

The complaint

Mr W complains about a car supplied to him using a hire purchase agreement taken out with BMW Financial Services (GB) Limited trading as BMW Financial Services ("BMWFS").

What happened

In July 2023, Mr W acquired a used car using a hire purchase agreement with BMWFS. The car was almost five years old, the cash price of the car recorded on the agreement was £25,000, the agreement was for 60 months, made up of regular, monthly repayments of £547.40. The advance payment recorded on the agreement was £500. The mileage recorded on the sales invoice for the car was 55,982 miles.

Mr W said that before he acquired the car, he was aware it had a performance engine modification made to it. He also said that he was informed it would be removed and the car reset to its normal factory settings before it was supplied to him.

Mr W said the car later developed an issue where the engine management light illuminated on the car's dashboard. For the car to be diagnosed, a software update was required to be completed on the car. Once the update was completed, Mr W said the car drove differently, and believed only then had the engine modifications been removed.

Mr W was unhappy as he thought the car now didn't meet the specifications or features, he thought the car had when he acquired it. For example, he thought the car had less power and was quieter, and among other things, he said the car's digital display was altered.

Mr W complained to BMWFS in September 2024. In October 2024, BMWFS agreed for the agreement to be terminated as they thought it had been mis-sold. They explained that any amount owed still needed to be finalised as Mr W had covered around 30,000 miles in the car.

Mr W returned the car in early November 2024, but BMWFS hadn't compensated him for any of his losses, which impacted his ability to acquire another car. Mr W made BMWFS aware of his circumstances and that he needed to travel around 170 miles per day.

Unhappy with BMWFS's response, Mr W referred his complaint to our service in November 2024.

Our investigator upheld Mr W's complaint and instructed BMWFS what they needed to do to put things right. Among other things, our investigator thought BMWFS needed to refund monthly payments made from September 2024 onwards, as it was at this point, he stopped using the car. He also directed BMWFS to reimburse Mr W for some additional costs he may have incurred if proof of these could be provided to BMWFS.

Mr W disagreed with the investigator's findings. Among other things, Mr W didn't think it was fair that BMWFS retain all the payments made up to September 2024.

BMWFS informed our service that in January 2025, they issued a further final response to Mr W. They explained that the dealership were requesting payment from Mr W of almost £5,000 for the mileage that had been covered in the car (after the proceeds from the sale of the car had been accounted for), and that BMWFS had agreed with the dealership that this wasn't required anymore. They went on to explain that the account would soon be closed and that they would be returning two monthly instalments to him, alongside a further payment of £548 to reflect the distress and inconvenience caused by this complaint.

Mr W confirmed to our investigator that he remained unhappy with both his view made and BMWFS's latest offer to put things right. Mr W strongly felt he should be placed back into his pre-contract position and he didn't think his monthly repayments he made towards the agreement should equate to a charge for usage of the car he acquired.

Mr W also confirmed that his agreement had been cancelled and that BMWFS had already made a payment to him.

As Mr W disagreed with the investigator's findings and also didn't accept the offer BMWFS had made, the complaint 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'm upholding this complaint along similar lines to our investigator and I'll explain why below.

I'm aware I have summarised events and comments made by both parties very briefly, in less detail than has been provided, largely in my own words. No discourtesy is intended by this. In addition, if there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Mr W complains about a car supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr W's complaint about BMWFS.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. Section 56 of the Consumer Credit Act 1974 ("S56") is relevant to this complaint. S56 explains that, under certain circumstances, a finance provider is liable for what was said by a credit broker or supplier before a credit agreement is entered into. I'm satisfied S56 applies here. So, I can consider what Mr W says he was told about the car and finance by the dealer before he entered into the contract.

Normally, I would consider whether the agreement was misrepresented to Mr W. A misrepresentation would have taken place if Mr W was told a '*false statement of fact*', and this induced him into entering into the contract to acquire the car when he otherwise would not have.

