

The complaint

Ms S complains that the car she acquired through BMW FINANCIAL SERVICES (GB) LIMITED, trading as ALPHERA Financial Services ("BMW") was misrepresented to her. She says the colour of the car is not as she was told, and that this has de-valued it.

Ms S is represented in her complaint. For ease of reading, any reference to "Ms S" refers to testimony and submissions from both Ms S A and her representative.

What happened

Ms S entered into a hire purchase agreement in January 2025 to acquire a used car. The cash price of the car was £54,880, and with an advance payment of £24,895.14, the credit provided to Ms S was £29,984.86. The credit agreement was set up over a term of 48 months and Ms S' monthly payments were set at £752.99. If the agreement ran to term, then the total repayable under it would be £61,038.66. At the time of acquisition, the car was over five years old and had been driven nearly 35,000 miles.

Ms S told us:

- The car is a prestige car and was sold to her as being of the manufacturer's SVO paint pallet colour which means that it was painted a special colour by the manufacturer when the car was built;
- there is a premium for this particular colour – she says around £10,000 – and this would also be reflected in the used car market;
- several weeks after acquisition, she needed to fill up the windscreen washer bottle and had to open the bonnet, but the colour of the metal work differed significantly from the exterior colour of the car – it had clearly been resprayed aftermarket, and this would depreciate the car's value;
- she tried to contact the supplying dealership, but it was no longer trading so she raised a complaint with BMW;
- further examination of the car suggested it had been stripped and resprayed at some point prior to her acquiring it;
- the doors do not align correctly indicating they may have been removed for the paint respray, and the paint is wearing off from one of the doors revealing the original colour underneath;
- the car was mis-sold and misrepresented to her by the supplying dealership because it's not the limited-edition colour that she was told;
- she put down a significant deposit for this car, priced at a hefty premium, and she would not have done this if she'd been aware that it was not an SVO colour;
- she's now using a car with mismatched colouring and poor paintwork, and this will devalue the car when she comes to sell it
- she's also unhappy with the validity of the MOT that was undertaken. She says advisories from the June 2024 inspection do not appear on the MOT paperwork dated January 2025, even though work on the brake discs has not been carried out;
- she wants to return the car and have the credit agreement cancelled.

BMW rejected this complaint. It said that the MOT process is regulated, licensed and monitored by DVSA, and it had no reason to believe the MOT was anything other than a reliable and factual source of information.

BMW said that if the car had been re-sprayed, only its exterior and not the engine bay would have been sprayed. And it said a retailer associated with the manufacturer had confirmed that a respray would not devalue the car. BMW also noted that Ms S had an opportunity to inspect the car prior to purchasing it and would've been able to judge for herself whether she was satisfied with the car before accepting it. BMW acknowledged that Ms S had experienced distress and inconvenience whilst it investigated her complaint, and it offered her £250 compensation in recognition of this.

Unhappy with BMW's response, Ms S brought her complaint to this Service. She said it was unreasonable to presume that when visiting a prestigious car dealer, a customer might pop the bonnet to look in the engine bay to check that the colour of the car's interior metal work matched its exterior. And she said that BMW's suggestion that the car's engine bay and other interior parts could be resprayed to match the exterior were not acceptable solutions because mechanics had told her that removing the engine and gearbox and other parts for a respray, and then re-fitting them, would cost thousands of pounds.

Our Investigator looked at this complaint and said she thought it should be upheld. She explained she'd had sight of the information contained in the advertisement for the car, and she found Ms S' testimony about her discussions with the supplying dealership to be plausible.

Our Investigator explained the relevance of *misrepresentation* in the circumstances of this complaint, and she explained to Ms S and BMW that when considering misrepresentation she was looking at two things:

- i. whether there was a false statement of fact and, if there was;
- ii. whether the false statement of fact induced Ms S to enter into the finance agreement.

Our Investigator concluded that Ms S had been told by the supplying dealership that the car was of a certain colour – which it was – but that she'd not been told this was the result of a respray and that the car was not the same colour as when it rolled off the manufacturer's production line. Ms S was knowledgeable about this manufacturer's colour process and had been consistent and plausible about why the colour of the car mattered to her. Our Investigator concluded that had Ms S been aware of the respray, she would not have chosen to acquire this car and would not have entered into the finance agreement.

She recommended that the credit agreement be cancelled, the car returned to BMW and that BMW refund Ms S her deposit. And because she was recommending that the car be rejected, she didn't need to make any finding about the MOT because even if the car had been of unsatisfactory quality at the point of supply, the resolution she'd propose would be the same as she was recommending here.

Ms S accepted our Investigator's recommendations but highlighted that she continues to pay the monthly payments due under this agreement even though BMW hasn't accepted our Investigator's recommendations.

BMW did not accept our Investigator's recommendations, so the complaint comes to me to decide.

