

## The complaint

Mrs C is unhappy with the amount she's being charged by BMW Financial Services (GB) Limited trading as BMW Financial Services ('BMWFS') on early termination of a hire agreement she had with them.

## What happened

In March 2023, Mrs C was supplied with a new car through a hire agreement with BMWFS. She paid an initial rental of £2,916.70 and the agreement was for 36 months; with monthly rental payments of £498.05. If the agreement ran its full term, Mrs C was due to pay a total of £20,348.45 in rental payments.

The hire agreement allowed for a maximum total allowable mileage of 8,000 miles a year – 24,000 miles over the full term of the agreement. It also stated that Mrs C would be charged 17.50 pence for every mile that exceeded this amount.

In July 2024, Mrs C was looking to change the car, and BMWFS confirmed it would cost £6,690.88 to settle the agreement. In November 2024, BMWFS confirmed the settlement figure was now £5,133.76. Mrs C calculated that, by January 2025, the settlement figure would be around £4,500 and continued with the process of changing the car.

When Mrs C took delivery of the new vehicle in January 2025, she requested a final settlement figure from BMWFS. This was £7,533.26 – around £2,500 more than she'd been told in November 2024. So, she complained to BMWFS.

The agreement was eventually terminated in March 2025, and Mrs C paid £6,453.86 to settle the agreement, which included an excess mileage charge.

BMWFS explained that an administration error had been made with the residual value of the car which affected the settlement figures. And the figures Mrs C had been given in July and November 2024 were incorrect. They offered Mrs C a total of £300 compensation for this, and for the delay in responding to her complaint.

Mrs C had brought this matter to the Financial Ombudsman Service for investigation before BMWFS had issued their complaint response.

Our investigator said that, although BMWFS had made an error with the settlement quotes they provided Mrs C, it wasn't fair that Mrs C paid the lower (incorrect) figure as this wasn't what she was contractually obliged to pay. Instead, the investigator thought compensation for the error was fair, and that the £300 offered by BMWFS was reasonable in the circumstances.

However, the investigator thought that BMWFS had benefitted by more than the value of the settlement amount and excess mileage charge. So, the investigator said that BMWFS should also refund the settlement figure Mrs C paid, plus interest.

BMWFS didn't agree with the investigator. While they agreed they should compensate Mrs C for the errors they made, they didn't agree they had benefitted from the agreement ending early, so they didn't think any refund was due. Because BMWFS didn't agree, this matter has been passed to me 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.

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. Mrs C was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I've specifically considered the following:

#### Consumer Credit Act 1974 ('CCA')

Section 101 of the CCA refers to a consumer's right to terminate a hire agreement by giving notice. It states:

*“Right to terminate hire agreement:*

*(1) The hirer under a regulated consumer hire agreement is entitled to terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement.*

*(2) Termination of an agreement under subsection (1) does not affect any liability under the agreement which has accrued before the termination ...*

*(7) This section does not apply to—*

*(a) any agreement which provides for the making by the hirer of payments which in total (and without breach of the agreement) exceed £1,500 in any year ...”*

Section 132 of the CCA enables the court to grant relief to a hirer where the owner has recovered possession of the goods otherwise than by action. It states:

*“Financial relief for hirer:*

*(1) Where the owner under a regulated consumer hire agreement recovers possession of goods to which the agreement relates otherwise than by action, the hirer may apply to the court for an order that—*

*(a) the whole or part of any sum paid by the hirer to the owner in respect of the goods shall be repaid, and*

*(b) the obligation to pay the whole or part of any sum owed by the hirer to the owner in respect of the goods shall cease, and if it appears to the court just to do so, having regard to the extent of the enjoyment of the goods by the hirer, the court shall grant the application in full or in part.*

*(2) Where in proceedings relating to a regulated consumer hire agreement the court makes an order for the delivery to the owner of goods to which the agreement relates*

*the court may include in the order the like provision as may be made in an order under subsection (1)."*

### Consumer Rights Act 2015 ('CRA')

The CRA sets out a schedule of non-exhaustive examples which might be considered to be unfair. The effect of this section is that terms used in contracts and notices will only be binding upon the consumer if they are fair. It defines 'unfair' terms as those which put the consumer at a disadvantage, by limiting the consumer's rights or disproportionately increasing their obligations as compared to the trader's rights and obligations.

