

## The complaint

Mr L complains that BMW Financial Services (GB) Limited (BMWFS) didn't provide an invoice to demonstrate that a car he was financing through an agreement with them, had a zero VAT rating. He says that BMWFS discriminated against him under the Equality Act (2010).

## What happened

I issued my provisional decision on this complaint earlier this month. An extract from that provisional decision is set out below.

*In February 2021 Mr L entered into a hire purchase agreement with BMWFS for a new adapted vehicle. The lease was made under the HMRC scheme VAT1615 which allows for no VAT to be charged on vehicles for disabled people like Mr L. Mr L hadn't made use of the scheme before and he relied on the dealership and BMWFS to ensure all of the relevant documentation was put in place.*

*Mr L subsequently complained to BMWFS as he said they had refused to provide him with an invoice for the car that would demonstrate it was zero-rated for VAT. He said he'd learnt that meant he had to pay VAT for any repairs to the car where it wouldn't have otherwise been necessary.*

*BMWFS said they had to show the invoice with VAT so it could be claimed back from the HMRC. They explained that the invoice had been reduced to reflect zero VAT. They confirmed that the agreement had been established with zero VAT as per the VAT 1615a declaration at point of sale.*

*Mr L was disappointed with their response as he found garages were unwilling to accept BMWFS's confirmation without a zero-rated invoice. He referred his complaint to this service, and he explained that he'd now traded the car in for another vehicle, with a different provider, who had settled the agreement with BMWFS for £23,447.49. That business had been able to provide him with a zero-rated VAT invoice so that he could benefit from VAT free maintenance on his new vehicle.*

*Our investigator didn't think the lack of a zero-rated VAT invoice had disadvantaged Mr L. She noted that he had still been able to use the car he was financing through BMWFS.*

*Mr L disagreed and 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 BMWFS, but I don't agree with our investigator's view. 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 L 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.*

*Mr L says that BMWFS discriminated against him. It's not for me to decide the merits of a claim under the Equality Act 2010, only a court can do that, but I take relevant legislation into account when deciding if the business have been fair.*

*Under section 56 of the Consumer Credit Act 1974 (CCA) any negotiations conducted by the dealership on behalf of the finance company are treated as if BMWFS themselves conducted those negotiations. Any representations or omissions made by the dealership could, therefore, be fairly attributed to BMWFS under section 56.*

*If the dealership didn't give him the relevant information and if Mr L wouldn't have proceeded with the deal had he known the information was missing. I think the deal would have been misrepresented to him. I think that was the case, I'll explain.*

*Mr L hadn't applied under the VAT1615 scheme before, so I think he could have fairly expected the business to provide the requisite information to enable him to benefit from it. The VAT1615 scheme explained:*

*"8. The repair or maintenance of an adapted motor vehicle can be zero-rated when the work relates to a vehicle (or an adaptation to a vehicle) that was eligible for zero-rating when it was bought or supplied.*

*If you take the vehicle for repair or maintenance to a third-party garage you will need to produce the original purchase invoice for the vehicle or adaptation to confirm that it had previously been supplied at the zero rate.*

*Suppliers that did not supply the vehicle will need to check the original invoice for the purchase of the vehicle to confirm that it was supplied at the zero rate. You should keep a copy for your records."*

*It's not disputed that the invoice Mr L was provided wasn't zero VAT rated. BMWFS say they couldn't have provided that, but Mr L has provided a copy of the invoice for his latest car and that clearly is zero VAT rated. He's also provided copies of invoices for repairs to the car he was financing through the agreement with BMWFS and it's clear he was paying VAT when he wouldn't have needed to if he had the requisite zero-rated invoice.*

*Mr L has explained that he traded in the BMW for a different car because it was getting older, and he didn't want to be faced with paying VAT for repair work. This was a hire purchase agreement and Mr L could have chosen to keep the car and pay a final payment to take ownership. He chose not to, and I think that supports his argument that he wouldn't have proceeded with the deal if he'd been made aware a zero-rated invoice wouldn't be supplied. I note he chose not to trade in the car at the dealership he sourced his BMW from and where I think he could have expected to have got a better deal. I think that also supports*

*Mr L's position that he has exited the agreement because of the VAT implications and that he wouldn't have proceeded if he'd been adequately informed.*

*On that basis I think the finance agreement was misrepresented to Mr L.*

*In normal circumstances we would usually ask the business to put the consumer back in the position they would have been in had the misrepresentation not have taken place. That would mean returning the car, and the consumer's deposit and ending the finance agreement. But that's not possible here as the finance agreement has been settled and Mr L no longer has the car.*

*I don't agree, with the investigator, that Mr L hasn't been disadvantaged. He's had to pay VAT on some repairs. He's not had his deposit refunded, but he has benefitted from that deposit as he was able to trade the car in for £31,000 and his deposit will have formed part of that trade in value. I think BMWFS should refund any VAT payments Mr L has paid on repairs he had done to the BMW, and they should add interest to that refund as Mr L has been deprived of the money. I note that Mr L hasn't got copies of the receipts for all of the repairs he had completed. I'm not persuaded that bank statements are sufficient to demonstrate a qualifying repair as they won't show the VAT added, but BMWFS should refund any repair costs he can provide receipts for from VAT registered garages.*

*Mr L has also experienced some distress and inconvenience as a result of BMWFS's actions. He's had to escalate his complaint to this service when I think it could have been resolved earlier, and he's had to prematurely trade in his vehicle. In those circumstances I think BMWFS should pay him £200 in compensation.*

### **My provisional decision**

*For the reasons I've given above, I'm expecting to uphold this complaint tell BMW Financial Services (GB) Limited to:*

- Refund the VAT Mr L has paid on repairs to the car he was financing, on provision of receipts, and add 8% simple interest per year to the refund from the date of payment to the date of settlement.*
- Pay Mr L £200 to compensate him for the distress and inconvenience they've caused.*

### **The parties responses to my provisional decision**

Neither party provided any further comments or evidence for me to consider. So I've not been persuaded to change my provisional decision and that now becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above, I uphold this complaint and tell BMW Financial Services (GB) Limited to:

- Refund the VAT Mr L has paid on repairs to the car he was financing, on provision of receipts, and add 8% simple interest per year to the refund from the date of payment to the date of settlement.
- Pay Mr L £200 to compensate him for the distress and inconvenience they've caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or

reject my decision before 20 December 2024.

Phillip McMahon  
**Ombudsman**