

## **The complaint**

Mr C complains about the misrepresentation of a car that was supplied through a hire purchase agreement with BMW Financial Services (GB) Limited (BMW).

## **What happened**

In September 2022, Mr C acquired a used car through a hire purchase agreement with BMW. The car was seven years old and had travelled 21,685 miles when it was supplied to Mr C. The cash price of the car was £49,750. Mr C paid a deposit of £19,000 so the total amount financed on the agreement was £30,750 payable over 30 Months.

Mr C said that soon after being supplied the car he noticed it didn't match what had been described to him by the dealership. He said the electric range mileage was less than what he'd been told, but mainly that the servicing schedule didn't match with the seller's description, in that it wasn't serviced in line with the manufacturer's recommendations. He also wasn't happy that the car had more than one previous owner, despite being advertised as only one, and that these issues have impacted the value of the car.

Mr C also said on the day he collected the car he raised concerns over some cosmetic issues, which included damage to the front camera, driver's mirror, which he was told a franchised dealer would rectify. Mr C said the franchised dealer confirmed the difference in the maintenance schedule.

Mr C said after some correspondence both ways, with BMW and the dealership, BMW asked that the car be returned so that a rejection could be looked at, Mr C said the car was returned on 5 November 2022.

Mr C said he wants to reject the car with a full refund of his monthly repayments and deposit.

In December 2022 BMW issued their final response to Mr C's complaint which they didn't uphold. BMW said the dealership confirmed there were no issues with the car, and that Mr C had an opportunity to raise any cosmetic concerns before taking the car.

BMW provided a copy of an email from the dealership dated 1 November 2022 advising that the overdue services were within the tolerance of BMW standards and that the car was therefore sold correctly.

Unhappy with their decision, Mr C brought his complaint to our service for investigation. Having reviewed all the information on file one of our investigators recommended that Mr C's complaint should be upheld. The investigator focused on the service history and concluded they weren't in line with BMW's approved recommendations.

BMW responded with further evidence to demonstrate the service history was completed within tolerances.

The investigator issued a second opinion which concluded that BMW didn't have to take any further action as the service history was within the approved guidelines.

BMW accepted this recommendation. However, Mr C didn't, and so he asked that his case be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

Mr C has made lengthy submissions in response to the investigator's second opinion. I've considered all of what it has said. The response included a series of manufacturer's marketing and product documentation. All of which has been added to Mr C's case file.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr C complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr C's complaint about BMW.

Section 56 of the Consumer Credit Act 1974 explains that in certain situations finance providers are liable for what is said by a supplier before the consumer takes out a credit agreement. So, if the dealership incorrectly told Mr C the car had a full-service history, or that there were specific features on the car it's taken as if BMW told Mr C the same.

In his response to the investigator's view Mr C summarised his complaint points as the incorrect description that was given of the car and its electric driving range; as well as the service history not matching what was described. In consideration of Mr C's main concerns, I've focused my decision on whether the car was not as described, and as such misrepresented to Mr C.

To consider whether there was a misrepresentation of the car at the point of supply, I've considered whether there's been a false statement of fact and if that statement would have induced Mr C to acquire the car.

#### *previous owners and electric range*

Mr C confirmed in his submission that he'd already complained to BMW about the number of previous owners of the car and was compensated £250 for being given incorrect information. This hasn't been disputed by either party, nor does it appear to be an outstanding issue. However, I acknowledge it's likely Mr C has referred to this in context of being provided incorrect information.

So, in the circumstances, as this particular issue appears to have been resolved by both parties resulting in a compensation payment that has been accepted by Mr C, I haven't looked into it any further and instead have focused on the remaining issues raised.

In their final response dated 7 December 2022, BMW said that the dealership had investigated whether there was an issue with the electric range. They confirmed that following this, they found no fault with it and that the car was working as it should be. I've no reason to doubt what the dealership has said here, and although Mr C has provided testimony about what the range should be in comparison to what he's experienced it to be, I've not seen any evidence that the electric range isn't delivering as expected.

Research shows that an electric range can be impacted by different scenarios, such as driving style or climate, this is further supported within the evidence Mr C provided to us, so, in the absence of evidence to the contrary I think it's likely to be one of these reasons causing limitations to the electric range Mr C experiences with the car.

#### *service history*

Mr C said the dealership didn't highlight to him certain aspects of the service history, for example that some services were completed with a gap of more than twelve months. I don't dispute what Mr C has said here, however, I don't think BMW were obliged to explain or highlight every detail or element of a vehicle's history. In the main, it appears the car's maintenance schedule has met BMW's criteria for being classified as an approved used car, which is what they advertised, and so I don't think they were acting unfairly in the circumstances.

BMW's approved used car programme servicing standards say that engine oil servicing should not be overdue by more than 6,000 miles or six months. This is also confirmed in an email from the dealership. BMW have confirmed to us when the servicing was due and had provided us with a service history for Mr C's car, showing the servicing up to the point of supply was within their approved used car tolerances. I've been given no reason to doubt the information provided by BMW. Mr C also hasn't disputed the specific information provided by BMW, for example he hasn't questioned the specific dates or nature of the maintenance carried out. Mr C appears to challenge that certain information about the servicing wasn't disclosed.

I acknowledge Mr C's strength of feeling that he wasn't specifically told by the dealership that some of the maintenance schedules were overdue or missed. However, I don't think BMW were obliged to disclose this information to Mr C, for example with that particular level of detail. I'm satisfied from the evidence provided that the car met the criteria to be included within BMW's approved used car programme and that this was shared with Mr C prior to supply.

I think it's reasonable to say that had he wished to do so, Mr C would have had the opportunity to review the servicing schedule, or any other details about the car, in advance of entering into the agreement. I've not been made aware of anything that prevented Mr C from doing this.

All things considered, I'm not persuaded that any of the information given to Mr C, in relation to his complaint, was a false statement of fact, and so it follows that I'm satisfied the car wasn't misrepresented to him.

As I've concluded that the car was not misrepresented to Mr C, I don't require BMW to take any action in relation to this complaint.

#### **My final decision**

Having thought about everything above along with what is fair and reasonable in the

circumstances I don't uphold Mr C's complaint against BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 April 2024.

Benjamin John  
**Ombudsman**