

The complaint

Mr S complains about the quality of a car he was supplied under a hire purchase agreement (agreement) with BMW Financial Services(GB) Limited trading as BMW Financial Services (“BMWFS”).

What happened

In October 2019 Mr S entered into an agreement with BMWFS for a new car (sold by a dealership that I will call “B”) costing £41,375.71. Under the terms of the agreement, everything else being equal, Mr S undertook to make an advance payment of £9,124.71 followed by 47 monthly payments of £450.23 and 1 monthly payment of £15,732.54 making a total repayable of £46,018.06 at an APR of 4.9%.

The advance payment can be broken down as follows:

• trade in	£32,000.00
• agreement settlement	(£29,445.77)
• cash deposit (Mr S)	£5,070.48
• deposit allowance (dealership)	£1,500.00
• total	£9,124.71

Between November 2019 and September 2022 Mr S says the car had to be returned to B on several occasions for repairs.

On 28 October 2022 the car was returned to B for a new steering rack to be supplied and fitted.

On 17 February 2023 Mr S contacted BMWFS to complain about the quality of the car it had supplied him.

Between 19 February 2023 and 6 March 2023 Mr S contacted BMWFS on a number of occasions to reject the car it had supplied him.

On 6 March 2023 B confirmed that it was still waiting delivery of a new steering rack for the car.

On 28 March 2023 BMWFS issued Mr S with a final response letter (“FRL”). Under cover of this FRL BMWFS said it wasn’t upholding Mr S’ complaint.

On 29 March 2023 the car was returned to Mr S by B fully repaired.

In April 2023 Mr S entered into an agreement with BMWFS for a used car costing £55,179.00 (sold by a dealership that I will call "C"). Under the terms of the agreement, everything else being equal, Mr S undertook to make an advance payment of £9,883.49 followed by 48 monthly payments of £628.50 and 1 monthly payment of £24,808.01 making a total repayable of £64,859.59 at an APR of 6.9%.

The advance payment can be broken down as follows:

• trade in	£26,000.00
• agreement settlement	(£18,116.51)
• cash deposit (Mr S)	£2,000.00
• total	£9,883.49

On 22 April 2023 BMWFS issued Mr S with a letter of discharge confirming that he no longer had any obligations under the agreement subject to this complaint.

On 16 June 2023 Mr S complained to our service.

On 4 September 2023 Mr S confirmed to our service that he had been refunded the £2,000.00 cash deposit he had paid C for the (second) car.

On 15 September 2023 one of our investigators issued both parties with their view on Mr S' complaint. In summary they upheld Mr S' complaint and said that to fairly and reasonably compensate him BMWFS should pay £3,070 plus interest.

Mr S accepted the investigator's view but BMWFS didn't respond to it.

On 6 December 2023 Mr S settled the second agreement with BMWFS.

On 12 December 2023 BMWFS issued Mr S with a letter of discharge confirming that he no longer had any obligations under the second agreement.

Because BMWFS didn't respond to the investigator's view Mr S' complaint was passed to me for review and decision.

In May 2023 I issued a provisional decision on this case. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BMWFS is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 ("CRA") is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

BMWFS supplied Mr S with a brand new car. It's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used free from defects for a considerable period.

BMWFS says that Mr S being in possession of the car for three years before the steering rack failed would indicate that the car wasn't faulty at the point of sale. However, it's important to note the CRA points to durability being a factor in determining if goods are of satisfactory quality. So even if parts don't fail right away, if they fail prematurely (considering the reasonable expectations in the circumstances) this might indicate there was already a problem when the car was supplied. Particularly if those parts are major components of the car (for example those relating to the steering).

I've considered if the issue with the steering rack made the car of unsatisfactory quality. I note that the car was bought new for a high cost and that B undertook to supply and fit a new steering rack, and went on to do so, at no cost to Mr S. I also note there hasn't been any suggestion that Mr S had misused the car or that the issue with the steering rack was down to reasonable wear and tear.

Furthermore, when considering if the car was of satisfactory quality at the point of sale I note that the steering rack issue hasn't been the only thing that has gone wrong. While some things will possibly be down to general wear and tear I note for example that the car required repairs to the windows and sunroof shortly after Mr S acquired it – which seems premature for a brand new car and also indicates that it wasn't of satisfactory quality at the point of sale.

Because of when the issue with the steering rack came to light, BMWFS says Mr S needed to provide more evidence to prove the car wasn't of satisfactory quality when it was supplied. It refers to the 'burden of proof' as set out in the CRA.

