

The complaint

Miss W is unhappy that a car supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alphera Financial Services ('BMWFS') was misrepresented.

What happened

In February 2019, Miss W was supplied with a used car through a hire purchase agreement with BMWFS. The cash price of the car was £21,864 and Miss W paid an advance payment of £2,000. The agreement was for £19,684 over 48 months; with 47 monthly payments of £315.38 and a final optional payment of £10,971.86. At the time of supply, the car was almost four years old. When it was supplied to her, the car had an odometer reading of around 20,000 miles, which was reflected in the cash price of the car.

In August 2023, Miss W wanted to pay the optional final payment and take possession of the car. She planned to sell the car to an online car buyer, whom I'll refer to as 'B', and had been quoted a sale price of £16,150. However, when B conducted their checks, they found that, before the car had been supplied to Miss W, it had been a Category S write-off (the car had suffered structural damage which needed to be repaired before the car was fit to go back on the road). B also discovered that, when the car had been recovered to the salvage yard, the odometer showed 54,953 miles. Due to this discovery, B withdrew their offer to buy the car.

Unhappy with this, Miss B complained to BMWFS. But they didn't uphold her complaint, saying that Miss W had had uninterrupted use of the car while it was in her possession, and that she could've handed back the car at the end of the agreement. BMWFS also said that the checks the supplying dealership carried out when the car was supplied didn't reveal the issues with the car that B had subsequently discovered.

Still unhappy with what had happened, Miss W brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said the facts that B had discovered hadn't been disputed, and they thought that these should've been identified by the dealership / BMWFS before the car was supplied to Miss W. So, they thought that BMWFS needed to do something to put things right.

The investigator said that the motor trade guides show the car was overvalued by around £2,000 at the time it was supplied to Miss W, due to the mileage having been changed. What's more, the fact the car had been stolen, written-off and salvaged would also negatively affect the value. So, applying the same formula to when Miss W wanted to sell the car to B, the car's true value was between £13,500 and £14,000.

However, the investigator said that Miss W has continued to have use of the car, but hasn't paid any payments since June 2023, despite her paying for repairs so the car could pass its MOT in November 2023. At the time Miss W was looking to buy and sell the car she was already in arrears, and the investigator said that Miss W not making payments from July 2023 to June 2024 would have increased those arrears by around £3,780. This would've

increased the outstanding balance to an amount exceeding the true value of the car in August 2023.

So, the investigator said that BMWFS should take back the car with Miss W having nothing further to pay, and that they should also pay her £150 for the distress and inconvenience she'd been caused by what had happened.

Miss W didn't agree with the investigator's opinion. She said that, had she known the true history of the car, she would never have purchased it, and that she paid additional interest as the car was overvalued due to its history. She's said the car is no longer being used and is registered as being off the road.

Miss W also disagreed with the figure the investigator had used to calculate the value of the car and thought this should be much lower. As such, she didn't think she had been fairly compensated and has asked for an ombudsman 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 (if appropriate) what I consider was good industry practice at the time. Miss W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

This is essentially a complaint about misrepresentation. When considering misrepresentation, I'm looking for two things – was there a false statement of fact and, if so, did that false statement of fact (in this instance) induce Miss W to choose this particular car.

It's not disputed there was a problem with the mileage on the car when it was supplied to Miss W, nor that she wasn't made aware of the previous history of the car. Given that B was able to quickly identify the issues it follows that, had the supplying dealership conducted similar basic checks, then they would also have been able to identify the same issues. So, the supplying dealership (whether knowingly or unknowingly) provided Miss W with a car (financed by BMWFS) that not only purported to have travelled around 35,000 miles fewer than it actually had, but it was also priced accordingly to the incorrect (lower) mileage.

I'm therefore satisfied that there was a false statement of fact. I'm also satisfied that, had Miss W known about the true history and mileage of the car, she wouldn't have paid the same price as she did for it (if she would even have taken this car at all). So, I'm satisfied the false statement of fact induced Miss W into the deal she agreed to, and therefore the car was misrepresented to her.

As such, I need to consider what BMWFS should do to put things right.

Putting things right

Miss W doesn't think the investigator's opinion fairly compensated her based on the values of the car she had received from B and other similar companies.

When considering car values, our services approach is to consider the values obtained from the motor trade guides. This is because they are based on actual sale values of cars, and not either advertised prices or prices offered by online retailers sites (whose business model is to buy a car quickly and without undue fuss at lower than the true market value, so as to sell it on at a higher price). As such, I don't think the investigator has done anything wrong by using the values they did. So, while I appreciate this will come as a disappointment to Miss W, I'm satisfied she paid around £2,000 more than the value of the car in 2019, and the car was valued around £2,000 to £2,500 less than B initially offered in 2023.

I've seen the Statement of Account provided by BMWFS shows that Miss W was in arrears at the time the final instalment payment was due (and not paid). She continued to make some payments to BMWFS until June 2023, after which payments stopped. However, Miss W has continued to keep possession of the car and, although she's said it was no longer being used, it's been available for her to use if she wants.

Where misrepresentation has occurred, I would usually ask the financial business to take back the goods and unwind the agreement. However, I would also expect the customer to pay for the use of the car (including when it was available to be used, even if the customer chose not to use it) while it was in their possession. In this instance, as the agreement has run its full term, I think it's only fair that BMWFS take back the car, and keep the payments made for the usage Miss W has had.

Miss W has commented that the car was overpriced, therefore the agreement was more than it should've been, and she has paid more interest than she should've done. While I agree with this, I also need to consider that Miss W hasn't paid all the payments due under the agreement, and the car has been in her possession and used / available for her to use from when the agreement should've ended. Given this, I'm satisfied that the payments Miss W should've paid and didn't more than fairly offset any additional interest she would've paid had the finance agreement been for £2,000 less than it was.

So, I won't be asking BMWFS to refund any of the payments / interest Miss W paid, nor would I expect them to pursue her for any outstanding arrears.

However, it's clear that Miss W has been inconvenienced by what has happened, and the shock of finding out the true mileage and history of the car in August 2023. So, I think BMWFS should compensate her for this. The investigator had recommended BMWFS pay her £150, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, BMWFS should:

- end the agreement, removing all outstanding payments, fees, and charges, so Miss W has nothing more to pay;
- collect the car at no cost to Miss W;
- remove any adverse entries relating to this agreement from Miss W's credit file; and
- pay Miss W an additional £150 to compensate her for the distress and inconvenience caused by being supplied with a car where the true history and mileage hadn't been disclosed.

My final decision

For the reasons explained, I uphold Miss W's complaint about BMW Financial Services (GB) Limited trading as Alphera Financial Services. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 1 October 2024.

Andrew Burford
Ombudsman