

## The complaint

Mr E complains that BMW Financial Services(GB) Limited (“BMWFS”) has unfairly charged him for excess mileage under a hire purchase agreement and that the finance agreement was mis-sold to him.

## What happened

In June 2018, Mr E acquired a car using a hire purchase agreement from BMWFS. The total repayable under the agreement was £27,671.06. Mr E paid a deposit of £2,750.00 and was then required to make 36 monthly payments of £348.13 and there was a final optional payment of £12,388.38 if he wished to buy the car at the end of the agreement.

The agreement set out that Mr E had an annual mileage allowance of 10,000 and a total mileage allowance of 43,353. It noted that the car was supplied with 12,520 miles having already been driven. It said that if he exceeded the total mileage allowance BMWFS could charge him 8.68 pence for every mile that he exceeded the allowance by. It said that in the event he terminated the agreement early, the mileage allowance would be pro-rated for the time the car was on hire.

Mr E doesn't think an excess mileage charge is due. He told us:

- More than 12 months after agreeing to the hire purchase agreement, he moved employment. And at this time, he reviewed some of his personal paperwork, and he realised there was a 10,000-mile annual mileage limit on his agreement with a charge per mile for each mile driven over and above this limit;
- his new job would've increased his annual mileage by more than 12,000 miles and he would've received an excessive charge for this;
- the thought of this caused him stress and anxiety and as a result he had no option but to sell the car – which he did at a significant financial loss;
- he was mis-sold the financial agreement, he wanted a Hire Purchase agreement, but he's been sold a PCP agreement, and he wants to be compensated.

BMWFS rejected this complaint. It said the charges for excess mileage were clearly set out in the finance agreement Mr E signed in June 2018. And it said that the agreement advised Mr E that in signing it, he was entering into a Hire Purchase agreement and should only sign it if he wished to be bound by its terms and conditions.

Our investigator didn't recommend the complaint be upheld. He was satisfied that the agreement entered into between Mr E and BMWFS was a hire purchase agreement – as Mr E wanted – and not a PCP agreement, as Mr E had claimed. He also said he thought the mileage terms and conditions together with the cost of any excess mileage were clearly set out on the first page of Mr E's contract.

Mr E disagrees so the complaint comes to me to decide. He says there shouldn't be a mileage allowance on a hire purchase agreement, so he's clearly been sold a PCP agreement, and he says that the deposit of “£2,750 plus his scheduled 36 monthly payments do not equate to the full purchase cost of the car” – and this demonstrates that the

agreement has been mis-sold.

### **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 conclusion as our investigator, and for broadly the same reasons.

I've looked carefully at the finance agreement signed in June 2018 by Mr E and note that the agreement is described as "Hire Purchase Agreement regulated by the Consumer Credit Act 1974" at the top of the agreement. I'm therefore satisfied that Mr E entered into a Hire Purchase agreement with BMWFS.

In paying a deposit and his monthly rentals to BMWFS, the hire purchase agreement allowed Mr E use of the car for the duration of the agreement. He also had the option to purchase the car outright at the end of the agreement in exchange for the final payment of £12,388.38. So, Mr E is correct when he says that "*£2,750 plus his scheduled 36 monthly payments do not equate to the full purchase cost of the car*". This is because he's omitted the *Optional Final Payment* that is set out clearly on his agreement.

The Optional Final Payment is £12,388.38. He'd need to pay this *in addition* to his deposit and 36 monthly payments if, at the end of the term of the agreement, he wished to purchase the vehicle.

While Mr E was entitled to use the car, that use was subject to certain conditions, such as maintaining and taking care of the car and only driving a maximum mileage each year and overall, throughout the lifetime of the agreement. The agreement set out what would happen should Mr E not meet those requirements.

The first page of the *Explanation Document* – signed by Mr E – says "*Excess mileage charges will be payable...if you exceed the maximum contract mileage. These are shown in the pre-contact credit information and the credit agreement.*"

The first page of Mr E's hire purchase agreement has a section headed: "*Excess Mileage Charges*". This section sets out the mileage allowance and what charges will apply if that mileage is exceeded. I'm satisfied Mr E's agreement is worded clearly in setting out when excess mileage charges arise – I don't think the agreement is either unclear or misleading concerning the charges for excess mileage. And I'm satisfied that Mr E agreed to this when he signed this finance agreement.

Overall, I'm not persuaded BMWFS has acted unfairly or unreasonably towards Mr E. And I can't hold it responsible for the additional mileage Mr E drove because he changed his employment.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 6 March 2024.

Andrew Macnamara

**Ombudsman**