

The complaint

Mr M complains that he was misled into taking out a hire purchase agreement with BMW Financial Services(GB) Limited ("BMWFS") to acquire a new car.

What happened

Mr M acquired a new car in February 2023, financed by a hire purchase agreement with BMWFS. The cash price of the car was £76,053.98. The duration of the agreement was 48 months, and it involved Mr M having to make an advance payment of £5,493.39, then 47 monthly repayments of £1,035.00. There was then an optional final repayment of £36,397.41 Mr M would need to pay if he chose to purchase the car.

The car acquired was a newer make and model of a car that Mr M previously had. Mr M said he spoke to the supplying dealership before he acquired the car and expressed that he wanted all the same features as his previous car. The supplying dealership later emailed Mr M and said,

"Thank you for the chat on the phone!... I have sourced for you in Stock – (Coming through for March 2023) a Brand New... completely matching the specification you require."

Mr M also said he was sent a specification of the car, which, on face value, he said it looked like it met his request.

On the same day Mr M collected his car, he noticed features that were missing which he believed should have been supplied with it. The features varied from things such as a front facing camera, rear sunblind's, to software driving aids such as a parking assistant mode, among other things.

Mr M contacted the supplying dealership to discuss his options and explain the features that were missing.

It later became transparent that the features which Mr M had on his previous car were part of packages that could be purchased. But, with the new car being acquired, the packages and the features within them had been revised. And so, for Mr M to have had all the features he required, the car would have needed to include the same packages, including the relevant additional *plus* packages. Mr M believed the supplying dealership knowingly did not disclose or did not have knowledge to advise that there were *plus* packages that needed to be applied to the car to include all the features he previously had.

Mr M has said some of the features were of particular importance to him. One of those was the front facing camera, as he said he regularly parked in an 'undercroft' carpark, which was built many years ago and not designed for larger cars. And as such, the front facing camera was useful manoeuvring through the tight pathways leading up to where he parked the car, and he said it reduced the chances of him damaging his car.

Mr M also said that the rear sunblind's were also important to him as his young children often travelled with him on long journeys and it helped them to sleep, undisturbed by sunlight.

Mr M also said he wasn't building the car through the manufacturer's website, but rather relying on the information the supplying dealership were providing him, and advising him of any features that were missing from his previous model.

The supplying dealership as a gesture of goodwill, offered a five-year service plan and a three-year tyre insurance cover, which were put in place.

Mr M later complained to BMWFS and they provided their final response to him. They said the supplying dealership confirmed they did not discuss the content of the specification packages with Mr M, but BMWFS recognised they should have. In summary, BMWFS were unable to uphold Mr M's complaint as the supplying dealership offered a gesture of goodwill which Mr M accepted, so they considered this matter closed.

Mr M, unhappy with BMWFS' response, referred his complaint to our service. Mr M felt he is paying a large monthly sum for a car that does not meet his needs. He said he feels trapped as he must continue to make the repayments, or his credit rating would be impacted. Mr M said his preference would be to unwind the agreement, which would then allow him to get a car that would better suit his requirements.

Our investigator upheld the complaint. In summary, he said from the evidence provided, he believed Mr M only proceeded to enter into the agreement based on the understanding that the car that was being supplied matched the specification of his previous car. And that, had Mr M known specific features were not included in the car, he would not have proceeded to enter into the agreement. Our investigator went on to say that Mr M only likely accepted the gesture of goodwill from the supplying dealership after exhausting any process to remedy the situation with them. He also said that it didn't fairly put Mr M back into a similar position – as far as is reasonably practicable – that he would have been in had he been told the correct information from the outset. Our investigator then went on to breakdown what he directed BMWFS to do to put things right.

Disappointingly, BMWFS didn't respond to the investigator's view. And 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.

Having done so, I'm upholding this complaint and I'll explain why below.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. Section 56 of the Consumer Credit Act 1974 explains that, under certain circumstances, finance providers are liable for what they say and for what is said by a credit broker or supplier before the consumer takes out the credit agreement.

