

The complaint

Mr L is unhappy that a car he ordered through Automobile Association Developments Limited trading as British School of Motoring ('BSM') hasn't been provided.

What happened

Mr L is a professional driving instructor under a franchise agreement with BSM. In November 2022 he ordered a new car for his franchise, which was to be provided by BSM under a hire agreement. On receiving the order, BSM confirmed that Mr L's existing franchise agreement would continue until the new car was supplied to him, and the terms of the new franchise agreement wouldn't start until the new car had been delivered to, or collected by, Mr L.

Mr L's existing franchise agreement was due to expire in February 2023, but BSM hadn't supplied him with the new car he ordered by this date, and they couldn't provide any confirmed date of delivery. Unhappy with this, he complained to BSM.

BSM didn't uphold the complaint. They said the delays were due to supply chain issues which had affected the motor industry worldwide and were outside of their control. Mr L wasn't happy with this response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said BSM had made Mr L aware there were delays, which were outside of their control, and that no specific timeframe for delivery had been given. She also said that Mr L's existing franchise agreement continued until the new car was provided to him, so he wasn't left without transportation or a means to continue his business. Given this, she didn't think BSM needed to do anything more.

Mr L didn't agree with the investigator. He said that, although he was advised of delays, he thought the length of time the car had now been delayed was unreasonable. He explained that, as he was changing from a manual to an automatic transmission, this has made it difficult taking on new pupils without a timeframe for the new car being delivered, and that this has affected his income.

Mr L was also unhappy that his new franchise agreement was cheaper than his existing agreement, and that he's not been able to start making the lower payments, while the sickness cover that was linked to his existing agreement has now ceased. Mr L explained that BSM hadn't been able to provide him with a temporary replacement automatic car while he was waiting for the one he ordered, and he thought BSM were favouring new franchisees over existing ones when making new cars available.

Because Mr L 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.

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 what I consider was good industry practice at the time. BSM ordered the car for Mr L as a credit broker, and as an ancillary action to this and to their franchising activity – the car was only ordered by BSM as they were also arranging the finance for Mr L, so the two are intrinsically linked. So, as credit broking is a regulated activity, this is something we're able to look at.

However, when considering this complaint, I'm only able to consider the hire agreement and the ancillary action of the ordering of the car. I won't be considering Mr L's complaints about the other aspects of his franchise agreement with BSM, such as the sickness cover, the cost of the franchise agreements, and/or Mr L's belief that BSM are favouring newer franchisees over existing ones when supplying cars. This is because the franchise agreement is not regulated by the Financial Conduct Authority, so isn't something we have the powers to consider.

I've seen that, in the covering letter to Mr L's order for the new car, BSM said *"Please note that due to circumstances beyond Our control, including semiconductor shortages and other industry-wide factors affecting the supply of new vehicles in the UK, the delivery of Your new Tuition Vehicle may be delayed."*

It's not disputed that Mr L was also verbally advised of the delays when he ordered the car. And I haven't seen anything to show me that Mr L was ever provided with any firm timescale in which the car would be provided. As such, while I appreciate Mr L expected the new car to be provided before or around when his existing franchise agreement expired in February 2023, I can't agree that BSM ever confirmed or indicated that would be the case.

It's my understanding that Mr L still hasn't been provided with the new car, almost 12-months after originally placing the order. And I agree with him that this delay is unreasonable. However, I haven't seen anything that shows me BSM were in any way responsible for this delay. So, while I appreciate the frustration and inconvenience this must be causing Mr L, it's not something I think BSM should compensate him for.

I also appreciate the frustration Mr L has been caused by both not being able to take on pupils who want to learn in an automatic car; and the reluctance to take on pupils who want to learn in a manual car, when he was unsure how long he would have a manual car for. I've seen that the franchise agreement Mr L was moving to is the only one offered by BSM where they don't supply pupils, which shows me the existing franchise agreement he had includes a pupil introduction service. And, as I've already said, I can't consider aspects of the franchise agreement.

However, as the Pupil Terms of the agreement I've seen doesn't exclude Mr L from taking on pupils that haven't been provided by BSM, I have considered this when considering whether BSM should compensate Mr L. And I don't think they should. I say this because the issues and concerns he has with taking on pupils stems from the delay in the new car being supplied to him, which as I've said is outside of BSM's control. So, as they're not responsible for the delay, it wouldn't be fair for me to ask them to compensate Mr L for any issues that may be caused by that delay. As such, I won't be asking BSM to do anything more.

My final decision

For the reasons explained, I don't uphold Mr L's complaint about Automobile Association Developments Limited trading as British School of Motoring.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 November 2023.

Andrew Burford
Ombudsman