

## **The complaint**

Mr M complains about a hire purchase agreement he had with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS). He is unhappy about being incorrectly told he would be refunded his January 2024 monthly repayment when he called to terminate the agreement. Mr M is also unhappy about being charged excess mileage charges and damage charges when the car was returned.

## **What happened**

Mr M took out a hire purchase agreement with BMWFS in January 2019 to acquire a used car. Under the terms of the hire purchase agreement and in return for making the monthly repayments, Mr M was able to use the car. The terms of the agreement had a maximum mileage allowance, which meant that Mr M was not permitted to drive more than 8,000 miles each year, with a total mileage allowance over the term of the agreement at 70,138. As this was a used car, the starting mileage was recorded on the agreement and this was shown to be 37,471 miles.

Mr M called BMWFS in January 2024 to enquire about terminating the agreement. He says in that call he was told he would be refunded that month's repayment and when handing back the car he would not be required to pay anything more.

Mr M then received an invoice for damage to the car's wheels and the wing mirror. Mr M was also charged for exceeding the mileage allowance. Mr M complained to BMWFS and was told that he was incorrectly informed about the monthly repayment being refunded and it would not in fact be refunded. He was also told the damage and excess mileage charges were valid and would need to be paid.

Unhappy with BMWFS's response, Mr M referred his complaint to our service. It was considered by one of our investigators and they explained why they considered BMWFS was allowed to charge for excess mileage and damage under the terms of the hire purchase agreement and the relevant sections of the Consumer Credit Act.

The investigator also found that the excess mileage charges and damages charges had been applied fairly and he did not consider BMWFS should be required to remove or reduce the amount due. The investigator did however consider Mr M had suffered some trouble and upset as a result of being incorrectly told he would be refunded the January 2024 monthly repayment. He recommended BMWFS pay Mr M £150 in recognition of this.

BMWFS accepted the investigator's findings. Mr M accepted some of the findings but remained unhappy about the excess mileage charges. He maintained his position that the start mileage of 37,471 was not correct and it was higher than this – therefore reducing the amount of excess mileage covered.

As the complaint could not be resolved informally it was passed to me to consider as the last stage in our process. After initially reviewing the complaint I asked the investigator to put some questions to BMWFS. One of these related to an online car valuation site our service has access to and that this shows the original advert from when Mr M acquired the car. More

specifically that although the advert did show the mileage of the car at that time was 37,471 (the same as recorded on Mr M's hire purchase agreement) a photo of the car's instrument panel showed the mileage to be 41,458.

BMWFS attempted to contact the dealership responsible for selling the car but says it did not receive a response. It did not provide any further comments about the mileage discrepancy.

I then issued my provisional decision, which set out the following:

***What I've provisionally 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.*

*likely to have happened in light of the available evidence and the wider circumstances.*

*I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.*

*The investigator has set out in some detail why Mr M's complaint about should mostly not be upheld and the parties have again mostly accepted this. I do not therefore consider it necessary to go into significant detail again addressing every point in depth. I shall instead focus on the outstanding issue around the excess mileage charge and whether this has been calculated correctly.*

*I will briefly however say that for the same reasons set out by the investigator in their view, that having considered the terms of Mr M's hire purchase agreement with BMWFS and the requirements of the Consumer Credit Act, I am satisfied that BMWFS was permitted to charge for excess mile and damage charges, should they apply in the specific circumstances here. The Consumer Credit Act, particularly sections 99 and 100, do not in my view prevent excess mileage or damage charges being applied, again subject to them being clearly set out in the terms of the hire purchase agreement. I'm satisfied the terms relating to excess mileage and damage were clearly set out and BMWFS was therefore permitted to apply a charge in this instance.*

*I have reviewed the damage shown on the inspection report and have carefully considered whether this represents fair wear and tear, considering the age and mileage of the car, or more significant damage.*

*I have noted what the BVRLA fair wear and tear guide refers to and also considered what I consider to be fair and reasonable in all the circumstances of this complaint. Again for very similar reasons to those set out by the investigator, I note the damage to each of the car's four wheels is not insignificant. Nor is the damage to the wing mirror.*

*The BVRLA guidance refers to fair wear and tear occurring when normal usage causes acceptable deterioration to a vehicle. And that fair wear and tear should not be confused with damage which occurs as a result of a specific event or series of events.*

*The wheel damage is likely caused by multiple kerb impacts and the mirror plastic/glass (covering the indicator element of the mirror) is also cracked through what is likely to have been impact by or with something else. I have carefully considered the age and mileage of the car when Mr M handed the car back and that it was of course older and had in excess of 100,000 miles. But I'm not persuaded the damage would be considered to be fair wear and*

tear.

