

## **The complaint**

Ms M is unhappy that an electric car supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited ('BMWFS') had been misrepresented to her – it failed to achieve the range she was advised and the sale price she paid was higher than the value of the car.

## **What happened**

In April 2023, Ms M was supplied with a used electric car through a hire purchase agreement with BMWFS. She paid an advance payment of £3,000 and the agreement was for £27,898 over 49 months; with 48 monthly payments of £457.44 and an optional final payment of £12,311.24. At the time of supply, the car was around nine months old but had done just 31 miles.

Ms M says that she asked about the mileage range on the car before she agreed to finance it. While the advertised range was 220 to 240 miles per charge, Ms M said the supplying dealership explained this was based on lab conditions, and the reasonably achievable range was around 170 miles. Ms M believed this was suitable for her needs as she made regular long journeys of less than 170 miles.

Ms M said that she was able to achieve the 170 mile range during the summer months but, as the weather became colder, the achievable range dropped. And she was only able to achieve 114 miles by turning off systems such as the heating.

Ms M also said that she subsequently read an article that detailed the drop in electric car values in early 2023, and she was shocked to discover the value of the car had dropped around £10,000 in the first six weeks of it being in her possession. She complained to BMWFS in March 2024 about the mileage range and that the drop in value meant she would now be in negative equity, so unable to return the car and settle the agreement early.

BMWFS didn't uphold her complaint, so she brought it to the Financial Ombudsman Service for investigation.

Our investigator didn't think the issue with the mileage range indicated there was a fault with the car. They said that colder weather and the use of systems such as heating and having the lights running for longer periods (all associated with winter weather) would affect the battery performance and energy consumption, and therefore the range achievable. So, while Ms M discussed the range with the dealership, as it's not disputed that the range in winter wasn't specifically discussed, the car wasn't misrepresented to her.

With regards to the value of the car, the investigator said that BMWFS had no control over market conditions, nor how supply and demand would affect prices. While BMWFS said in their final complaint response letter that the sale price was correct given the age and mileage of the car, the investigator said their correspondence with the dealership showed they were initially in dispute about the sale price.

In an email dated 2 May 2024, the dealership said that *“the electric car market values have been plummeting, we simply bought the car at the wrong time as we have made a substantial loss on this car which was out with our control.”* In an internal email the same day BMWFS confirmed Ms M had paid *“way over the odds”* for the car and actually paid more than an industry recognised trade valuation company’s retail price for a new car, even though the car was second hand.

In a follow up email to the dealership dated 20 May 2024, BMWFS said *“I have liaised with our underwriting team who agree the [value] was a lot less than what we have sold (around 4.5/5k) for and the only reason this was not picked up was due to the proposal auto accepting ... I do believe [Ms M] has a strong case especially with underwriting advising it was upsold.”*

Based on this evidence the investigator said that, in line with their stated process, BMWFS had failed to identify the car was sold for substantially more than its value, something that should’ve been picked up by their underwriting team. As such, the investigator thought BMWFS had failed to comply with its regulator’s principles to pay due regard to customer’s interests and treat them fairly. So, to put things right, the investigator said that Ms M should be allowed to reject the car and receive a refund of the deposit she paid.

Ms M agreed with the investigator’s opinion, but BMWFS didn’t. Despite their case notes at the time, they now didn’t think the car had been upsold, and they provided evidence which they said showed the value of the car when it was supplied to Ms M was £34,750.

Because BMWFS didn’t agree, this matter 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.

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. Ms M 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.

When Ms M raised her complaint with this service, there were two elements to this – the mileage range and the value of the car compared to its sale price. Both Ms M and BMWFS have accepted the investigator’s opinion that the car wasn’t misrepresented to Ms M based on the mileage range, nor was there a fault with the car that limited its range. As such, I’m satisfied that I don’t need to consider this within my decision. Instead, I’ll focus my decision on the remaining area of dispute – the value of the car when it was supplied to Ms M.

In their case notes and emails to the dealership in and around May 2024, detailed and quoted above, BMWFS were clear that Ms M had paid around £5,000 more than the value of the car at the time, and that the dealership needed to do something to resolve this. However, as the dealership have refused to do something, BMWFS have subsequently stepped back from this position, and now maintain that Ms M paid a fair market value for the car.

