

The complaint

Mr S is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services(GB) Limited trading as BMW Financial Services (BMWFS) was of unsatisfactory quality, and that as part of the remedy for this, his second agreement was misrepresented.

What happened

Mr S acquired a brand-new car under a hire purchase agreement in October 2023. The cash price of the car was £79,562.24 with an advance payment of £8,515.00 being paid. The total payable was £89,990.08 payable in 47 monthly instalments of £950.00 followed by an optional final payment of £36,825.08.

Mr S explained that soon after purchasing the car, the windscreen was leaking. Mr S was unhappy with this and was able to reject the car. Through efforts to resolve things for Mr S, it was agreed he'd be given a new car. There was some time in between Mr S' old car being rejected, and his new car being ready. At certain times Mr S had use of a courtesy car, and then was also given his old car back to use whilst waiting for the new one due to an accident.

Issues arose surrounding the second agreement, as Mr S explains he was told it would be identical to the previous agreement and the fact the car would be newer at the end of it would compensate him for the trouble he'd been through previously. As the agreement crucially had a different balloon payment attached to it, Mr S complained. He explained he was told first the old agreement would move to the new car, then when this wasn't possible, that the new agreement would be identical to the old one. Mr S says he noticed the different balloon payment on the second agreement, but was told that this would be sorted out later. BMWFS issued a final response upholding the complaint as the vehicle was being rejected and the finance would be settled down on the original agreement. BMWFS said it could not influence Mr S being given a like for like car to be kept mobile in.

Mr S was unhappy about how things progressed, particularly as the second finance agreement was not identical to the first, and the balloon payment was not adjusted as Mr S said he was told it would be. As a result, Mr S brought his complaint to this service where it was passed to one of our investigators. The investigator upheld the complaint. They explained that Mr S was supplied with a car of unsatisfactory quality, and as such there were times where he had loss of enjoyment or impaired use, or no use at all of the vehicle and as a result, a portion of some of his monthly payments should be reimbursed. Alongside this, the investigator explained the second agreement was misrepresented to Mr S, meaning that it should be unwound.

Mr S replied to confirm the deposit refund he could expect. BMWFS replied to disagree with the outcome. BMWFS said it hadn't received a complaint about the second agreement being mis-sold and that if Mr S wanted to raise this issue, he'd need to complaint to them first about it. The investigator replied to explain his complaint was made clear on his complaint form sent to BMWFS and so he would not need to raise a new complaint. BMWFS still didn't agree, but did agree with some of the recommendations the investigator made in their

outcome. BMWFS then replied to the investigator to explain the dealership agreed to supply an identical car with the same monthly payments. And outlined the difference in balloon payment is due to the vehicle being seven months newer and is expected to have travelled less miles at the end of the term. BMWFS also stated the dealership gave Mr S what he wanted - the same car, the same monthly payment and a finance term that is less the time he had the first car. As such BMWFS disagree on the mis-sale.

There were some more comments supplied by the investigator and BMWFS, but an agreement couldn't be reached and so I've been asked to review the complaint 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.

I've read and considered the whole file, but I'll concentrate my comments 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.

Mr S acquired a car under a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr S' complaint about BMWFS. BMWFS is also the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply of the car and its quality. The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory, fit for purpose and as described". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

In this case, it is not in dispute that the vehicle under the first agreement was of unsatisfactory quality. I say this because rejection of the vehicle was allowed. So I'm persuaded I don't need to make a finding on this issue. There are disagreements about the time Mr S was without his vehicle, or was using it whilst it was of unsatisfactory quality and how to put those right - So I will cover these before moving on to the misrepresentation element of the complaint.

Mr S was continuing to pay towards his agreement whilst awaiting his new vehicle. As his old vehicle had been taken back, he was kept mobile in another car, but this car was not similar to the vehicle he'd purchased or wanted. Mr S was driving this replacement vehicle from around the middle of November 2023 to around the end of January 2024. Mr S explained the design of the vehicle was not to his liking, but the vehicle itself appears to be functional. To recognise the loss of enjoyment Mr S encountered by being supplied with a vehicle that wasn't of satisfactory quality, meaning it had to be rejected, I agree that it is fair for BMWFS to refund 5% of half of his November monthly instalment, and 5% of his December 2023 and January 2024 instalments.

Unfortunately, Mr S was in an accident around the end of January 2024. So the vehicle Mr S was put in had to go back for repairs. From then until around the middle of February 2024,

Mr S explained he was provided with a vehicle for a very short period of time before it was taken back. I also think it is fair for BMWFS to recognise the time he was paying for a vehicle without being kept mobile here. BMWFS have pointed out this is because the vehicle he was driving was in an accident, however, he was still without his original vehicle due to it being not of satisfactory quality when it was supplied. So, it is fair for BMWFS to reimburse him for the time he was without a car here by reimbursing him 50% of his monthly payment in February 2024.

Whilst awaiting his new vehicle Mr S was given his old vehicle back, but it's been advised it smelled of damp. This will have affected his enjoyment of the vehicle, and, he's encountering this issue due to being supplied a vehicle that was of unsatisfactory quality. It is fair then that BMWFS recognise this by reimbursing him 5% of half of his February 2024 instalment, and 5% of his March to June monthly instalments until he was supplied with his new vehicle.

