

## **The complaint**

Mr W complains that a car acquired with finance from BMW Financial Services (GB) Limited trading as MINI Financial Services wasn't of satisfactory quality.

## **What happened**

In December 2020 Mr W was supplied with a car and entered into a hire purchase agreement with BMWFS.

Mr W experienced issues with the cruise control in March 2021. The issues included the cruise control failing to engage, failing to slow down, failing to increase speed and failing to disengage.

Mr W contacted the dealership in June 2021. An appointment was made for the car to be inspected. However, a dispute arose over the supply of a loan car and the inspection didn't go ahead.

Mr W complained to BMWFS. In response, BMWFS said it wasn't upholding the complaint because it hadn't seen any evidence that there was a fault with the car.

Mr W remained unhappy and brought his complaint to this service.

Our investigator upheld the complaint. He was satisfied that there was a fault with the car and that because the fault arose in the first 6 months, BMWFS should arrange for repairs.

BMWFS didn't agree. It said it required a diagnostic report to evidence what was wrong with the car before a repair could be carried out. It said that Mr W would need to book the car into a mini dealer of his choice to obtain a diagnostic. BMWFS said it didn't agree to a partial refund of payments made by Mr W since March 2021 because it hadn't seen any evidence of a fault and because Mr W had been able to use the car.

## **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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that good must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. Satisfactory quality includes the general state and condition of the car, as well as other things including fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

Mr W was supplied with a brand-new car. So, I'd expect it to be of a very high quality and to be free from minor defects for a reasonable period of time.

Under the relevant legislation, where a fault occurs in the first 6 months which renders the car of unsatisfactory quality, there's a presumption that the car was of unsatisfactory quality

at the point of supply. The business is allowed one opportunity to repair the fault. After 6 months, the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality at the point of supply.

I've looked at the available information to decide whether there is a fault with the car. BMWFS has said there's no evidence of a fault. However, Mr W has provided photographs showing the issues with the cruise control. This evidence covers the period May 2021 to November 2021. Based on what I've seen, I'm persuaded that there is a fault with the cruise control.

I've gone on to consider whether the car was of satisfactory quality when supplied. I've already said that I'd expect a brand-new car to be of a very high quality and to be free from minor defects for a reasonable period of time. In this case, the fault with the cruise control occurred within the first 6 months of the point of supply. I don't think a reasonable person would expect to experience a fault of this nature so early on in the agreement. Based on what I've seen, I don't think the car was of satisfactory quality at the point of supply because it wasn't free from minor defects for a reasonable period of time.

BMWFS has said it's up to Mr W to provide evidence that the car has a fault. I disagree. I'm satisfied that the fault has been evidenced by the photos supplied by Mr W and that the fault occurred within the first 6 months of the point of supply. The relevant legislation obliges the business to put things right here. I'd expect BMWFS to arrange an inspection and diagnostic of the car, and to arrange for repairs. I don't think it's reasonable to ask Mr W to arrange the inspection, particularly as he's already tried to do this on a previous occasion. I also think that BMWFS has had a reasonable opportunity to arrange an inspection during the course of Mr W's complaint.

### **Putting things right**

To put things right, BMWFS must arrange an inspection and diagnostic of the car at an approved dealership and must arrange for repairs to be carried out at no cost to Mr W.

Mr W has been able to drive the car despite the fault with the cruise control. However, his use and enjoyment of the car has been impacted by the fault. I think it's fair to ask BMWFS to refund 10% of all payments made by Mr W since March 2021 to reflect this.

### **My final decision**

My final decision is that I uphold the complaint. BMW Financial Services (GB) Limited trading as MINI Financial Services must:

Arrange for and cover the cost of a diagnostic inspection and repairs

Refund 10% of rentals paid by Mr W from March 2021 to the date when the fault is repaired

Pay 8% simple interest on the amount refunded from the date of payment to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 July 2022.

Emma Davy  
**Ombudsman**