

## **The complaint**

Mr R complains about a car supplied to him using a hire purchase agreement taken out with BMW Financial Services(GB) Limited ("BMWFS").

## **What happened**

In January 2023, Mr R acquired an almost new car using a hire purchase agreement with BMWFS. The car was less than six months old, the cash price of the car recorded on the agreement was £66,000, the agreement was for 48 months, made up of 47 regular, monthly repayments of £492.47, followed by an optional final payment of £35,074.60. The advance payment recorded on the agreement was £17,430.23. The mileage of the car recorded on the agreement was 2,099 miles and the agreement had an annual permitted mileage of 8,000 miles (maximum total mileage of the car to be 34,099 miles).

At around the end of November 2023, Mr R noticed a rattle coming from the rear of the car. Mr R took the car to the manufacturer's dealership and during a road test, several rattles were heard. The supplying dealership partially stripped the interior and identified rattles coming from the interior trims as well as the parcel shelf. The dealership said these issues were eventually rectified and Mr R collected the car. Mr R was given a courtesy car while his car was being repaired.

Mr R said his car was returned to him on 5 February 2024, and within 48 hours he noticed another issue with it. He said the back window had significant condensation on it and when he looked into the boot, he felt the fabric was damp.

The following week, a water test was carried out to the car by the manufacturer's dealership to identify how water was entering it. The dealership identified a foreign body in the roof channel where the boot seal met the roof. Some damp trims were also later replaced, and the car was water tested again over several days. The supplying dealership said that they were unable to fault the car at the time for water ingress.

Mr R said he had received the car back on 26 February 2024 and believed the condensation on the windows persisted and so did the rattle. Mr R took photos of the car which showed all the windows had a layer of condensation on them, including the glass panoramic roof. Mr R wished to reject the car.

Mr R said the car was uplifted to the supplying dealership on 7 March 2024 and he was given another courtesy car. Mr R said that since the car first went in for repairs on 28 November 2023, he only had use of his acquired car for around 12 days.

In April 2024, Mr R referred his complaint to our service as he didn't receive a final response from BMWFS within eight weeks.

BMWFS eventually provided their final response to Mr R. In summary, they said that Mr R couldn't reject the car as it couldn't be determined that there was a fault with it. They also said that the supplying dealership agreed to reimburse Mr R the equivalent of four monthly repayments made (£1,969.88) to recognise the issues experienced with the car, which had

been applied to his account. BMWFS also offered £150 as a gesture of goodwill which they said had yet to be accepted by Mr R.

Mr R remained unhappy and explained that he still thought there was an issue with the condensation forming in the car and the rattle issue hadn't been resolved.

Our investigator upheld Mr R's complaint and thought he could reject the car. Our investigator explained that she had previously asked BMWFS for job sheets for all the various repairs and diagnostics carried out to the car since November 2023, and they hadn't been supplied. But from all other correspondence she had seen, as well as Mr R's testimony, she was persuaded that there was a fault with the car which occurred intermittently. And she thought the car wasn't reasonably durable. As BMWFS had opportunities to repair the car but they seem to have failed, our investigator thought Mr R should be able to reject it.

Mr R accepted the investigator's view, but BMWFS didn't respond. So the complaint was referred to an ombudsman to decide.

Over the next few weeks, Mr R later informed our service of further issues he experienced with the car. He said there was an issue relating to the:

- front passenger seat. Mr R provided photos to show there was a warning appearing on the car's central display that said the front passenger restraint system was restricted.
- car's stabilisation system. Mr R provided another photo of the car's central display, which said, "*driving stabilisation restricted...*". The car at the time had been driven 13,368 miles.
- car's GPS system. Mr R said the car was showing its location to be in a different place to where it was both in the car's navigation system and on the car's corresponding mobile app.

Mr R provided job sheets for works carried out in October 2024, and explained the car also needed to be taken in for a safety recall. The mileage of the car recorded on one of the job sheets was 15,520 miles.

BMWFS eventually responded to the investigator's view and provided job sheets for works carried out to the rattling noise and the water ingress investigation. They didn't think it showed there was a fault with the car and they said that Mr R had been able to complete mileage in the car in line with their agreement.

Our investigator responded and said her opinion hadn't changed. In summary, she said that from the job sheets it was clear the car had been in and out for repairs for the same issues, which kept recurring. And she said she hadn't seen enough to suggest the car was durable, especially considering its age and price.

Again, over the next few weeks and months, Mr R kept our service updated with further issues he said he noticed. Mr R said:

- in November 2024, the car's central screen displayed a warning suggesting there was a problem with its energy management. Mr R supplied a photo of this warning.
- as the winter months came back, the car had a lot of condensation inside, which led to a musty smell in the car getting worse.
- there were still continuous rattles while driving.