However, in this instance, it isn't in dispute that the agreement and the car were misrepresented. BMWFS has accepted and explained this to Mr W. So, what I need to go on to consider is whether BMWFS needs to do anything more to put things right, above what they say they have already done.

From my understanding, the car has been returned, and the agreement has been unwound. As BMWFS has accepted a misrepresentation took place, I also think this is fair in the circumstances for the car to be returned and the agreement unwound, alongside Mr W's advance payment he made towards the agreement also being refunded.

As it seems that a misrepresentation took place, I think it is also fair in the circumstances that Mr W receives a refund of monthly repayments made. But when making this finding, I'm mindful that the car had been driven significantly in the time that Mr W was in possession of it. And I'm also mindful that the car was BMWFS's asset at the time the agreement was active. And due to the mileage driven in the car, its value would have decreased considerably. In the circumstances, I think it would be fair that any refund of monthly repayments should be less of any deduction for usage.

I have noted Mr W's comments here, and how he strongly feels that to be placed back into a pre-contract position, monthly repayments shouldn't equate to a charge for usage. He gave a suggestion of a figure in pence per mile, of what he thought may be a fair and reasonable charge. However, I disagree. I think a pragmatic way to resolve things here would be that BMWFS doesn't need to reimburse Mr W the monthly repayments for the time he had use of the car. And, along similar lines, is why I think BMWFS should reimburse Mr W for monthly repayments made from 11 September 2024 onwards, as this is when Mr W complained to BMWFS and stopped using the car.

Other costs

Turning my attention now to the other costs Mr W has said he incurred.

Car insurance – It was a legal obligation for Mr W to insure the car while it was in his possession, and it is also set out in the terms he signed that he must insure the car. So, I don't think Mr W should be refunded any insurance premiums paid before the car was collected from him and while it was in his possession. However, if Mr W can show BMWFS insurance premiums or any cancellation fee incurred from the date of the car's collection onwards, then I think it is fair that he is reimbursed for those. This would be dependent on Mr W providing proof of payment directly to BMWFS.

GAP insurance – Like my reasoning above, if Mr W can show any premiums or any cancellation fee incurred from the date of the car's collection onwards, then I think it is fair that he is reimbursed for those. This would be dependent on Mr W providing proof of payment directly to BMWFS.

Cherished plate – Mr W has said he incurred a fee to remove his cherished plate from the car. Given the circumstances, I think it is fair that BMWFS should refund him this cost if he can show payment being made.

Distress and inconvenience

Mr W initially raised his complaint to BMWFS in September 2024, and while BMWFS upheld his complaint, they were unable to determine how best to resolve this matter in relation to the refunds and redress due to him. I'm also mindful that this all occurred during what I think would be a very difficult time for Mr W, which he also explained to both BMWFS and our service.

I think the offer BMWFS made to Mr W of £548 for the distress and inconvenience caused is fair and reasonable.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct BMW Financial Services (GB) Limited trading as BMW Financial Services to put things right by doing the following:

- End the agreement (if this has not been done already) ensuring Mr W is not liable for monthly rentals after the point of collection (it should refund any overpayment for these if applicable).
- Collect the car (if this has not been done already) without charging for collection.
- Refund Mr W's advance payment towards the agreement of £500. If any part of this advance payment was made up of funds through a dealer contribution, then BMWFS doesn't need to refund this amount. * **
- Reimburse Mr W a pro rata of his monthly repayments made from 11 September 2024 up to when the agreement ended. * **
- Pay Mr W additional costs he incurred as set out above in my findings i.e., for comprehensive car insurance, GAP insurance and the cost to remove a cherished plate from the car. This should be paid to Mr W on production of evidence to BMWFS to show that payment was made by him. Reimbursement for insurance premiums should only be for those made after the car was collected.* **
- Pay Mr W £548 to reflect the distress and inconvenience caused. **
- Remove any adverse information from Mr W's credit file in relation to the agreement, if any.

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If BMWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

** If BMWFS has already given compensation in relation to this, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 September 2025.

Ronesh Amin
Ombudsman