

## The complaint

Mr E is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited ('BMWFS') was of an unsatisfactory quality. He was also unhappy about the terms of the agreement he signed, including the interest rate, payments, and the Guaranteed Minimum Future Value ('GMFV').

## What happened

In April 2017, Mr E was supplied with a new car through a hire purchase agreement with BMWFS. He paid an advance payment of £25,000 and the agreement was for £70,500 over 48 months; with 47 monthly payments of £692.07 and a final payment of £42,036.55. Mr E was charged an interest rate of 1.8% a year.

Mr E says that he complained about issues with the car from when it was supplied to him, and the supplying dealership were given the opportunity to put things right. However, after attempts to repair the car failed, he instructed solicitors. Mr E advised the dealership in November 2018 that he wanted to reject the car. However, rejection wasn't accepted by the dealership, and they never collected the car.

Mr E's solicitors contacted BMWFS in February 2019, explaining what had happened, and asking for the car to be rejected with a full refund of all payments made. In response to this, BMWFS didn't agree that the car was of an unsatisfactory quality when it was supplied, and they said there was no evidence i.e., a report from an independent expert, to show this was the case. Notwithstanding this, in December 2020, BMWFS offered to allow Mr E to return the car and receive a refund of the deposit he'd paid. This offer was never accepted.

Also in 2020, Mr E's income was affected by the coronavirus (Covid-19) pandemic, and BMWFS agreed a three-month payment deferral (also known as a payment holiday). This had the effect of increasing the remaining monthly payments by £22.82, to £714.89. The term of the agreement was also increased by three-months.

Mr E continued to have possession of the car, and it was available for him to use, until the extended agreement ended in June 2021. At this point Mr E chose not to pay the final payment and take ownership of the car, but instead he returned the car to BMWFS.

Mr E complained to BMWFS on 17 August 2023 about the quality of the car, that he was charged an interest rate of 1.8% when he'd been quoted 0%, that he was told the payments would be £700 a month but he was charged £790 a month; and that he wasn't told the value of the car when it was collected, which meant he'd lost out on £20,000 he was owed. Mr E also made a complaint about commission payments, but this is being dealt with separately.

BMWFS responded to this complaint on 3 October 2023, addressing the interest rate and payment complaints only. Unhappy with this, Mr E brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said they'd seen evidence of the faults with the car, and that it had been returned to the dealership in September 2017 for repair. However, the repair was

unsuccessful, and the faults remained. As this was a brand-new car, the investigator said that the faults made the car of an unsatisfactory quality when it was supplied.

As the agreement reached the end of its term, and the car was returned to BMWFS, the investigator said that rejection was no longer an option. So, they said that BMWFS should refund two payments to Mr E – to account for the periods the car was being repaired by the dealership and Mr E wasn't provided with a courtesy car – as well as refund 20% of the remaining monthly payments made by Mr E to account for his impaired usage of the car while it was in his possession. The investigator also said that BMWFS should pay Mr E £750 compensation for the distress and inconvenience he'd suffered.

With regards to the interest rate, the investigator said that Mr E had initially been quoted on a 0% deal, but this quote expired before he took the deal. And he was reoffered a deal at 1.8% which he accepted. This, along with the payments Mr E was required to make, were all clearly detailed on the agreement he signed. As such, the investigator didn't think that the agreement had been mis-sold to Mr E.

Finally, the investigator said that the GMFV only applied if the car was part-exchanged at the end of the agreement, or if Mr E chose to make the final payment. It didn't apply if the car was returned to BMWFS, and so Mr E wasn't entitled to the difference between the GMFV and what BMWFS sold the car for.

The investigator said this was clearly stated within the paperwork supplied to Mr E at the start of the agreement, as well as in an email of 13 January 2017. So, even though an email from the dealership dated 14 January 2017 briefly implied a potential cash back scenario, this wasn't enough for Mr E to reasonably believe he would receive the difference between the GMFV and sale price if he handed the car back. So, the investigator didn't think BMWFS needed to do anything more about this.

