

## **The complaint**

Mr A complains about a car he acquired using a hire purchase agreement provided by BMW Financial Services(GB) Limited trading as BMW Financial Services ('BMWFS').

Mr A says he has had numerous issues with the car since he acquired it.

Mr A has been represented on this complaint, but to keep things simple, I will only refer to Mr A in my decision

## **What happened**

Mr A acquired a new car in July 2018 using a hire purchase agreement from BMWFS to finance part of the cost. The cash price of the car is listed on the agreement as £67,943.13. An advance payment of £19,999.66 is displayed on the agreement – although I understand £10,000 of this was a dealer contribution. The repayments on the agreement were for £585.70 a month over 48 months, with a final balloon payment of £20,415.57 if Mr A wanted to keep the car.

Shortly after getting the car, Mr A began to have problems with it. I won't list out the whole history of issues Mr A had with the car, as these are well known to all parties and aren't in dispute. Mr A said he noticed issues with the car as soon as got it and he says he continues to have problems with it.

Some of the issues Mr A has had with the car include problems with; various cosmetic issues including trim, number plates, kick plates etc., headlights, parking assist, brake lights, heated screen, speakers, pedestrian sensors, automatic parking system, the fabric roof, seats, cup holders and the heads up display.

Some of these issues, such as the heated rear screen and speakers, required repairs on multiple occasions. And the car has been returned to the dealer for repairs in total over ten times since Mr A has had it.

Mr A complained to BMWFS and asked to reject the car. It issued its final response in February 2020. This said, in summary, that the issues with the car had only been minor and had been repaired under warranty. So, it didn't uphold Mr A's complaint and said he couldn't reject the car.

Mr A was unhappy with this and continued to complain. BMWFS said it would not change its stance.

Mr A brought his complaint to our service. He said he was very unhappy with the car, particularly as he had owned several other models from the brand. He said he had incurred various costs that should be reimbursed. And he said the car continued to have issues with it.

Our investigator upheld the complaint. She said, in summary, that the car was not of

satisfactory quality and said Mr A had a right to reject it. She said he should be reimbursed the deposit paid, £150 for distress and inconvenience and 15% of the repayments made to reflect impaired usage.

BMWFS said it agreed to the view in part, but it didn't think it was reasonable to pay for impaired usage as Mr A had been able to use the car and had covered a significant mileage. Mr A was also unhappy with the view. He said he estimated he hadn't had the car for around 20% of the time he'd been paying for it due to repairs. He said he'd specifically bought a convertible but hadn't been able to use it properly. And he said the situation had caused him stress and embarrassment.

Our investigator responded to Mr A and BMWFS and said what she had been told didn't change her opinion. So, the case was passed to me to decide.

I sent Mr A and BMWFS a provisional decision on 7 February 2022. This explained I was thinking of upholding the complaint, but I thought BMWFS should do something slightly different to put things right. And, I commented on a few points our investigator didn't cover. I've set out my findings from this decision below.

*I should firstly say that I will focus on what I think to have been the key events and issues here. Where I have summarised points or not specifically mentioned something, both in my findings and in the background above, this doesn't mean I think it's unimportant. This just reflects the informal nature of our service. Mr A has written at some length about the history of what's happened and provided a lot of information. I want to reassure Mr A, and BMWFS, that I have carefully considered everything in relation to this complaint – even if I haven't commented on it.*

*Mr A complains about a car supplied under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr A's complaint about BMWFS.*

*When thinking about what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – BMWFS here – needs to make sure they are of satisfactory quality.*

*Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description.*

*Thinking about this, I'll consider here that the car Mr A acquired had a cash price of nearly £70,000. It was brand new, and a high end model from a premium manufacturer. So, I think a reasonable person would have very high standards for the car's quality.*

*In response to the investigator's view, BMWFS now seems to accept the car was not of satisfactory quality when it was supplied. So, my decision will mainly focus on what I think is fair and reasonable to put things right. But, for the sake of clarity, I still think it's worth me commenting briefly on this.*

*Given the price of Mr A's car, and the fact it was brand new, I'm satisfied a reasonable person would not have expected to have so many issues with it over the coming months.*