*"Part 2: Unfair Terms..... What are the general rules about fairness of contract terms and notices?*

*62. (1) An unfair term of a consumer contract is not binding on the consumer ...*

*(4) A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer."*

The CRA provides guidance on the expected clarity of wording within a contract, and the potential impact that any ambiguity within the contract would have:

*"68: Requirement for transparency*

*(1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent ...*

*(4) A term is unfair if, contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.*

*69: Contract terms that may have different meanings*

*(1) If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail."*

The CRA then goes on to list examples of terms that might be considered unfair:

*"Schedule 2: Consumer contract terms which may be regarded as unfair.*

*Part 1 list of terms ...*

*(4) A term which has the object or effect of permitting the trader to retain sums paid by the consumer where the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract.*

*(5) A term which has the object or effect of requiring that, where the consumer decides not to conclude or perform the contract, the consumer must pay the trader a disproportionately high sum in compensation or for services which have not been supplied.*

*(6) A term which has the object or effect of requiring a consumer who fails to fulfil his obligations under the contract to pay a disproportionately high sum in compensation."*

### The Financial Conduct Authority ('FCA')

The FCA Principles for Businesses (PRIN) also apply and are of relevance to this complaint. PRIN 6 says "A firm must pay due regard to the interests of its customers and treat them fairly."

### The Hire Agreement

The hire agreement sets out Mrs C's contractual obligations. Regarding early termination, the agreement states:

### **7. Ending this Agreement Early**

*In the event of any default referred to in Clause 8 below, you will be considered to have repudiated this agreement. This means we may accept your repudiation and end this agreement after sending you any notice required by law and if (if the default can be remedied) you do not remedy the default by the date which we notify you. If we end this agreement, you must return the Vehicle to us in accordance with Clause 9 and pay the sums due under Other Charges on page 1.*

### **8. Events of Default**

*The events of default referred to in Clause 7 are:  
[13 separate events of default are listed]*

### **Other Charges**

*(e) If we end this agreement early due to you breaking this agreement (see Clause 7), you must pay us on demand:*

*(ii) all unpaid Rentals and other sums which were due before this agreement ended; plus*

*(iii) any Excess Mileage Charges payable after reducing the Maximum Total Mileage pro rata to the reduced period of hire (see key Financial Information) and any sum payable after this agreement ends [relating to late payment interest, charges for the vehicle not being returned in good condition, unpaid vehicle excise duty, and/or costs involved with changing the registration mark]; and*

*(iv) to compensate us for this agreement ending early, all the Rentals which (but for termination) would have been payable from the date this agreement ends to the end of the Hiring Period, less: (a) any discount we may apply (calculated in accordance with our standard practice from time to time) for our accelerated receipt of such Rentals; and (b) the amount (if any) by which the sale proceeds we receive for the Vehicle (less our reasonable sale expenses) exceed our reasonable estimate of the net resale value if it were returned in accordance with this agreement within the Maximum Total Mileage at the end of the Hiring Period.*

The first point I need to consider is whether these charges are legally enforceable on early termination. Unlike a hire purchase agreement, the hire agreement Mrs C entered into doesn't have the same rights in legislation to terminate an agreement early. And, while section 101 of the CCA gives consumers the right to terminate a hire agreement, this doesn't apply to agreements where the hirer is required to make payments exceeding £1,500 a year. Which Mrs C was. So, I'm satisfied that section 101 of the CCA doesn't apply.

So, as the charges, on the face of it, aren't unenforceable, I've also considered if what Mrs C is being asked to pay is fair and reasonable in the circumstances.

Based on what I've seen, I'm satisfied that both parties agreed to terminate the hire agreement early. And, as a result, BMWFS charged both an early termination charge and a charge for exceeding the total allowable mileage (calculated based on a pro-rated allowable mileage for the length the agreement was in force).

Clauses 7 and 8 of the hire agreement provide for an early termination charge. However, these clauses don't include the circumstances applicable here – where early termination was mutually agreed between the parties. So, it's not clear whether these clauses actually apply.

And, while the Other Charges clause allows for an excess mileage charge to be applied, the hire agreement isn't clear as to what basis fair compensation will be calculated when both an early termination and an excess mileage charge are applied.