I've carefully considered what BMWFS has said, but I don't think it was fair for it to have asked Mr S to provide more evidence. In my view I've enough evidence to persuade me that the car was likely not of satisfactory quality when it was supplied.

As I've concluded that the car was likely not of satisfactory quality at the point of supply I have looked to what would be a fair remedy here. In doing so I've considered the provisions of the CRA.

I note that before the steering rack had been replaced Mr S, in February and March 2023, requested rejection of the car. He appeared to be completely fed up with being without it for four months or more. However, BMWFS wouldn't allow Mr S to do so. I don't think that was fair and reasonable considering what had occurred here and the relevant law.

I would also add that even if I was to accept that by returning the car to B in October 2022, for the supply and fit of a new steering rack, Mr S in essence accepted a repair (rather than say another available remedy/outcome) I would remind BMWFS that the CRA states that where a consumer accepts a repair that repair should be undertaken “within a reasonable time and without significant inconvenience to the consumer”. And in the particular circumstances of this case I’m satisfied this isn’t what happened.

So I consider Mr S had a right to reject in March 2023 and was denied this unfairly. But as both parties are aware this is no longer an option given that Mr S part exchanged the car (and settled the agreement) in April 2023.

Had I been able to make a decision on this case prior to Mr S part exchanging the car I would have directed BMWFS to:

- end the agreement with no further liability to Mr S in respect of future monthly payments*
- collect the car at no cost to Mr S*
- refund to Mr S the advance payment he made of £7,624.71*
- pay Mr S interest on the above sum of £7,624.17 at 8% a year simple from the date of payment to the date of settlement*
- pay Mr S £1,629* for the additional and reasonable costs he incurred as a result of being in one or more courtesy cars, rather than his own, for five months*
- pay Mr S £500 for the distress and inconvenience this whole matter had caused him*

** £194 and £150 additional courtesy car insurance, £600 residential car parking, £285 additional travelling costs and £400 additional fuel*

Assuming BMWFS would have deducted tax from the 8% a year simple interest (as required by HMRC) and assuming payment was made by BMWFS on 31 March 2023 the above direction would have resulted in Mr S receiving £11,400 (rounded to the nearest £100).

Now when Mr S part exchanged the car he received £7,900 (rounded to the nearest £100). This means that immediately after part exchanging the car Mr S was £3,500 worse off than he would have been had BMWFS allowed rejection of the car and paid him £11,400.

However, this isn’t the end of the matter. This is because at the end of August 2023 Mr S received £2,000 for having been supplied with a car that was of unsatisfactory quality. This means that immediately after receiving this sum Mr S was £1,500 worse off than he would have been had BMWFS allowed rejection and paid him £11,400.

So with the above in mind I find that to fairly and reasonably compensate Mr S BMWFS should have to pay him:

- £1,500 being the capital sum Mr S is worse off by as a result of BMWFS not allowing rejection of the car and by it not paying him (on 31 March 2023) the sum of £11,400*
- interest on the sum of £3,500 at 8% simple a year* from the 1 April 2023 to 31 August 2023*

- *interest on the sum of £1,500 at 8% simple a year* from the 1 September 2023 to the date of settlement*

**HMRC requires BMW Financial Services(GB) Limited trading as BMW Financial Services to take off tax from this interest. If Mr S asks for a certificate showing how much tax has been taken off this should be provided.*

Mr S responded to my provisional findings to say that he lost a lot of money on the car he purchased in April 2023 and sold on in December 2023.

BMWFS acknowledged receipt of my provisional findings but didn't provide anything new for my consideration by the date I gave for it to do so.

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 accept that Mr S may have lost money on the car he purchased in April 2023 and sold on in December 2023. But like Mr S appears to accept, I'm simply not persuaded that this is material or relevant to my consideration of this complaint.

Given what I say above and given that BMWFS hasn't provided anything new for my consideration I can confirm I see no reason to depart from my provisional findings and I now confirm them as final.

My final decision

My final decision is that I uphold this complaint and find that BMW Financial Services (GB) Limited trading as BMW Financial Services must pay Mr S:

- £1,500 being the capital sum Mr S is worse off by as a result of BMWFS not allowing rejection of the car and by it not paying him (on 31 March 2023) the sum of £11,400
- interest on the sum of £3,500 at 8% simple a year* from the 1 April 2023 to 31 August 2023
- interest on the sum of £1,500 at 8% simple a year* from the 1 September 2023 to the date of settlement

**HMRC requires BMW Financial Services(GB) Limited trading as BMW Financial Services to take off tax from this interest. If Mr S asks for a certificate showing how much tax has been taken off this should be provided.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 July 2024.

Peter Cook
Ombudsman