It is clear in this case that the loan financed the acquiring of a car. The company that sold the car was the dealership. I have approached this case on the basis that the loan was set up as a result of pre-existing arrangements between BMWFS and the dealership and that section 56 of the Consumer Credit Act therefore applies.

Mr M complains he was misled into taking out a finance agreement with BMWFS due to features he was told were present on the car he acquired. So I've considered if a misrepresentation occurred here.

I would consider a misrepresentation to have taken place if Mr M was told a 'false statement of fact' that induced him into entering into the agreement he otherwise would not have. So ultimately, what I need to firstly consider is whether Mr M was told that the car he was going to acquire had all the features he thought it would have.

Mr M says he had a conversation with the supplying dealership about his requirements. He says he explained his previous car was to a very high specification, and as such, he says he made it clear to the dealership that he wanted all features maintained within the new car. On the other hand, the supplying dealership has told BMWFS that no conversation took place specifically outlining the contents of the packages supplied with the car. I've also noted the email the supplying dealership sent Mr M following their conversation.

"*Thank you for a chat*" suggests a conversation about acquiring a new car took place and goes some way to corroborate Mr M's version of events. Mr M says he contacted the supplying dealership initially following a marketing email he received and enquired about taking out another agreement with them. So, I think it is likely a conversation took place and I think it is a logical thing to have happened following Mr M contacting the dealership. But that in itself doesn't persuade me that a conversation specifically took place about the specification of the car.

However, the email from the supplying dealership goes on to say, "*...completely matching the specification you require.*". This does suggest to me that a conversation did take place about the specifications of his previous car and the requirements for his new car.

Thinking about all of this, I find Mr M's testimony about what happened in his conversations with the supplying dealership to be persuasive. It follows that I think it's most likely Mr M was told that the specification of the car completely matched the one he previously had.

I accept that the supplying dealership might not have specifically broken down the contents of the packages. But, considering the sales process involved Mr M discussing his requirements with a sales representative at the supplying dealership, I think it was reasonable for Mr M to rely on the information given to him. Mr M wasn't to know that the contents of each package had been revised since. And I think it is reasonable for Mr M to have expected the supplying dealership to have told him of any revisions to them. I've also noted that BMWFS, in their own submissions, have agreed that the contents of the packages should have been discussed with Mr M.

As I'm satisfied Mr M was told a false statement of fact, I now need to consider whether this induced him into taking the agreement out with BMWFS.

I've carefully considered what Mr M has told our service. He has explained in detail the importance of some of the features missing from the car. Given what he has told us, I'm persuaded he relied on the false statement of fact, and I'm satisfied he wouldn't have entered into this credit agreement if he had been told correct information from the outset.

I now need to consider what would be fair and reasonable to put things right. Our service's normal remedy, where possible, is to put a consumer in the position they would have been in had the mistake not been made. Mr M says he would like the agreement to be unwound, to give him an opportunity to acquire a car that better suits his needs. I think this would be fair in the circumstances.

However, I'm mindful that Mr M has had full use of the car, and I'm not aware of any faults with it which has impaired the driving ability of it. Mr M has though, likely had a loss of enjoyment with the car, given the features that were most beneficial to him are missing. Thinking about this, I don't think it would be fair for BMWFS to refund the full amount of the monthly payments made to the agreement and I think a fair refund would be 5% of monthly repayments made up until when the agreement ends.

I'm also mindful how invested Mr M has been with his complaint and the significant dialogue he has had with both the supplying dealership and BMWFS to try and get his complaint resolved. With that in mind, I think an award of £300 to reflect the inconvenience it caused Mr M is fair.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct BMW Financial Services(GB) Limited to:

- End the agreement with nothing further for Mr M to pay.
- Collect the car at no cost to Mr M at a time and date suitable for him.
- Reimburse Mr M the advance payment made of £5,493.39. *
- Reimburse Mr M 5% of the monthly repayments made towards the agreement up until when the car is collected to reflect the impaired use of the car. *
- Pay Mr M £300 compensation to reflect the distress and inconvenience caused.
- Remove any adverse information from Mr M's credit file in relation to the agreement and this complaint (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 M how much it's taken off. It should also give Mr M a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 November 2023.

Ronesh Amin
Ombudsman