Taking everything into consideration, I think it's fair to presume that BMWFS are charging both the early termination charge and excess mileage charge to compensate themselves for both Mrs C not paying all the originally agreed contractual payments and for any devaluation of the car caused by the expected mileage (the total allowable mileage specified in the hire agreement) being exceeded. But the fact that the car potentially has a different (higher) value on early termination, as opposed to the value at the end of the hire agreement, also needs to be considered.

As the hire agreement doesn't provide a transparent and fair way of calculating this compensation and so ensuring that BMWFS aren't overcompensated to the extent that it wouldn't be fair and proportionate to their actual loss, I'm satisfied that PRIN 6 should be applied to the circumstances. Which would also involve the need for BMWFS to be both clear and transparent about what they're charging; and not charging more than it's fair and reasonable to do so.

In their view on Mrs C's complaint, the investigator looked at the difference between the position BMWFS would be in upon early termination compared to the position they'd be in had the agreement run its full term (and the car having done no more than the total allowable mileage). In doing so, the investigator also considered the value of the car at both stages, with valuations taken using the motor trade guides. Using these guides is in line with standard practice for the Financial Ombudsman Service, so I don't think the investigator acted unfairly when doing so. What's more, neither party has provided any evidence to show that these valuations were incorrect.

As such, I see no reason why the investigator's calculations shouldn't be relied upon.

When Mrs C returned the car, there was around 12 months left on the agreement, and had the agreement continued to its natural end, Mrs C would've paid an additional £5,976.60. As it was, she paid an early termination charge of £6,453.86, which included a pro-rated excess mileage charge.

So, had the agreement run its full term, BMWFS would've received £5,976.60 in payments from Mrs C, and they would also have benefitted from the value of the car at the time (assuming the total allowable mileage hadn't been exceeded – if it had, then any reduction in this value due to mileage would be offset by any excess mileage charge).

However, as the agreement was terminated early, Mrs C was charged a total of £6,453.86 in charges, and BMWFS benefitted from the sale value of the car. While I have seen both the expected value of the car if the agreement had run its full term, and the sale value of the car, BMWFS have requested that the actual figures aren't included within my decision as they are commercially sensitive.

While I'm happy not to specify these figures, taking them all into consideration I'm satisfied that BMWFS, charging what they did on early termination, received more than they would have done had the agreement run its full course. What's more, the extra amount they received was also more than the combined early settlement and excess mileage charge Mrs C paid them in March 2025.

I've not seen anything to show me that Mrs C was ever made aware that BMWFS was benefitting from terminating the agreement early, rather than letting it run its full course, and I don't think it's likely she would've been otherwise aware of this. And, if she had been aware,

there is the possibility she wouldn't have terminated the agreement early.

Having considered section 132 of the CCA, and the significant amount by which BMWFS benefitted from the agreement ending how it did, I think it's likely that a court would consider it reasonable to grant Mrs C some relief on the grounds the early termination fee resulted in a situation where BMWFS has been overcompensated.

So, and whether or not a court would grant Mrs C any relief under the CCA, I'm satisfied that BMWFS didn't comply with PRIN 6 by requiring Mrs C to pay a disproportionate charge. As such, I'm satisfied that BMWFS need to take action to remedy the situation by waiving the early termination charge.

In addition to this refund, I think Mrs C should be also compensated for the distress and inconvenience she was caused by being given incorrect settlement figures In July and November 2024, and for the shock of discovering she needed to pay BMWFS an additional £2,500 to end the agreement. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

BMWFS have already offered to pay Mrs C £300 to recognise the distress and inconvenience she's been caused. And having considered this, I think it's a fair offer that falls in line with our service's approach and what I would've directed, had it not already been put forward. So, this is a payment I'm directing BMWFS to make

### **Putting things right**

If they haven't already, BMWFS should:

- refund the £6,453.86 payment Mrs C paid on 17 March 2025, to settle the agreement;
- apply 8% simple yearly interest on the refunds, calculated from the date Mrs C made the payment to the date of the refund<sup>†</sup>; and
- pay Mrs C an additional £300 to compensate her for the trouble and inconvenience caused by being supplied with incorrect settlement figures (BMWFS must pay this compensation within 28 days of the date on which we tell them Mrs C accepts my final decision. If they pay later than this date, BMWFS must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment<sup>†</sup>).

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

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 January 2026.

Andrew Burford  
**Ombudsman**