

The complaint

Mr M complains that a finance agreement he entered into with BMW Financial Services (GB) Limited (BMWFS) was mis-sold to him.

What happened

Mr M entered into a four-year HP (PCP - Personal Contract Purchase) agreement with BMWFS in December 2022 to fund the provision of a new car.

He complained to them in December 2023. He said he'd been mis-sold the agreement as he'd been led to believe he could leave it after the halfway mark but had subsequently discovered he could only exit after he'd paid half of the amount due on the agreement. He said that the dealership knew he was planning to retire and that if they'd explained things clearly at the start he wouldn't have proceeded with the deal as it was unaffordable for him.

When BMWFS didn't respond to Mr M's complaint he referred it to this service. Our investigator didn't think there was sufficient evidence the car was mis-sold to Mr M. She noted that the agreement clearly stated the car could be returned after half of the amount due had been paid, and while Mr M's financial circumstances may have changed since he entered into the agreement, she didn't think there was evidence it was unaffordable at the time the agreement was struck.

Mr M disagreed with the investigator's opinion. He asked for a decision by an ombudsman.

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.

I know it will disappoint Mr M, but I'm not upholding this complaint. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

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 M acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

Section 56 of the Consumer Credit Act (1974) says that the pre-contractual acts or omissions of the credit broker or supplier can be deemed to be the responsibility of the lender under this sort of an agreement.

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

Mr M says there was a misrepresentation here. He says he was told by the dealership who brokered the agreement that he'd be able to exit early, as he'd done on previous occasions. In particular he says he was led to believe that would be when he'd reached the halfway point of his agreement. I'm not persuaded I have sufficient evidence that was the case. The finance agreement explained Mr M's termination rights. It said:

“Termination: Your Rights

You have a right to end this agreement. To do so, you should write to the person you make your payments to. They will then be entitled to the return of the goods and to half the total amount payable under this agreement, that is £42,173.17. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more.”

I don't think those terms were ambiguous or misleading and I don't think I have sufficient evidence to persuade me they weren't adequately explained to Mr M. Unfortunately, it's not been possible to obtain the dealership hand written notes on the deal and while I understand Mr M's wife would be prepared to corroborate Mr M's testimony I don't think her testimony could fairly be considered to be unbiased and it wouldn't be fair for me to place too much weight on it. I'm not persuaded the agreement was, therefore, misrepresented to Mr M on that basis.

Mr M has also visited another dealership and presented them with the same facts he says the dealership who brokered this agreement had. He's explained that they wouldn't have sold him a PCP in those circumstances as he was due to retire. But I haven't got sufficient evidence to demonstrate the dealership had been asked to take his imminent retirement into account. The Demands and Needs form doesn't make reference to that and Mr M has signed that form to explain that *“there has been no material change in his circumstances since initial commitment to purchase that would impact his ability to maintain payments.”* I don't, therefore, think I have sufficient evidence to suggest a PCP shouldn't have been sold or that the information the business had been provided with would suggest it wasn't affordable for Mr M.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 January 2025.

Phillip McMahon
Ombudsman