*BMWFS initially said the issues were minor. But, even if I accepted this was the case, the CRA explains freedom from minor defects can be considered as part of satisfactory quality. And considering the cost of the car Mr A got, I think a reasonable person would've expected*

*it to be free of even very small defects. That being said, I think some of the issues Mr A had couldn't be described as minor. Several of these issues were repeated and required multiple attempts at repair. And Mr A continued to have issues with the car after he asked to reject it.*

*I'm satisfied some of the issues Mr A experienced were likely to be present or developing at the point of supply. And I'm satisfied others that occurred later mean the car wasn't reasonably durable. It follows all of this that I'm satisfied that overall the car wasn't of satisfactory quality when it was supplied to Mr A.*

*So, I now need to consider what would be reasonable to put things right. Thinking about this, I agree with our investigator here that, given several attempts at repair have occurred, Mr A now has a right to reject the car. It seemed BMWFS and Mr A accepted this part of our investigator's view. But, they didn't agree on what else should be done to put things right.*

*BMWFS said it didn't think it was fair for Mr A to be reimbursed any of his monthly payments, as he had covered a significant mileage in the car. But, I don't agree here. I'm satisfied, given how many issues Mr A had with the car, that it's fair to say it wasn't performing as it should've for the majority of the time he had it. I take BMWFS's point that Mr A was able to drive the car. But, this isn't the same as the car performing as it should or Mr A getting what he paid for. So, I think it's reasonable a portion of Mr A's payments are reimbursed.*

*I've considered what Mr A said in response to the investigator's view. He said, in summary, that he thought it was fair to receive 25% of the repayments back. I've very carefully thought about what he's said here. I can see Mr A is particularly passionate about cars – this comes across in his testimony and from what he's said about taking care of this car. So I can understand his disappointment and frustration with the issues this car had.*

*When thinking about what to do here, I've also considered that Mr A appears to have been kept mobile during the times his car was being repaired. But, the courtesy cars Mr A was given, from what he's said, weren't always of the same class or value as the car he was paying for.*

*Given the frequency of the issues from the start of the contract, and the overall impact of the situation on Mr A, I think it's reasonable for BMWFS to reimburse a portion of his payments for the whole time he's had the car rather than me excluding specific periods where the car appeared to be in full working order. Having thought about this, along with everything from both sides here, I think it's fair and reasonable for BMWFS to reimburse Mr A 15% of his repayments.*

*Our investigator recommended Mr A received £150 to reflect the distress and inconvenience caused. I also agree Mr A has been caused upset because of what's happened. But, I think this amount should be raised. I'll explain why.*

*As I said earlier, it's clear Mr A is very passionate about cars and from what he's said I think the stress of what happened here has impacted him more than it might another individual. He's had to take time out to get his car repaired on a very frequent basis considering it was brand new. He's told us how this has impacted his work and his relationship with clients. And, he's explained how he had to swap a courtesy car at hospital when a close relative was very ill.*

*Thinking about all of this, I think it would be reasonable for BMWFS to pay Mr A £800 to reflect the impact of what went wrong.*

*I also agree with our investigator that as part of the rejection of the car Mr A should get back the deposit he paid towards the agreement. There is some discrepancy between the invoice,*

*the credit agreement and what we've been told happened here. But I believe from what I've seen that the dealer made a deposit contribution of £10,000 – meaning from the credit agreement Mr A paid a deposit of £9,999.66. But, if Mr A or BMWFS can evidence otherwise I will reconsider this in my final decision.*

*Mr A has also mentioned various other expenses in relation to the car that he thinks he should be reimbursed for. I can't see our investigator commented on these in her view, so I've gone on to consider what is fair and reasonable here.*

*Mr A has asked for legal costs back in relation to his complaint. Our service is a free alternative to the courts. Any expenses Mr A has incurred here have been his choice – so I don't think it's fair to ask BMWFS to reimburse any legal costs.*

*Mr A has asked for the reimbursement of several insurance policies. The alloy wheel and cosmetic insurance has now expired, so Mr A has had benefit of the coverage and so I don't think any reimbursement is due here. It appears he can request a pro-rata refund on his tyre insurance, so again I don't think anything is due here.*

*I have considered Mr A's GAP insurance policy. But, I haven't seen whether this has expired. If it hasn't, I haven't seen if a pro-rata refund is due. So, without further information I don't think it would initially be fair to ask BMWFS to pay anything here.*