The dealership purchased the car for £33,376 in September 2022 and, after seven months of unsuccessfully trying to sell it at £34,989, eventually sold it to Ms M in April 2023 for £30,898. I've seen a valuation from one of the motor valuation companies for a value of the car supplied to Ms M in April 2023. This correctly shows the supply mileage to be 31 miles, confirms the original sale price as £34,750, and the April 2023 retail price as £26,730. This shows that Ms M paid around £4,100 more than the retail price at the time, which falls roughly in line with what BMWFS said on 20 May 2024.

I've also seen the valuation BMWFS have provided as part of their comments on the investigator's opinion. This has been produced by a different valuation company, one who has a minimum mileage of 1,000 miles for valuation purposes. While the car supplied to Ms M had only done 31 miles, given that both 31 miles and 1,000 miles would class the car as 'nearly new', I don't think the value at these two mileage figures would be significantly different. As such, I'm satisfied that this valuation is reasonable to rely upon.

BMWFS have correctly pointed out that the retail valuation of the car is showing as £30,250, around £650 less than Ms M paid. While this is the case, this is also the valuation for 16 February 2023, and the car wasn't supplied to Ms M until April 2023. The valuation supplied by BMWFS also provides monthly retail valuation figures for March to June 2023, and the 16 April 2023 retail figure is showing as £26,000. This is both in line with the valuation obtained by the investigator and, given that Ms M paid around £4,900 more than this valuation figure, is also in line with what BMWFS said on 20 May 2024.

Based on these valuations, I disagree with BMWFS's latest arguments, and I'm satisfied that Ms M paid around 15% to 18% more than the retail price for the car.

In explaining their process, BMWFS have said that *"all credit applications when considered, we will look at the current price and the [guaranteed future value], this is to ensure that it is fair to the customer but also fair to us as a lender."* I've reviewed the agreement Ms M signed, and this makes no reference to a guaranteed future value. Instead, it explains that Ms M can purchase the car by paying the optional final payment of £12,311.24; or part exchange the car and use the difference between the *"value at the time"* and the optional final payment price towards the cost of a replacement vehicle. Alternatively, she can hand back the car at the end of the agreement with nothing more to pay.

So, I'm satisfied that Ms M doesn't benefit from any guaranteed future value which could offset the fact that she paid substantially over the odds for the car.

As I've said above, in their email of 20 May 2024, BMWFS have acknowledged they missed that Ms M paid too much for the car as part of their underwriting checks (because the agreement was auto accepted) and they thought something needed to be done about this. I'm in agreement with them on this and, as BMWFS failed to identify Ms M was paying too much, I will be directing them to put things right.

### **Putting things right**

When directing a financial business to put things right, I'm looking, as far as is possible, to put the customer back in the position they would've been in had nothing gone wrong. In this instance I'm not able to do this, as I can't alter the amount Ms M overpaid the dealership for the car. However, I can address the fact that Ms M is, by virtue of overpaying for the car, now essentially in a position of negative equity – the settlement value of the agreement is more than the value of the car. And I don't see this position changing before the agreement ends, at which point Ms M is unlikely to have any equity to put towards a replacement vehicle.

So, in these circumstances, I think the fairest solution is to allow Ms M to be able to reject the car. BMWFS will be able to retain the payments she's made to account for the usage she's had of the car, and her deposit should be refunded which will essentially put her back into the position of having equity to put towards a replacement vehicle, something she would've naturally had if BMWFS had identified that she'd paid too much for the car.

Therefore, if they haven't already, BMWFS should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Ms M;
- remove any adverse entries relating to this agreement from Ms M's credit file;
- refund the deposit Ms M paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMWFS is entitled to retain that proportion of the deposit); and
- apply 8% simple yearly interest on the deposit refunds, calculated from the date Ms M made the payment to the date of the refund<sup>†</sup>.

<sup>†</sup>If HM Revenue & Customs requires BMWFS to take off tax from this interest, BMWFS must give Ms M a certificate showing how much tax they've taken off if she asks for one.

### **My final decision**

For the reasons explained, I uphold Ms M's complaint about BMW Financial Services (GB) Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 16 April 2025.

Andrew Burford  
**Ombudsman**