*It would not in my view therefore be unreasonable for BMWFS to charge for the damage caused in this instance. And considering the charges applied to each of the wheels and for the wing mirror, I'm satisfied these are not unreasonable in the circumstances. I do not consider there to be sufficient grounds to instruct BMWFS to remove or reduce the damage charges.*

*I've next considered the excess mileage charges and while I am satisfied BMWFS is permitted to charge excess mileage, I am not satisfied the excess mileage has been calculated correctly.*

*The hire purchase agreement shows the mileage of the car at the time the agreement was taken out as 37,471. This matches the invoice from the car dealership and I can understand therefore why it is recorded as 37,471.*

*The car's MOT history shows the car's mileage of 34,471 at the time of the MOT on 20 May 2019. As already mentioned, the car invoice of 23 September 2019 also shows the mileage at the time the car was supplied to Mr M as 37,471.*

*It is of course possible that the car did not travel far in the four months between the MOT and being supplied to Mr M. But the mileage is exactly the same and I consider it unlikely that the car did not travel at least one mile in the four months.*

*The image of the car's instrument panel, and mileage, from the advert from what I understand to be when the car was supplied to Mr M, shows the mileage to have been 41,458. I see no reason why the image would show a mileage of 41,458 at the time if the mileage was actually 37,471. Considering this, and what I have said above about the mileage being unlikely to have been exactly the same in September as it was when the car was MOTd four months before, on the balance of probabilities I am satisfied the mileage of the car was not 37,471 when the car was supplied to Mr M.*

*I have noted what Mr M has said about the mileage being higher than the 37,471 that is shown on the agreement and that he believes the mileage to have been around 50,000 miles when the car was supplied. I am not however persuaded the mileage was around 50,000 as Mr M has suggested. I consider it more likely than not that the image showing the mileage to have been 41,458 is more likely to have been an accurate representation of the mileage at the time the car was supplied to Mr M. The agreement start mileage should therefore be changed from 37,471 to 41,458 and BMWFS should recalculate the excess mileage charge with the correct start mileage.*

*For completeness, there is no dispute about the mileage of the car when it was returned, or the pence per mile used to calculate the charge. I calculate that Mr M has however been overcharged excess mileage by 3,987 miles, or at 4.95 pence per mile, £197.*

*If Mr M has not yet paid the excess mileage amount in full, his liability should be reduced by £197. If Mr M owes less than £197, BMWFS should refund what Mr M has overpaid and add interest to the refunded amount. Similarly, if Mr M has repaid in full the excess mileage charge, he should be refunded the £197, with interest.*

*Interest should be calculated at 8% simple per year from the date of any overpayment until the date of settlement.*

*Finally, I have considered what Mr M and BMWFS have said about Mr M being misled about receiving a refund of the January 2024 repayment when he called to discuss this. BMWFS*

*accepts that Mr M was incorrectly told he would receive a refund and I can understand Mr M's disappointment at then being told no refund was actually due. But even though Mr M was misled, this does not however mean that Mr M should now receive a refund of what he was incorrectly promised. Had Mr M been correctly informed about no refund being due, I consider it more likely than not that he would still have proceeded with the termination and would therefore not have received the refund. I do not consider BMWFS should be required to refund the payment now.*

*I am satisfied this has caused some degree of trouble and upset for Mr M and that he would have needed to adjust his finances that month when he was correctly told he was not getting a refund. The investigator proposed a payment of £150 in recognition of this and I'm satisfied in the circumstances here that is a reasonable sum to compensate Mr M.*

### **My provisional decision**

*My provisional decision is that for the reasons set out above, I partly uphold Mr M's complaint against BMW Financial Services (GB) Limited trading as ALPHERA Financial Services. Mr M's excess mileage charge should be recalculated as set out above and Mr M should either be refunded, with interest, if he has overpaid, or be required to pay a lower sum that is calculated on the higher start mileage.*

*Mr M should also receive a payment of £150 for the distress and inconvenience caused by being misled about the monthly repayment refund.*

We did not receive a response to the provisional decision from either party.

### **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, and in the absence of any further submissions or arguments from the parties, I have come to the same overall conclusions as set out in my provisional decision and referred to above.

I am not persuaded that BMWFS should be required to remove the damage charges for the wheels and wing mirror, or pay Mr M an amount equivalent to the January 2024 repayment that he was incorrectly told would be refunded.

BMWFS should however recalculate the excess mileage charge based on the higher start mileage of 41,458. BMWFS should then reduce the amount owed, if Mr M has not yet settled the amount, or refund what he has overpaid with interest. If Mr M is due a refund, interest at the rate of 8% simple per year should be added to the refunded sum from the date of payment until the date of the settlement.

BMWFS should also pay Mr M £150 in recognition of the distress and inconvenience he has been caused.

### **My final decision**

My final decision is that I partly uphold Mr M's complaint and direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to settle the complaint in accordance with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 17 January 2025.

Mark Hollands  
**Ombudsman**