

The complaint

Mr S's complaint relates to a car BMW Financial Services (GB) Limited ("BMWFS") supplied to him under a hire-purchase agreement

What happened

In May 2022 Mr S entered into a hire-purchase agreement under which BMWFS supplied him with a used car. At the time the car in question was around seven years old. On taking delivery Mr S made some adjustments to the car, including fitting a secure tracking device and cherished number plates.

Unfortunately, soon after taking delivery Mr S began to experience problems with the car. He identified a number of things he felt indicated the car wasn't of satisfactory quality, both cosmetically and mechanically. Mr S attempted to get the issues rectified through the dealership, who undertook repairs to the vehicle on several occasions. The dealership provided Mr S with an alternative vehicle for some of the time it was investigating.

Due to ongoing problems with the car Mr S became dissatisfied with the dealership and at the end of August raised his concerns with BMWFS. In doing so he provided a non-exhaustive list of the vehicle defects, expressing his intention to cancel his direct debit and make a manual payment, and that he would reject the car under relevant legislation¹ if it remained not fixed within 30 days.

BMWFS corresponded with the dealership, initially with a view to Mr S rejecting the car. It said it would take back the car and refund some – though not all – of the costs Mr S had incurred. As I understand it, Mr S decided he didn't necessarily want to reject the car at that point, and sought to enter into further negotiation with the dealership based on keeping the vehicle. During October the dealership undertook further work on the car, both in fault diagnosis and repair.

BMWFS issued its final response to Mr S on 4 November. In it, BMWFS said it understood the faults with the car had now been repaired, and as a result it wouldn't agree to rejection. However, in recognition of the problems Mr S had experienced it offered to credit his finance account with £1,000. Around the same time, the dealership said it would send Mr S an additional sum towards cosmetic work on the vehicle trims and provide a warranty extension.

Mr S was unhappy with the response from BMWFS and brought his complaint to us. In the course of our investigation, Mr S has mentioned additional matters he feels are connected to the underlying dispute, including further problems with the car and impairment of his credit file due to missed payments.

Our investigator noted BMWFS had originally indicated it would take back the car, and that there still appeared to be problems with the vehicle. By way of an attempt to mediate a resolution, BMWFS made a revised settlement offer. It said it would collect the car from Mr S

¹ Mr S's claim is in the main founded on terms implied into his hire-purchase agreement under Chapter 2 of the Consumer Rights Act 2015.

and settle the remaining finance without seeking any further payments from Mr S (at this time, he'd made three of the monthly payments). BMWFS added that it would clear any adverse payment data from Mr S's credit file and pay him £300 in recognition of his inconvenience.

Mr S didn't accept this proposal. He thought he should be refunded the monthly payments he had made, given the minimal use he'd had of the car. He said he'd previously been told BMWFS would refund these amounts, and that he should also get back the additional costs he'd incurred, including the tracker, insurance, vehicle duty and the number plate transfer. Our investigator approached BMWFS, who was unwilling to change its offer.

Following further submissions from Mr S about his limited use of the car and the impact of the missed payments on his ability to obtain finance for another vehicle, our investigator set out her recommendations as to how she felt matters would be best resolved. She proposed that BMWFS carry out the actions it had proposed, but in addition that (subject to evidence) it should refund – with interest – two of the three payments Mr S had made towards the agreement as well as the following costs:

- the number plate transfers
- the vehicle tracker and trickle charger
- the MOT
- the insurance premiums and vehicle duty from October 2022 (being the point at which she felt BMWFS should have accepted return of the car) to date

BMWFS was willing to agree to some of the investigator's recommendations. But it disputed that it should refund the number plate transfer costs, as it said Mr S hadn't told it he'd changed the vehicle in this way. Mr S has disputed this. BMWFS also queried the refunds of the monthly payments, the car insurance and vehicle duty. It considers that Mr S should pay these for the period he was in possession of the car.

As Mr S isn't willing to accept BMWFS's further revised proposal, and BMWFS hasn't accepted the remedy proposed by our investigator, the matter has been passed to me for review and determination. I understand that Mr S has expressed the intention to instigate legal proceedings in the event that the dispute remains unresolved.

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.

Having done so, I'm satisfied the investigator's proposal is an appropriate way to resolve Mr S's complaint. I'll explain why.

Mr S has, on the face of it, presented a clear case that the car wasn't of satisfactory quality, taking into account relevant factors such as its age and the price. I find his version of events is credible and persuasive. As the supplier of the car under the hire-purchase agreement, BMWFS is responsible for supplying a car of satisfactory quality in accordance with the Consumer Rights Act 2015, which incorporates this requirement into the contract between the parties. BMWFS appears to have accepted that the car didn't meet the required standard, though for the avoidance of any doubt that is the view I have taken here.

The remaining question is how BMWFS should address this breach of contract. The attempts at repairing the faults with the car haven't fully addressed the problems, and the parties accept that Mr S can reject the car and the hire-purchase agreement be brought to

an end. The car will be collected at no cost to Mr S. That seems to me a sensible way forward. There's little doubt that Mr S has been inconvenienced by the problems he experienced and it seems fair to me that BMWFS pays him compensation in recognition of this. The £300 the investigator suggested is in my view appropriate for this.

