe the dealership gave Mr S wrong information or the car was mis-represented to him.

Was the car of satisfactory quality?

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr P entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory

Although the crux of this complaint is whether or not the car was mis-represented, I've also thought about whether there is a fault with the car and that's the reason for the mileage achieved. This is because Mr S has said the car has been returned to the dealership and had to be recovered by breakdown services on several occasions.

From the evidence presented to me, I can see the car has indeed been recovered several times and for battery/charging related reasons. It has been looked at by manufacturer approved garages and based on the most recent correspondence it says the car was recovered with no charge but once the fault codes were cleared and the car charged, it performed as expected. It goes on to say no fault has been found on the three occasions the car has been returned.

Therefore in the absence of clear or compelling evidence a fault exists, I can't reasonably say the car is faulty therefore I find it was of satisfactory quality at supply.

Taking everything into account, I don't find the car's mileage was mis-represented to Mr S. Additionally there's insufficient evidence the car was faulty at supply.

My final decision

For the reasons set out above, I've decided not to uphold Mr S' complaint.

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

Simona Reese
Ombudsman