

The complaint

Mr C is unhappy with the length of time it took for a repair to be carried out to a motorbike supplied to him by BMW Financial Services (GB) Limited ("BMWFS").

What happened

Mr C acquired a brand-new motorbike under a 48 month hire purchase agreement through BMWFS on 30 April 2019. The motorbike cost around £19,527.96. Mr C paid a deposit of £2,458.98 and was required to make 47 monthly repayments of £273.61 under the agreement.

Around late October 2019, the manufacturer wrote to Mr C and told him the motorbike needed a repair to its gearbox. Mr C says the letter said he'd be contacted by a local dealer to have it repaired within 14 days. By January 2020, Mr C said he hadn't been contacted, so he contacted a local dealer. Mr C says the dealer told him it would take some time to book in the repair, as it didn't have the necessary parts in stock to carry out the repair. He says he was offered a repair in April 2020, but due to restrictions imposed by COVID-19, the repair was unable to go ahead. So he complained to BMWFS.

BMWFS looked into Mr C's complaint and said it was down to Mr C to arrange the repair directly with his supplying retailer. But Mr C hadn't done this. It said when the motorbike was booked in for repair, due to COVID-19, unfortunately retailer branches were closed. BMWFS said it wouldn't offer Mr C the full seven monthly payments he was claiming for, but instead it would offer a refund of four payments totalling £1,094.44.

Mr C referred his complaint to our service in July 2020. He said the motorbike had been repaired on 2 July 2020, but he wanted BMWFS to contribute towards the monthly repayments he made whilst he was unable to use it. He said he wasn't aware of BMWFS' final response to his complaint and if he had been, he would have accepted the offer it had made. But given he didn't receive it, he wanted to continue with his complaint.

Our investigator looked into the complaint and thought the motorbike wasn't of satisfactory quality at the time it was supplied to Mr C. He said BMWFS should increase its offer and refund seven monthly payments instead of four, paying 8% simple interest on any refunded amounts and that BMWFS should pay Mr C a further £100 for any trouble and upset caused.

Mr C agreed with our investigator. BMWFS disagreed and maintained its offer to refund Mr C four monthly payments. It also agreed to pay 8% simple interest on the refunded amounts and pay Mr C £100 for the trouble and upset caused. It didn't agree to increase its offer to refund further monthly payments as it said it had sent the final response letter to Mr C and it was his responsibility to contact the retailer to arrange a repair. It said if Mr C hadn't caused a delay, the motorbike would have likely been repaired in January or February 2020. So it said it couldn't be held responsible for the subsequent delays as a result of the COVID-19 pandemic.

As BMWFS remained in disagreement, the case was passed to me.

I issued a provisional decision on 15 February 2022, in which I said the following:

"What I've provisionally 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.

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

In this case, it appears both Mr C and BMWFS accept that the motorbike had a fault with it at the time it was supplied to Mr C. BMWFS didn't dispute this in response to our investigator's view. But, for the sake of clarity, I'll very briefly comment on this. A fault with a motorbike's gearbox is potentially serious and it isn't in dispute that this was present at the point of sale. It follows I'm satisfied the motorbike wasn't of satisfactory quality. Under the Consumer Rights Act 2015, as the fault took place more than 30 days after the motorbike was supplied to Mr C, BMWFS had once chance to repair the motorbike. I'm satisfied it has exercised this right as it repaired the motorbike on 2 July 2020.

I've gone on to consider what I think BMWFS needs to do to put things right, considering all the circumstances.

In October 2019, the manufacturer of the motorbike issued a recall notice. Neither Mr C nor BMWFS have been able to supply our service with a copy of the recall notice issued to Mr C. However, Mr C in his testimony has said he received a copy of the recall notice. Recall notices are public information. I've seen a copy of the public recall notice which confirms it is being issued because the gears on the motorbike may not perform correctly. It asks the recipient of the recall notice to contact their local dealership or the manufacturer, to check if the motorbike they've been supplied is affected.

