

## **The complaint**

Mr D complains about the quality of a car he acquired through a hire purchase agreement financed by BMW Financial Services (GB) Limited.

## **What happened**

In March 2017 Mr D acquired a new car through a hire purchase agreement. The car was in an accident in early 2018 and was written off. Mr D's insurance company replaced the car with a new car, in agreement with BMW, in April 2018.

Mr D has experienced a knocking or rattling from the rear of the car on a number of occasions. He says he took the vehicle to the dealership four times in 2018 and four times in 2019 and the problem is yet to be resolved.

Mr D complained to BMW about the quality of the car. They said that because it'd been replaced by Mr D's insurance company, they were no longer responsible for its quality.

Unhappy with this, Mr D brought his complaint to this service. Our investigator looked into things for Mr D and felt that BMW were responsible for the quality of the car. He thought that the car wasn't of satisfactory quality, and that Mr D should be able to reject it.

As BMW didn't agree with our investigator, the case has been passed to me for a 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's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a hire purchase agreement regulated by the Consumer Credit Act (CCA) – so we can consider a complaint relating to it.

BMW have said that because Mr D's car was replaced by his insurance company following an accident, they aren't the supplier of the goods anymore, so they aren't responsible for a complaint about their quality.

The hire purchase agreement that Mr D entered sets out what should happen if the vehicle is declared a total loss by the insurance company, as happened here. It says that Mr D must pay any insurance money to BMW. There is no clause in the agreement that sets out how or when BMW might agree for the insurance company to replace the vehicle.

I've reviewed the documents provided by BMW, and I can see that Mr D's insurance company asked if they would accept a replacement vehicle. BMW set out to the insurance company exactly what specification any new vehicle would need to meet.

Once they'd found a suitable replacement vehicle, Mr D's insurance company sent these details to BMW, and BMW confirmed that they would accept the proposed vehicle as a

replacement. BMW wrote to Mr D to tell him that his agreement remained as it was before the total loss, but any mention of the vehicle now referred to the new vehicle, and not the old one.

I don't think this was something that BMW had to do. The agreement allowed them to receive the sum of the insurance claim, but instead they chose to negotiate with Mr D's insurer and accept a replacement vehicle.

The hire purchase agreement between Mr D and BMW is one where BMW retain ownership of the vehicle and hire it to Mr D for an agreed monthly payment, until a number of conditions have been met. Following the replacement of the vehicle by the insurance company, this remained the case. So, I think that BMW have agreed for the insurance company to replace the vehicle they own, and they have agreed to hire this new vehicle to Mr D under the same terms as the old one. I find that BMW are still supplying the vehicle to Mr D, and remain responsible for its quality.

So, I've gone on to consider the satisfactory quality of Mr D's vehicle.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car acquired was brand new with a cash price of around £37,000. So, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a cheaper, more road worn vehicle and that it could be used, free from defects, for a considerable period of time.

Mr D has reported a knocking or rattling noise coming from the rear of the vehicle and has taken it back to the dealership to investigate on a number of occasions. I've seen a job sheet that suggests that multiple fixes have been attempted, but none lasts for very long before the noise returns. It seems that the cause of the noise can't be identified, or a long lasting repair can't be made.

I haven't seen any evidence that the noise has been caused by fair wear to the vehicle, or by driving style or third party damage. It seems more likely that there is an inherent fault with the vehicle which causes the noise to return repeatedly.

As the car cannot be used free from defect and having regard to its age and mileage at the time it was acquired, I'm satisfied that the ongoing problem with the noise makes the car of unsatisfactory quality.

Having made that finding, I need to decide what, if anything, BMW should do to put things right.

The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. That repair should be done in a reasonable time, and without significant inconvenience to the consumer.

I think that Mr D has allowed ample opportunity for the fault to be found and repaired. He's taken the vehicle back to the dealership on at least eight occasions, and I've seen evidence that a courtesy car was provided on seven occasions, meaning that the car had to be kept for an extended period of time. So, I find that he should be allowed his final right to reject the car. This means the car is collected from Mr D, the finance agreement is brought to an end, and Mr D has his deposit refunded (plus interest).

Mr D's deposit contribution was £14,920.62, but £500 of this was a manufacturer contribution, so the total to be returned to Mr D is £14,420.62 plus 8% simple yearly interest calculated from the date of payment to the date of settlement.

Our investigator recommended that BMW pay Mr D £250 compensation for the impact the situation has had on him. Mr D has had to make multiple trips to the dealership in order to try and get the fault repaired and has had to drive the car with the fault for an extended period of time. Overall, I'm satisfied that this compensation reflects the distress and inconvenience experienced by Mr D.

### **My final decision**

My final decision is that I uphold this complaint and I require BMW Financial Services (GB) Limited to:

- End the finance agreement and collect the car at no further cost to Mr D
- Refund Mr D's deposit of £14,420.62 plus 8% yearly simple interest calculated from the date of payment to the date of settlement.
- Pay Mr D £250 compensation to reflect the distress and inconvenience caused
- Remove the finance agreement from Mr D's credit file

If BMW considers that its required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 April 2021.

Zoe Launder  
**Ombudsman**