Mr S has expressed concern over missed payment information reported on his credit file. BMWFS has agreed to remove adverse information recorded in relation to the agreement. I think that's only right. Once this is done, Mr S should find his credit position has been restored and he will be at liberty to apply for future credit.

BMWFS has said it will meet the cost of the secure tracker, the trickle charger and the MOT Mr S paid for, subject to evidence of costs. These all appear to be costs associated with the acquisition of the car, and as such can be claimed by Mr S as damages arising from the breach. As BMWFS has agreed to pay these, they should be included in the settlement.

The key issue is those costs that Mr S has claimed that BMWFS has said it's not willing to meet. The first of these is the finance repayments. I understand why Mr S believes he should be refunded all of these payments. But I'm not persuaded that would necessarily be the outcome should the matter go to court. Although Mr S's use of the car has undoubtedly been impaired, he has had some use of it.

Our investigator felt that a suitable way to reflect that impaired use would be for BMWFS to refund two of Mr S's three payments. While I appreciate BMWFS holds the view that Mr S has had possession of the vehicle, the position it has taken wouldn't adequately reflect the limited use he has been able to make of it. I therefore take the view that a refund of two months' payments is appropriate.

I share BMWFS's view of the insurance and vehicle duty costs, in that they are costs associated with possession and use – however limited – of a car. That said, had BMWFS agreed rejection in October 2022 as its correspondence with the dealer indicates it was looking to do, Mr S would not have incurred any further charges for these matters. Any such costs from October 2022 are attributable to the failure to agree rejection of the car and so I consider that they represent a loss BMWFS should cover from that point.

That leaves the matter of the number plate transfer costs. I can see why BMWFS feels this is something Mr S should have brought to its attention. While Mr S says he did so, I must acknowledge that there is nothing in the record to demonstrate that this was something BMWFS was made aware of at the point of supply. But I would also question whether the position would be any different had there been such evidence. I can't see that this would have materially affected BMWFS's agreement with Mr S, or that the costs in question are unreasonable in light of what happened. With this in mind, I find it would be reasonable for BMWFS to pay the transfer cost as our investigator recommended.

BMWFS hasn't commented on the recommendation that it pays interest on the refunds. I think there is an arguable case for interest to be applied to the refunds for the two payments under the hire-purchase agreement, and for the insurance and vehicle duty costs from October 2022. I don't think the same necessarily follows for the other costs, and so I'm not awarding interest in respect of those elements.

I would also make a couple of further observations. First, I'm conscious Mr S has further arguments and concerns over matters he considers are inextricably connected with the underlying claim. I'm under no obligation to offer an opinion as to whether those arguments would be successful in a court of law, should Mr S seek to pursue his claim there, or to reach the same conclusion as might be reached there. While I've considered all that he's said, it is entirely possible that BMWFS could successfully argue against at least some aspects of his

claim in damages. My decision is based on what I consider a fair and reasonable way to resolve matters as an informal alternative to the court.

Second, there has been some confusion that has arisen from the fact Mr S was corresponding with the dealership at the same time as his early negotiations with BMWFS. One of the points to note in this respect is the offer from the dealership that I mentioned in the background section of this decision. Mr S says he didn't accept that offer, which was in excess of £2,000. Although I note Mr S has said that was as an issue separate and distinct from his claim to BMWFS, the correspondence with the dealership does speak to an issue over the cosmetic appearance of the car. It was proposed to address costs Mr S would incur for remedial work to address an issue of the car's quality.

On the basis that Mr S says he didn't accept that proposal, and noting he is exercising the right to reject the car, I have assumed he didn't undertake the remedial work in question. Should the basis for this assumption prove to be incorrect, the redress I have proposed can need to be amended to take into account any such money Mr S has already received as compensation for matters connected with the breach of contract.

My final decision

For the reasons I've explained here, my final decision is that I uphold Mr S's complaint. To settle the complaint, BMW Financial Services (GB) Limited should take the following steps within 28 days of Mr S accepting this decision:

1. clear Mr S's hire-purchase agreement with an effective date of 1 October 2022, and arrange to collect the car at no additional cost to Mr S
2. amend Mr S's credit file to show the account as fully settled on 1 October 2022, with no missed or late payments recorded
3. pay Mr S £3,611.48, representing the sum of two of the payments he made towards the hire-purchase agreement.
4. reimburse Mr S's insurance and vehicle duty costs, subject to him evidencing the costs he's incurred
5. The payments in 3. and 4. should be backdated to 1 October 2022 and BMWFS should pay interest on the total at 8% simple per year from that date until the date BMWFS settles the complaint. I've assessed this at the rate the courts use where – as here – a party's been deprived of the use of their money. If BMWFS deducts tax on this interest, it should provide Mr S with an appropriate tax certificate
6. reimburse the costs Mr S can evidence he incurred for the number plate transfer, secure tracker, trickle charger and MOT
7. pay Mr S £300 for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 August 2023.

Niall Taylor
Ombudsman