

## **The complaint**

Mr A has complained that he is unhappy with the quality of a new car he bought in December 2018, using a hire purchase agreement with BMW Financial Services (GB) Limited (BMWFS).

## **What happened**

Mr A acquired a new car in December 2018. The cost was just over £47,000. Of this, Mr A borrowed £40,581.78 over 48 months. The monthly cost was £551.98, with a final amount of £20,550.18 payable if Mr A wanted to keep the vehicle at that point.

After a series of issues with the car (set out below), Mr A said he sold it for £29,000 in September 2020, but the amount required to settle the agreement was £32,227.71, so Mr A had to pay the difference to BMWFS.

Shortly after buying the car - in January 2019 - the parcel shelf stopped operating and was replaced by the supplying dealer. However, no further issues arose with the parcel shelf after the repair.

Some months later, in late November 2019, a serious issue occurred. Mr A told us that when driving the car near his home at night-time, and as he was turning on to a main road and picking up speed, he heard a loud 'clunk' from underneath the vehicle. The car juddered severely and came to an abrupt halt, having lost all power without warning. I can appreciate how worrying this was, especially as his family were with him in the car.

Mr A contacted the supplying dealer and was advised to take the car in for examination. However, on the way to the dealership, the car came to an abrupt halt again, so the dealer arranged to collect the car from where it had broken down.

Following this breakdown, extensive repairs were carried out. These included a new differential, new rear prop shaft, new transfer box seal, new rear drive shaft and a new gear box sump. Mr A collected the car in December 2019 when the repairs were complete.

Mr A said that he then contacted the supplying dealer again about six weeks later, in January 2020, to say that the car didn't feel right, in that he was experiencing juddering at certain speeds and load conditions that could be felt through the seat, gear stick and steering wheel. Mr A further said that a BMW technician accompanied him on a test drive, and concluded that another part should've been fitted but, due to the expense, he needed to get his manager's approval.

The supplying dealer then road-tested the car separately, but was unable to replicate the issue. Mr A said he was told that the dealer would arrange to compare and test drive with another car of the same model and specification, but he told us that didn't happen.

In February 2020 a new issue arose - the multimedia centre crashed on several occasions, causing a loss of sat nav data and contacts. Mr A took the car back to the dealer to repair the multimedia centre, but the issue with the juddering still couldn't be replicated.

In June 2020, Mr A complained to BMWFS, saying that he had lost all confidence in the car and felt that it wasn't of satisfactory quality when it was supplied to him. He further said that he wanted to return the car to BMWFS.

BMWFS issued its final response on 19 August 2020, saying that it didn't feel obligated to assist, as there had been no fault found and no repairs carried out since March 2020. It also said that Mr A had accepted the repairs and they hadn't failed as no fault had since been identified.

Mr A was unhappy with this response and therefore brought his complaint to this service. As I noted above, Mr A had sold the car, but for less than the amount owing under the hire purchase agreement. Mr A thought this loss should be reimbursed, together with a refund of his deposit and the monthly payments made to BMWFS.

Our investigator looked at Mr A's complaint, but didn't think it should be upheld. Mr A disagreed and asked for his complaint to be reviewed by an ombudsman. On 4 July 2022 I issued my provisional decision, in which I explained why I was minded to uphold Mr A's complaint. I requested any further comments by 1 August 2022, but as both parties have responded, I can now issue my final decision. Mr A told us he had nothing further to add. BMWFS said it 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.

In my provisional decision, I set out my findings and the reasons why I proposed to uphold Mr A's complaint as follows:

*"Because BMWFS supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.*

*In this case of course, the car was new, and I think any reasonable person would expect it to be free of any faults or defects.*

*I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.*

*I set out above the information that Mr A provided about the sequence of events. None of the faults described occurred within the first 30 days after Mr A took delivery of the car, so the short term right to reject under the CRA doesn't apply here.*

*Mr A's information was very detailed, with a lengthy description of the sequence of events. BMW provided job cards, and these described the repair of the parcel shelf, the later, more substantial repairs in December 2019, and the repair to the multimedia system.*

*Looking at what happened in December 2019, the car was only a year old when extensive repairs were needed. I think the parts involved ought reasonably to have had a longer life span. And I've not seen anything to make me think that Mr A caused or contributed to the faults occurring. So my conclusion is that that the car wasn't of satisfactory quality at the point of supply.*

*Under the CRA Mr A would have been able to reject the car if, after that repair, the car still hadn't conformed to contract. I've thought carefully about what Mr A said about this - that is, that he was experiencing juddering at certain speeds and load conditions.*

*I accept that the job sheets from February 2020 (when the multimedia system was repaired) show that the dealer was unable to replicate the juddering, and as the car has been sold there is no opportunity to commission an expert report. However, the job sheets didn't include any reference to the test drive in January 2020 that Mr A told us about, where he said the BMW technician referred to an additional part that should've been fitted. Nor did they refer to the comparison test drive that Mr A said was promised, but that didn't take place.*

*We asked BMWFS about those two points. In summary, it said it thought the dealer would've wanted to sell any part irrespective of expense, and that the option would have been made to Mr A in writing and noted in a job card or e-mailed to him to show breakdown of costs. Currently it could not find either of those.*

*I've considered what BMWFS said about that. But as the car was only just over a year old, it would still have been under warranty, so I don't think it would've been necessary to give Mr A a breakdown of costs or present the option in writing. And as Mr A said the comparison test drive didn't take place, I can't see that it would've been recorded in a job sheet.*

*Mr A is understandably unhappy with what has happened, and said that his confidence in the car was damaged after the events of November 2019. This was exacerbated by the further repairs required to the multimedia system a few months later. As I've said, Mr A provided a detailed account of events, and I find his account plausible and persuasive.*

*Taking everything into account, I'm not satisfied that the car was durable, or that it conformed to contract after the repairs, so I think Mr A was entitled to reject it. (However as I noted above, Mr A decided to sell the car, and did so in September 2020. The proceeds were less than the amount owed to BMWFS, so he paid the difference.)"*

*I said in my provisional decision that, for the reasons I'd explained, I was minded to uphold Mr A's complaint. As no further information has been provided, and BMWFS has accepted my provisional decision, I have no reason to change my findings or conclusions and therefore I am upholding Mr A's complaint.*

*As Mr A had the use of the car (or a courtesy car) I do not consider I can fairly direct BMWFS to refund the monthly payments Mr A made under the contract. But I consider it fair to require the refund of Mr A's deposit, and the additional amount he had to pay to settle the contract in September 2020.*

## **Putting things right**

BMWFS should:

- Confirm with Mr A the amount he paid by way of deposit and refund it, adding 8% simple interest\* per year from the date he paid it to the date the compensation is paid;

- Confirm with Mr A the amount he received on the sale of the car, and refund the difference between it, and the amount required to settle the agreement, adding 8% simple interest\* per year from the date of settlement to the date the compensation is paid;
- Pay £250 for the inconvenience Mr A experienced due to the faults with the car;
- Remove any adverse information from Mr A's credit file (if any has been added).

\*if BMWFS considers that it is required by HM Revenue & Customs to withhold income tax from that 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 & Customs if appropriate.

### **My final decision**

For the reasons given above, I have decided to uphold Mr A's complaint. BMW Financial Services (GB) Limited should compensate Mr A as I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 August 2022.

Jan Ferrari  
**Ombudsman**