BMW said Ms S saw the car and liked the colour and agreed to acquire it. And she had an opportunity to examine it at this time. And it said the advert made no reference that the

colour of the car was a result of the manufacturer's build process, it just said it was "finished" in this colour.

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 considered all the evidence and testimony afresh, I've reached the same conclusion as our Investigator and for broadly the same reasons. I'll explain why.

I hope that Ms S won't take it as a courtesy that I've condensed her complaint in the way that I have. Ours is an *informal* dispute resolution service, and I've concentrated on what I consider to be the crux of this complaint. Our rules allow me to do that. Ms S should note, however, that although I may not address each individual point that she's raised, I have given careful consideration to all of her submissions before arriving at my final decision.

The hire purchase agreement entered into by Ms S is a regulated consumer credit agreement which means that this Service is able to consider complaints relating to it. BMW is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

I have also taken into account section 56 of the Consumer Credit Act (1974), which explains that finance providers – in this case BMW - are liable for what they say and for what is said by a credit broker or a supplier before the consumer enters into the credit agreement. So I can hold BMW liable for what the broker / supplying dealership said prior to the agreement being entered into – something known as *antecedent negotiations*.

A misrepresentation is a false statement of fact that induces a consumer to enter into something that they wouldn't have entered into otherwise. And in limited circumstances, a misrepresentation can also be an omission of a fact. In other words, where something hasn't been said that should have been.

In the circumstances of this case, I'm satisfied that the car was misrepresented to Ms S for exactly the same reasons as our Investigator:

- Ms S' testimony is plausible, consistent and persuasive - she is aware of the colour options available for this make of car, and the manufacturer's build process;
- she had discussions with the supplying dealership about the manufacturer's colour palette and was advised that this car was of its SV bespoke colour palette;
- she was given the impression that this car's colour came from the bespoke process that customers can select when ordering a brand-new car;
- she wasn't told that the car had been resprayed during the conversations at the supplying dealership, and this isn't set out in the sales advertisement;
- it wasn't until she lifted the bonnet to refill something that the issue that she's complained of became apparent;

So I'm satisfied that the car was misrepresented to her in discussions with the supplying dealership.

Next, I've considered whether Ms S would have still acquired this car, had it not been misrepresented, and I don't think she would've done so. I say this because irrespective of whether or not it's the case, Ms S believes that the paintwork is more durable when the paint is applied to the car as part of the manufacturing process; it's less durable when applied later as a respray job. And she's talked about the premium value of the car, and its higher resale

value had it rolled off the production line with a bespoke colour scheme applied by the manufacturer. She's also told us about the important and motivating factor of this prestige paint colour that resulted in her wanting to acquire it. Put simply, she's persuasive when she says had she known the car had been resprayed, she would not have selected it.

Because I'm satisfied that the car was misrepresented to Ms S, I've gone on to consider what BMW needs to do to put things right. I'm going to direct it to cancel the credit agreement and refund Ms S her deposit. I'm also going to ask BMW to pay her some compensation for the worry and anxiety it caused, if it hasn't already done so.

Ms S has enquired about the monthly payments she's made in accordance with the credit agreement. Ms S does not receive a refund of these payments. She's had use of the car, and I've seen no evidence of anything mechanically wrong with it that's impaired her usage of it.

Ms S has complained about the wear on the car's brake discs, but as our Investigator explained, these are deemed a *wear and tear* matter, and their maintenance is the ongoing responsibility of the driver. And in the absence of an independent report concluding that there's a fault with the car that was present or developing at the point of supply, or that the existence of a fault makes the car to be not durable, I simply can't say the car was not of satisfactory quality at the point it was supplied.

In any event, the remedy were I to conclude the car was not of satisfactory quality is the same as the remedy here for it being misrepresented to Ms S. So I do not need to consider the complaint about the brakes and the MOT further.

Putting things right

I'm going to direct BMW FINANCIAL SERVICES (GB) LIMITED, trading as ALPHERA Financial Services to put things right by doing the following:

- ending the credit agreement with nothing further to pay;
- removing any adverse information from Ms S' credit file in relation to this credit agreement;
- collecting the car – if this has not already happened – at no further cost to Ms S;
- refunding Ms S her deposit;
- paying 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement*;
- paying £250 compensation that was previously offered for the distress and inconvenience (if this has not already been paid).

*HM Revenue & Customs requires BMW FINANCIAL SERVICES (GB) LIMITED, trading as ALPHERA Financial Services to take off tax from this interest. BMW FINANCIAL SERVICES (GB) LIMITED, trading as ALPHERA Financial Services must give Ms S a certificate showing how much tax has been taken off if she asks for one.

My final decision

My final decision is that I uphold this complaint and require BMW FINANCIAL SERVICES (GB) LIMITED, trading as ALPHERA Financial Services to settle this complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 25 December 2025.

Andrew Macnamara

Ombudsman