BMWFS didn't agree with the investigator's opinion. They didn't think we could consider Mr E's complaint about the issues with the car, as it was first raised with the dealership in 2017, and with them in 2019; especially as Mr E chose to continue to keep the car, but not use it.

BMWFS also didn't agree with the recommendations for returning the two monthly payments, refunding 20% of the remaining payments, and that the £750 compensation "*is also quite high.*"

Mr E also didn't agree with the investigator's opinion. He said that the car was rejected, but BMWFS failed to collect it, wasting so much time that the agreement naturally came to an end. He said that he wasn't able to use the car as the electrics would go off while driving, making it extremely dangerous, which is why he chose not to use the car. So, he didn't think a refund of 20% of the payments he'd made was fair. Mr E said that, had BMWFS collected the car when it was rejected, he wouldn't have had to make any further payments, so he felt these should be refunded in full.

Mr E also said that, if the car wasn't of an unsatisfactory quality when supplied, he would've been able to sell it for around £67,000 at the end of the agreement, but the faults deprived him of this option. He also said he was told the car would be worth more than the GMFV of £42,036.55. So, he feels he lost out by around £25,000, which he thinks BMWFS should refund to him.

Because neither party agreed with the investigator's opinion, this matter has been passed to me to make a 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr E was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMWFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMWFS can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr E to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr E took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMWFS to put this right.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here. BMWFS have said that we're unable to consider the quality of goods issue, as Mr E was aware of this in 2017, when he first raised the issue to the dealership.

Mr E first raised this matter with BMWFS in 2019, which is within six-years of when the issues with the car first arose. When BMWFS dealt with this matter in 2019 and 2020, they chose to do so through their solicitors, and not do so directly. Crucially, this has meant that they never issued a final response to this complaint, nor were these issues addressed within their final complaint response letter in October 2023. While Mr E would only have six-months from the date of the final complaint response letter (about the issues with the car) to bring this matter to us; as BMWFS have failed to issue such a letter, Mr E isn't excluded from raising the matter with us. And it falls within our jurisdiction to consider.

### *Quality issues with the car*

Mr E was supplied with a brand-new car that had a cash price of £95,560. Given this, I think any reasonable person would expect the car to be without any issues, and free from any defects (cosmetic or otherwise) for some considerable period of time.

I've seen a copy of the independent engineer's report dated 11 February 2020, relating to an inspection on the car that took place on 14 January 2020. While this is a comprehensive report that refers to emails between Mr E and the dealership in depth, the engineer only concludes there are some primary and secondary faults with the car that are still present. What the engineer doesn't do is state whether these faults made the car of an unsatisfactory quality when it was supplied.

As such, I've considered the emails between Mr E and the dealership to draw these conclusions. These emails also include photographic evidence of the issues with the car.

Shortly after Mr E took possession of the car in late April 2017, he raised issues with the supplying dealership about damage to the bumper, damage to the seats (a bulge and an issue with the leather), and an issue with the passenger door. The car went in for repair on 18 July 2017 and wasn't returned to Mr E until 22 August 2017. It's my understanding that he was not provided with a courtesy car during this period.

When the car was returned to Mr E, he was unhappy because the trim had been damaged, the original key wasn't working, and the issue with the seats remained. The car went back to the dealership for repair in September 2017 and wasn't returned to Mr E until October 2017. Again, no courtesy car was provided. However, it was returned with damage to the interior, the key still not working, and the issue with the seats remaining.

Mr E has said that, after the car was returned to him a second time, the reversing camera, radio, and USB socket didn't work; the fuel filler cap wouldn't open without using the manual release in the boot; there had been poor quality paint repairs to the bumper; and the centre console electrics intermittently kept going off. As I've said, the independent engineer confirmed this within their report, with the exception of the manual fuel filler cap which the engineer said was "*overlooked ... during my inspection.*"

So, based on the evidence I've seen, I'm satisfied there were issues with the car that remain unrepaired, despite several attempts. Given this was a high-end brand-new car, I'm satisfied that the issues Mr E suffered made the car of an unsatisfactory quality at the point of supply for the reasons already given - any reasonable person would expect the car to be without any issues, and free from any defects (cosmetic or otherwise) for some considerable period of time.