Misrepresentation

I've also taken into consideration section 56 of the Consumer Credit Act 1974. This states that any negotiations conducted by the credit broker or supplier of goods are deemed to be conducted in the capacity of an agent of the creditor, and that this includes all communications (including the advert) and representations made. This means that, in this case, any discussions, communication, or representations made by the sales agent in respect of the agreement were done so as an agent of BMWFS, for which BMWFS remain liable.

This is also a complaint about misrepresentation. For misrepresentation to be present there must (a) have been a false statement of fact, and (b) that false statement of fact must have induced, in this instance, Mr S to have financed this particular car with BMWFS. Based on the evidence I've seen, I'm persuaded it is more likely than not Mr S was told that the second agreement would be identical to the first agreement, and this induced him into entering into the agreement. I say this because I can see different options were offered to Mr S on how he wanted to proceed when it was deemed the first vehicle was not of satisfactory quality. Mr S has presented plausible and persuasive testimony about the option he chose and why. Mr S explained he thought he would be supplied a replacement vehicle under the existing agreement terms. This is supported in emails between Mr S and the dealership from February 2024. In this, Mr S states he *"thought that the agreement was to pass to the new car upon delivery, thus my agreement starts October 2023 and ends October 2027, the terms of the contract remain the same, just against the new vehicle upon delivery."* This was in reply to an email from the dealership outlining that the agreement for the first vehicle will be settled down.

This is also supported by later email such as from April 2024. The dealership email Mr S to explain the finance company have said they will end the current agreement and start a brand new one when the new car arrives, to which Mr S replies *"this isn't what was agreed previously, the finance was meant to transfer over to a new car, thus I would have a car that was newer than the four year finance period. This is no way compensates me, if this was the case I would have rejected the car in full"*. Mr S also asks to clarify if BMWFS will refund him from October 2023 to the month the new car gets delivered.

The dealership then email Mr S again in April 2024 and say *"then a new agreement is set up identical to the one you currently have"*.

Mr S replies to explain this is not what was said previously, and waits for the dealership to ask for clarity.

Alongside this, Mr S has signed the second agreement, displaying the new balloon payment. Mr S was asked about this, and said he was told he had to pick up the vehicle by the end of

June 2024, he was told this was signing the vehicle into his name and the balloon payment could be amended at a later date, and explained that when he signed the original agreement the monthly payments were wrong and were amended at a later date, and he was told this would be the same.

Mr S has also supplied messages that appear to show him following up the amendment to the finance issue with the dealership before July 2024 and in August 2024.

Mr S has been consistent, plausible and persuasive in his testimony and evidence supplied. I haven't seen anything that contradicts this or would persuade me that this is less likely to have happened. I acknowledge Mr S has signed the second agreement displaying the balloon payment, but given what has been explained and has happened, I don't think it is unreasonable that Mr S relied on what he was told. I can also see that in an email to Mr S in April it is mentioned that the agreement will be identical to the existing one, so again I don't think taking everything into consideration, he was unreasonable to rely on what he was being told. Mr S has also consistently said he would not have accepted the exchange and would simply have rejected the vehicle outright if he'd have known there would be a different agreement in place with a different balloon payment applying.

Considering the above, I'm persuaded that it is more likely than not a misrepresentation took place, and that this induced Mr S into entering into the agreement to purchase the vehicle.

Putting things right

When looking to put things right I'm looking, as far as is reasonably possible, to put Mr S back in the position he would've been had the misrepresentation not occurred. As such, I think it is reasonable that Mr S is allowed to return the car. BMWFS should end the agreement with nothing further to pay in relation to the monthly payments. BMWFS should also arrange to collect the vehicle at no cost to Mr S.

As Mr S has been able to use the car whilst it's been in his possession, it is only fair he pays for that usage. So, I won't be asking BMWFS to refund any monthly instalments paid toward the second agreement. BMWFS should refund Mr S's deposit paid towards the first agreement, but BMWFS can keep any part made up of dealer contributions if applicable. BMWFS should repay a portion of some of the monthly payments made towards the first agreement, to recognise Mr S' loss of enjoyment and time without a vehicle due to being supplied a vehicle that was of unsatisfactory quality. These are as described above and total 5% of seven monthly instalments and 50% of one half of an instalment, I agree with the investigator in this aspect as described by them in the quality of goods section of their outcome. BMWFS should also arrange to remove any adverse credit information about the agreements if applicable.

I also considered if a payment for distress and inconvenience was relevant here. I agree that it's fair for BMWFS to pay £250.00 to reflect the distress and inconvenience caused. Mr S has explained some of the impact on him, in having to make different arrangements, and there will have been inconvenience in having to do so. It is reasonable to also say there will have been stress and confusion caused in arranging the second agreement with Mr S trying to have this sorted out.

My final decision

For the reasons explained, I uphold Mr S' complaint and instruct BMW Financial Services(GB) Limited trading as BMW Financial Services to do the following:

- Treat the agreement as ended and collect the vehicle as outlined above.
- Refund Mr S some of his monthly payments as outlined above.
- Reimburse Mr S' deposit paid as outlined above.
- Pay 8% simple yearly interest* on the above, to be calculated from when Mr S made the payment to the date of the settlement.
- Pay Mr S £250 for the distress and inconvenience caused.
- Amend Mr S' credit file as outlined above.

*HM Revenue & Customs requires BMW Financial Services(GB) Limited trading as BMW Financial Services to deduct tax from the interest amount. BMW Financial Services(GB) Limited trading as BMW Financial Services should give Mr S a certificate showing how much tax it has deducted If he asks for one. Mr S can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 October 2025.

Jack Evans
Ombudsman