

## **The complaint**

Mr K has complained that he is unhappy with the quality of a car he acquired in March 2022, using a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS").

## **What happened**

Mr K acquired a new Mini in March 2022, using a hire-purchase agreement with BMWFS. The cost of the car was just over £31,000, of which Mr K borrowed £27,100.01 over a term of 48 months with a monthly repayment of £380.69. There would be a final payment of £12,247.85 due if Mr K decided to keep the car at the end of the term.

Mr K first raised concerns with the dealership in early July 2022, reporting intermittent problems with the operation of the parking brake. Mr K took the car to the dealership, but the fault could not be identified. Shortly after this, the problem with the parking brake reoccurred, so Mr K again reported this to the dealership, this time providing video evidence showing the fault happening. The dealership accepted the videos as evidence of a fault and the parking brake switch was replaced.

Mr K collected the car on 21 July 2022, but two days later the issue with the parking brake occurred again. He contacted the dealership and was told to bring the car back in. Mr K said that, that evening, the issue with the parking brake occurred again, but this time the car lurched forward when he had his foot on the brake pedal and prior to this there was a warning light on the dashboard instructing him to apply the brake, even though his foot was firmly on the brake pedal. He took the car back to the dealership the following day, again providing video evidence of the fault, but this time the dealership didn't accept this as sufficient evidence. The car was returned to Mr K, with the dealership advising that they hadn't been able to find or replicate the fault, and therefore no repairs had been done.

After this, Mr K complained to BMWFS, and it issued its final response letter in September 2022. In summary, BMWFS said that it had contacted the dealership, but in the absence of a confirmed fault, it couldn't agree that the car wasn't of satisfactory quality and therefore it would not uphold Mr K's complaint.

Mr K was unhappy with this, and brought his complaint to this service. Our investigator looked into the complaint, and concluded that it should be upheld. BMWFS responded to suggest an independent inspection of the car be carried out, but otherwise did not comment on the investigator's findings, and therefore the investigator referred the complaint for review by an ombudsman. An independent inspection has now been carried out, with the inspector unable to replicate the fault.

## **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 decided to uphold Mr K's complaint. I'll explain why.

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.

Mr K had had the car for just over four months when he first contacted the dealership, so the short-term right to reject doesn't apply here.

Mr K sent in details of the sequence of events, together with copies of email exchanges with the dealership and four videos showing the issue with the parking brake. The dates of the videos (taken from the video file properties) are 19 July (two videos) 26 July and 9 December 2022. BMWFS sent in copies of its records of Mr K's complaint, along with the hire purchase agreement and, later on, the copy of the independent report.

I've carefully considered all of the evidence provided. BMWFS has said that there's no evidence of the fault with the parking brake, so it doesn't agree that the car wasn't of satisfactory quality. And I accept that neither the dealership nor the independent inspector has been able to replicate the fault. However, Mr K has said from the start that the issue was intermittent, so it's not entirely surprising that it may have proved difficult to replicate.

I can see from the independent report that the inspector checked the underside of the rear of the vehicle for any visible damage to the handbrake mechanism, but he said most of it was covered by splash shields, so I don't think that is conclusive.

Set against this is the video evidence provided by Mr K. Two of the videos date from the period after the parking brake switch was replaced, and they clearly show the parking brake not operating correctly, in the same way as in the earlier videos taken before the repair. The dates of the videos are consistent with Mr K's information about the sequence of events, as well as the email exchange with the dealership. I find this evidence persuasive, and therefore it seems to me that there is a fault – albeit intermittent – with the parking brake.

The fault first occurred around four months after Mr K acquired the car. I have limited information about the mileage, but from what I can see from the videos and Mr K's testimony, it is below average. And I've not seen anything to make me think that Mr K has caused or contributed to the fault occurring. So I think it's most likely that the fault was present or developing at the point of supply. I think Mr K ought reasonably to have expected a new car to be free from this type of defect when he acquired it. So my conclusion is that that the car wasn't of satisfactory quality at the point of supply, nor did it conform to contract after the repair, so I think it fair for Mr K to reject it. So I've decided to uphold this complaint.

Although there have been these issues with the car, Mr K has had use of it, and the email exchange with the dealership shows that he had use of a courtesy car when necessary, so I

don't consider it fair to require BMWFS to refund the monthly payments made under the agreement.

However, I do consider it fair to require BMWFS to pay an amount of £200 in recognition of the distress and inconvenience caused to Mr K because of the issue with the car – he has had repeated trips to the dealership and has described how he has limited his use of the car over safety concerns, especially where young children would have been with him.

### **Putting things right**

BMWFS should:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to Mr K.
- Refund Mr K's deposit contribution of £4000, adding 8% simple interest\* per year from the date he paid it to the date the compensation is paid.
- Pay £200 for the inconvenience Mr K experienced due to the fault with the car.
- Remove any adverse information from Mr K'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 K how much it's taken off. It should also give Mr K 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 K's complaint. BMW Financial Services (GB) Limited should pay Mr K the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 September 2023.

Jan Ferrari  
**Ombudsman**