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for BMWFS – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is also clear that, if the single chance at repair fails, then Mr E has the right of rejection. However, this doesn't mean that Mr E is required to reject the car, and he can agree an alternative remedy i.e., further repairs to the car.

The single chance of repair failed, as did the agreed further attempt to fix the car. What's more, the car was left with issues that would've impaired Mr E's use and enjoyment of the car. As such, I think BMWFS need to do something to put things right.

### Interest Rate and Payments

I've seen that Mr E originally obtained a quote for the finance on 13 December 2016. This quote is for a combined £25,600 advance payment, with payments at £770 a month over 48 months, an interest rate at 0%, and a GMFV of 42,795.

However, the quote Mr E received on 14 January 2017 was for a £10,000 deposit, 47 monthly payments of £677.89, an interest rate of 1.8%, and a GMFV (balancing balloon payment) of £41,228.18.

The agreement itself ended up with a total £25,060 advance payment, 47 monthly payments of £692.07, an interest rate of 1.8%, and a GMFV (balancing balloon payment) of £42,036.55.

Finally, the end of payment deferral letter, dated 17 August 2020, confirmed that the agreement would be extended by three months, and the monthly payment increased by £22.82 to £714.89.

Based on what I've seen, I'm satisfied that Mr E was exploring his options about the finance in late December 2016 / early January 2017, and he was provided with different options relating to interest rates, payments, and GMFVs. I've seen nothing to show me that Mr E was offered a 0% interest rate with payments of £700 a month, only for him to find that the agreement had been set up at an interest rate of 1.8% with payments of £790 a month. Nor have I seen anything to show me that Mr E was offered the terms stated on the agreement, except with a 0% interest rate.

Mr E was clearly advised of the terms of the agreement, including the interest rate and payments, and due to the time between the agreement being signed (January 2017) and the car being provided (April 2017), he had sufficient opportunity to query anything he believed was incorrect – which he didn't.

Given this, I'm not satisfied that the agreement was mis-sold.

### GMFV

I've seen the email from the dealership dated 14 January 2027, which says "*this is the way to go 100%. This would see a 16500 cash back scenario for you.*" While the full context of this comment can't be determined from this email alone, and the other emails in the email trail haven't been provided; I have noted this was sent at the time Mr E was finalising the finance. The email also refers to servicing and ordering the car.

As I've said above, Mr E was quoted a finance deal with a £15,000 customer deposit (as part of a £25,600 total advance payment)

Given this, I'm satisfied that it's most likely the reference to £16,500 cash back relates to the deposit Mr E was putting down i.e., the amount he would receive in part-exchange for his existing car, rather than a guaranteed cash back difference between the GMFV and a future sale price of the car. As such, I'm not satisfied this is evidence that Mr E was told he would receive the difference between the sale price of the car and the GMFV, were he to hand back the car at the end of the agreement.

As such, I've considered what the agreement actually says about the GMFV. It says that, at the end of the agreement Mr E can pay the optional final payment (the GMFV) and keep the car, pay all the sums owing under the agreement (which would include the GMFV) and part-exchange the car, or hand back the car without the need to pay the GMFV. The third option is the one Mr E took. However, the agreement does not say that, if Mr E hands back the car,

he would be entitled to the difference between the eventual sale price of the car and the GMFV (or be liable for any loss if the eventual sale price were to be less than the GMFV).

As such, I'm not satisfied that the agreement was mis-represented to Mr E regarding the GMFV.

However, I've also considered Mr E's comments that, due to the faults with the car, he was denied the opportunity to sell the car at the end of the agreement and profit from the difference between the sale price and the GMFV – which he believes would have been £24,888.

However, the agreement is clear that, if Mr E wanted to sell or part-exchange the car at the end of the agreement, *“you can do this by paying all sums due under the agreement. You will then become the owner of the Vehicle and may part-exchange [or sell] it.”* As such, it's clear that Mr E would be unable to sell the car until he'd paid the £42,036.55 GMFV/optional final payment to BMWFS and had the ownership of the car transferred to him.