*Mr A has asked for the reimbursement of several protection treatments the car had totalling £540. I've carefully thought about this. But, this wasn't a requirement under the agreement and Mr A has had the benefits of these treatments while he's had the car. So, again I don't think a reimbursement is due.*

*Mr A made some modifications to the car, such as putting different grilles and door lights on. But, this was his choice. I've not seen evidence this would've increased, or decreased for that matter, the value of the car. So, thinking about what's fair here, I don't think BMWFS should reimburse Mr A for these costs.*

*Mr A asked for the cost of various cleaning products for the car back. But, I believe he would've bought and used these whatever happened here, and he will presumably be able to use any remaining products on his future cars. So, I don't think BMWFS should pay for these.*

*Mr A had the car serviced and an MOT carried out in July 2021. I don't think he's going to get the full benefit of this expense if the car is going to be rejected. It's difficult to put an exact value on this, but thinking about things in the round, it seems reasonable to be reimbursed half this amount. Mr A also had the car serviced earlier, but I think it's fair to say he's had the benefit of this.*

*I've thought about the tracker and subscription Mr A got for the car. He's evidenced this was for a five year period from 9 July 2018 at a total cost of £695. I can see that he's not had the full benefit here. But, I need to consider that the agreement was only due to run for four years, so I've made the assumption this can either be transferred or a pro-rata refund requested. But, if Mr A can show otherwise I'll reconsider this in my final decision.*

*Mr A has mentioned some other costs, such as a boot liner, but these haven't been evidenced. I will of course consider anything else provided such as invoices or receipts before I make my final decision.*

*Finally, I want to again reassure Mr A and BMWFS that I've carefully considered everything else said and provided in relation to the complaint. Having done so, I'm satisfied what I've*

*set out above is a fair and reasonable way to put things right.*

I gave both parties one month to respond with any further comments or evidence. BMWFS came back and said while it agreed with most of the decision, it thought £800 was too high an award for distress and inconvenience. Mr A responded and said he thought 15% of the monthly repayments was too low an amount and thought a mileage deduction of 45p a mile should be used.

### **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've carefully thought about what BMWFS said about it considering £800 too high an amount to reflect the distress and inconvenience caused to Mr A by what went wrong. It said it felt this award was higher than normal.

I've considered what happened in the very specific circumstances of this case. I think Mr A was caused quite significant distress because of what happened. And, I think the general impact on him was higher than another person, because of his obvious passion and high expectations for this car. So, having thought about everything again, I still think £800 is fair and reasonable.

Mr A asked me to explain how I calculated the 15% of the monthly repayments to be refunded to him. This was based on what I considered to be fair and reasonable under all the circumstances of the complaint as explained above. I've carefully thought about what Mr A said here. And I did have in mind when considering this that, as Mr A pointed out, he didn't have the use of his particular car for periods of the agreement.

I appreciate Mr A feels the award should be higher here or a different method of reimbursement used. But, having considered everything again, I still think it's reasonable for BMWFS to reimburse 15% of all repayments made to the agreement.

I mentioned several expenses in my provisional decision that I didn't think should initially be paid out without further evidence. Mr A hasn't provided any additional information about this – so I still think what I recommended in my provisional decision to put things right is reasonable.

Having thought about everything again, along with the additional comments made by Mr A and BMWFS, I still think this complaint should be upheld for the same reasons explained in my provisional decision and set out above.

### **My final decision**

My final decision is that I uphold this complaint and instruct BMW Financial Services (GB) Limited trading as BMW Financial Services to put things right by doing the following:

- Collect the car at no cost to Mr A at a time and date suitable for him
- End the agreement with nothing further to pay
- Reimburse Mr A the deposit of £9,999.66\*
- Reimburse Mr A 15% of all repayments made towards the agreement\*
- Reimburse Mr A half of the cost of the service/MOT from 2 July 2021 - £71.43\*
- Pay Mr A £800 to reflect distress and inconvenience caused

\* These amounts should have 8% simple annual interest added from the time of payment to the time of reimbursement. If BMWFS considers that it's required by HM Revenue and Customs to withhold income tax from the interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 April 2022.

John Bower  
**Ombudsman**