Having thought about this, I think it's likely the recall notice Mr C was sent by the manufacturer, instructed him to contact his local dealership or the manufacturer to arrange a repair.

Mr C contacted a dealership to book in the repair in January 2020. Given that I think it's likely the recall notice instructed Mr C to book in the repair, I think Mr C caused a delay of around two months when he didn't contact the local dealership or the manufacturer upon receipt of the recall notice in late October 2019. So I don't think BMWFS should reimburse Mr C any payments he made towards his agreement from when he received the recall notice, until the date he contacted the dealership to book in the repair.

I've gone on to think about whether BMWFS should reimburse Mr C any payments from the date he contacted the dealership to book in the repair, until the date the repair was carried out.

The repair to the motorbike was initially booked in for April 2020. But it was completed in July 2020, due to the restrictions imposed on businesses as a result of the COVID-19 pandemic. Mr C says BMWFS should have been ready to repair the motorbike at the time he contacted it in January 2020 and if it had done, the motorbike would have been repaired before the restrictions imposed on businesses as a result of the COVID-19 pandemic. BMWFS has said if Mr C contacted it earlier, the motorbike would have been repaired in January or February 2020 at the latest.

I've thought very carefully about what Mr C and BMWFS have said. I've also seen internal emails between the repairing dealership and BMWFS. These emails confirm that the repairing dealership is having difficulty sourcing the parts to repair the fault and it suggests it hadn't initially been provided with adequate training to enable it to fix the issue with the motorbike. The supplying dealership said because of these issues they were, "at a loss as to how they would be able to honour the work being carried out mid-April".

Having thought about this, I accept there was a delay in sourcing the required tools to fit the part and if these had been sourced sooner, Mr C would have had likely had his motorbike repaired sooner. But even if Mr C had contacted the dealership when he got the recall

notice, I don't think it's likely that the motorbike would have been repaired by January or February 2020, or even April 2020, given the comments made by the repairing dealership. Because of this, I think it's likely the repair would have been impacted by the restrictions imposed as a result of the COVID-19 pandemic.

I can't hold BMWFS responsible for the restrictions imposed upon businesses as a result of the COVID-19 pandemic. But in this case, I don't think the motorbike was of satisfactory quality when it was supplied to Mr C. So given that I think it's unlikely the repair would have been completed before the COVID-19 pandemic restrictions were imposed, I don't think it's fair that Mr C should be required to pay for any use of the motorbike from when he contacted the dealership in January 2020, to when the repair was completed in July 2020.

BMWFS has already agreed to pay Mr C £100 for the distress and inconvenience caused following our investigator's view. I think this amount is fair and reasonable given Mr C was unable to use his motorbike for a number of months whilst it wasn't of satisfactory quality.

My provisional decision

My provisional decision is that I intend to instruct BMW Financial Services (GB) Limited to do the following:

- *Refund any payments Mr C has made towards the agreement from January 2020 until 2 July 2020;*
- *Pay Mr C 8% simple interest on these payments from the date of each payment and the date of settlement*; and*
- *Pay Mr C £100 for the distress and inconvenience caused.*

**If BMW Financial Services (GB) Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."*

Responses to my provisional decision

BMWFS didn't provide any further comments to my provisional decision. Mr C accepted my provisional 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.

As no new evidence has been provided for me to consider following my provisional decision, it follows that there is no reason for me to reach any different conclusion than set out in my provisional decision.

Putting things right

For the reasons given in my provisional decision which I've outlined above, BMW Financial Services (GB) Limited should:

- Refund any payments Mr C has made towards the agreement from January 2020 until 2 July 2020;
- Pay Mr C 8% simple interest on these payments from the date of each payment and

the date of settlement*;

- Pay Mr C £100 for the distress and inconvenience caused.

*If BMW Financial Services (GB) Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr C's complaint. BMW Financial Services (GB) Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 March 2022.

Sonia Ahmed
Ombudsman