

## **The complaint**

Mr T is unhappy that he cannot change his annual mileage set on a hire agreement he entered into with BMW Financial Services (GB) Limited (BF). He is also unhappy with the customer service he received from them.

## **What happened**

In August 2023, Mr T entered into a hire agreement with BF to acquire a car. Mr T had to pay an advance rental of around £3,861.63 followed by 35 monthly rentals, each of around £429.07. The maximum yearly mileage amount set in the hire agreement was 8,000 miles.

Mr T said that when he originally entered into the hire agreement, he was unsure what annual mileage to select, but was advised that it did not matter as he could adjust the mileage, if his circumstances changed. So he said, he took comfort in this and overestimated the mileage (setting it at 8,000 miles per annum) to ensure he was not liable for additional charges. He said he anticipated he would review this after a year and adjust appropriately. But when he called BF late in July/early August 2024 and asked for the mileage to be adjusted to 4,000 miles per annum, he was told he could not reduce the mileage and that only increases could be processed. Mr T is insistent that, when he took out the finance agreement, he was advised that he could adjust mileage up or down. He is now unhappy as he said he is paying for mileage he does not need which adds extra financial burden to his monthly expenditures. Additionally, Mr T said he is unhappy with the customer service he received from BF.

In October 2024, BF responded to Mr T's complaint and apologised for the time it had taken them to respond to his concerns. They explained that when he contacted them, he was correctly informed that it was not possible to reduce the mileage allowance on the agreement. And they apologised for their agent who might have given him incorrect information, saying that sometimes the dealership will say such things in order to persuade a customer to sign an agreement. BF said that whilst they have been unable to obtain a recording of the telephone conversation in question, they are happy to offer the benefit of the doubt to Mr T and apologised for the poor service he received when speaking to them. So, in light of the delays and poor service he encountered, they offered to pay him £150 compensation.

Mr T was unhappy with BF's response, so he brought his complaint to Financial Ombudsman Service (Financial Ombudsman).

Our investigator said they have not seen anything which would make them think the dealer/broker had been acting as BF's agent. So, even if the dealer/broker did make that statement about mileage being adjustable, the investigator did not think he could conclude that BF would be responsible for anything said by the dealer/broker prior to Mr T entering into the agreement. The investigator was also of the opinion that within the terms of the finance agreement, they did not see anything that would suggest BF is obligated to accept a reduction in the mileage limit or reduce the monthly payments to reflect such an amendment.

Mr T did not accept the investigator's outcome. So, 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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law, and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Mr T acquired the car under a hire agreement, which is a regulated hire agreement. Our service can look at these sorts of agreements.

I know that Mr T is unhappy that he cannot change his annual mileage set on his hire agreement, but considering the terms and conditions of his hire agreement, I have not seen anything that would allow him to do so.

I know that Mr T said that the dealership/broker assured him that he could adjust the mileage if his circumstances change. I do not know what was discussed between Mr T and the dealership/broker, but for completeness, I have also considered if BF had any responsibility for anything that the dealership/broker might have told Mr T regarding the mileage and, specifically, its ability to be changed at a later date.

In doing so I have considered, among other aspects, if Section 56 of the Consumer Credit Act 1974 would apply here. Section 56 deals with "antecedent negotiations" and it explains that finance providers are liable for what they say and for what is said by a credit broker or a dealership (in certain circumstances) before the consumer takes out a credit agreement. But considering all the circumstances of this case, I think most likely, this section does not apply. I say this because I have not seen enough evidence to be able to say that BF was acting as negotiator with respect to the antecedent negotiations. In addition, I have considered common law principles of agency to establish whether the dealership/broker acted with authority, or apparent authority, on behalf of BF and I have not seen enough evidence to say that this, mostly likely, was the case either. Also, I have not seen evidence to show that Mr T dealt with BF or discussed the proposed transaction with them before he entered into the hire agreement. As such I think, most likely, it was the dealership/broker who Mr T dealt with, and I do not think the dealership/broker was acting as BF's agent in this particular case.

Considering the above and the circumstances of this specific case, I have not seen enough to be able to say that, most likely, BF authorised the dealership/broker to act as their agent or that the dealership/broker acted with actual or apparent legal authority on behalf of BF. So overall, I do not think it would be reasonable for me to hold BF liable for the actions of the dealership/broker considering the circumstances of this specific case.

While I appreciate Mr T's strength of feeling regarding his complaint, I do not think it is fair or reasonable for me to require BF to take any further action regarding the mileage aspect of his complaint.

Furthermore, I realise that Mr T said he is unhappy with the customer service he received from BF. But I can see that they apologised for the delays and the poor service he received when speaking to them. They also offered to pay him £150 compensation.

While I sympathise with Mr T for the difficulties that he is experiencing, based on the available evidence, including BF's contact notes and the information provided by Mr T, as

well as the specific circumstances of this case, I do not think it would be fair or reasonable to ask BF to do pay more than the £150 they have already offered to pay.

### **My final decision**

For the reasons given above, I think BMW Financial Services (GB) Limited should pay Mr T a total of £150, if this has not yet been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 September 2025.

Mike Kozbial  
**Ombudsman**