While Mr E may've wanted to sell the car at the end of the agreement, to profit from the difference between the sale price and GMFV, I haven't seen anything to show me that he was in a position to pay BMWFS the £42,036.55 required to allow him to take this option. As such, I'm not satisfied that there was ever a sum that Mr E was actually able to profit from. And, given this, I don't think the faults with the car stopped Mr E from being able to purchase it from BMWFS, and look to sell it at a profit.

So, I don't think BMWFS need to do anything more regarding this.

### **Putting things right**

As I've explained above, as the attempts to repair the car have failed, and the faults remain, Mr E had the right to reject the car. While Mr E has said that the dealership agreed to rejection, I haven't seen anything to show me this was the case. In February 2019, BMWFS confirmed in writing to Mr E that they didn't accept rejection and asked for an independent engineer's report before this could be considered. While the car wasn't inspected by an independent engineer until January 2020, it wasn't until December 2020 – almost a year later – that BMWFS offered Mr E the opportunity to reject the car. However, Mr E didn't accept this offer, because he also wanted a payment refund, and instead continued to keep the car until the agreement ended in June 2021 – about six months later – when it was handed back to BMWFS.

Given this, while Mr E has referred to both the dealership and BMWFS failing to collect the car after rejection, as he never accepted their offer to allow him to reject the car, I wouldn't expect BMWFS to arrange for collection, and the payments would continue to fall due.

The car was with the dealership for repairs for around a month in July/August 2017, and again for a further month in September/October 2017. During this period, Mr E wasn't supplied with a courtesy car. As such, he was paying for goods he was unable to use. For the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as BMWFS failed to keep Mr E mobile; I'm satisfied they should refund the payments he made during this period.

As well as the issues with the seats, paintwork, and fuel filler cap, Mr E has also explained that he had electrical issues with the car, including certain things not working and the centre console going off intermittently. And he's said he chose not to use the car because of these issues. While I accept these problems with the car would've meant his use and enjoyment of the car would've been impaired, importantly the independent engineer doesn't say that the

car was undrivable due to these issues, that it was recommended that Mr E didn't drive the car due to these issues, or that it was dangerous to drive the car due to these issues.

As such, I'm not satisfied that the electrical issues with the car meant that Mr E wasn't able to drive the car, only that any usage of the car would be impaired. As with any car, it's always the choice of the driver when and where it's used or not, so Mr E's decision to stop using the car doesn't mean that the car wasn't still available for him to use. So, I disagree that Mr E should be refunded the full payments he's made towards the car.

Instead, I think it's fair BMWFS refund some of the payments Mr E made. And I think 20% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality, especially given the issues with the electrics and fuel filler cap. As these issues didn't manifest themselves until the car was returned following the second repair attempt, this refund should only apply to the payments made from October 2017 onwards.

Finally, it's clear that Mr E was severely inconvenienced by what happened, including (but not limited to), having to arrange for the car to be repaired on more than one occasion, and these repairs being unsuccessful; having to wait almost a year after the car was inspected by the independent engineer before BMWFS offered him his right to reject; and having to pay for and drive a car for almost the full term of the agreement that loses electrics unexpectedly. So, I think BMWFS should compensate him for this. The investigator had recommended BMWFS pay him £750, which is in line with what I would've directed for this significant inconvenience had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, BMWFS should:

- refund the payments Mr E paid in July 2017 and September 2017, to compensate him for the time the car was with the supplying dealership for repair and no courtesy car was provided;
- refund 20% of the payments Mr E paid from October 2017 until the agreement ended, to compensate him for his impaired use and enjoyment of the car;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr E made the payment to the date of the refund<sup>†</sup>; and
- pay Mr E an additional £750 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If HM Revenue & Customs requires BMWFS to take off tax from this interest, BMWFS must give Mr E a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr E's complaint about BMW Financial Services (GB) Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 3 September 2024.

Andrew Burford  
**Ombudsman**