Mr R's car was taken back to the dealership to be investigated in January 2025. When it was returned, Mr R said the main driving display screen intermittently turned off and he said he was told by the dealership that it could be a larger electrical issue with the car, due to the moisture. A job sheet for repairs in February 2025 recorded the mileage of the car as 17,644 miles. The job sheet explained that the control unit for the central display system had been replaced.

Mr R explained he still needed to take the car back to the dealership again due to an intermittent fault previously identified with the parking sensors. Mr R later informed our service that the car needed to be left with the dealership as they needed further support from a senior technical team.

In March 2025, Mr R informed our service that the car was being investigated again as they couldn't resolve the issues with the screens turning off in the car. And he said they were intending to investigate the rattles still coming from the car.

Our investigator contacted the dealership where the car was held and was being repaired, so that she could obtain more up to date information on the status of it. The dealership responded and explained the rattles with the car were still present. A video was supplied of the car being driven where persistent creaking noises could be heard. The repairing dealership also said they had attempted repairs on the car on several occasions previously due to an electrical issue, and also needed support from a senior technician in relation to it, as the car wouldn't store faults.

### **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 uphold this complaint and I'll explain why below.

First of all, I would like to express my condolences to Mr R on the passing of his wife. I do appreciate that dealing with this issue must have been difficult and I want to reassure him I have taken this into consideration when reaching my decision.

I'm aware I have summarised events and comments made by both parties very briefly, in less detail than has been provided, largely in my own words. No discourtesy is intended by this. In addition, if there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Mr R complains about a car supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr R's complaint about BMWFS.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – BMWFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. It's important to point out in this case that the CRA specifically explains that the durability of goods can be considered part of whether they are unsatisfactory quality or not.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note here that the car Mr R acquired was almost new, being less than a year old at the point of supply, with a recorded mileage of less than 3,000 miles, and the cash price of the car being £66,000. I think a reasonable person would expect it to be in excellent condition, with no faults or issues. And I think they would expect trouble free motoring for a significant period.

What I need to consider is whether the car was of satisfactory quality when it was supplied. And in order to do that, I first need to consider whether the car developed a fault.

#### Had the car developed a fault?

BMWFS has supplied our service with logs of when the car was investigated for both the rattling noise and the water ingress.

#### Rattling noise

The issue with the rattling noise was first investigated on 28 November 2023. Notes provided say:

*"[carried out] road test for rattle near rear parcel shelf can confirm rattle rear of vehicle..."*

*Advise customer to leave vehicle here for 2 days at least to investigate further..."*

Notes from BMWFS show that works were carried out to the car to identify and rectify the rattle noises over the next few days. The following month, notes BMWFS provided say:

*"Adjusted bump stops and found very specific spot where noise is reduced. Boot may need to be aligned..."*

*... adjusted boot latch, bump stops and lateral stops..."*

Considering the above, I'm satisfied there was a fault relating to a rattling noise present in the car from November 2023.

#### Water ingress and significant condensation forming on the windows of the car

Notes BMWFS provided from January and February 2024 say:

*"Customer is getting condensation on windows and roof since the tailgate has been adjusted..."*

*... Found signs of water ingress from boot seal... found leaves in a drainage channel..."*

*...car no longer shows any signs on condensation since boot seals/ channels were cleaned..."*

I have inferred from the comments above that BMWFS believe there isn't a fault to the car relating to significant condensation forming inside the car. On the other hand, Mr R strongly believes there is an issue with the car and has supplied our service with photos to show condensation forming on all windows and the panoramic sunroof, and he says this is most apparent in the colder months.

I have carefully considered what both parties have said and I'm persuaded by Mr R's comments. I say this because, I have also noted that parts of trim in the rear of the car needed to be replaced due to being significantly damp. And I'm mindful that areas worked on to fix the fault relating to the rattle, such as the boot and adjusting the tailgate, are the same areas where water was found. Mr R has also consistently said that the car has significant condensation issues and that it may now also be leading to further issues which have presented themselves. And the photographs back up what Mr R is saying here.

Considering the above, I'm satisfied there is likely a fault relating to condensation forming in the car.

#### Other issues Mr R says he has experienced since referring his complaint to our service

Mr R says that several other issues have presented themselves since this complaint was referred to our service. While I'm aware the dealership has been notified of these issues, and Mr R has been liaising with them to get things rectified, it isn't clear if BMWFS has been made aware of them directly. So, I haven't made a finding on these, as BMWFS may not have had the opportunity to consider them.

Mr R has provided our service with some of the job sheets of works carried out. However, I'm satisfied I don't need to consider these as I have concluded already there is a fault in relation to the rattling noise and condensation forming on the windows of the car.

#### Was the car of satisfactory quality at the point of supply?

Given the car was almost new when it was supplied to Mr R, I'm satisfied the car wasn't durable. I wouldn't expect there to be a need to repair items such as rattling trim and issues involving condensation forming on the windows so early in the car's lifetime. And so, I'm satisfied a reasonable person would not consider it to have been of satisfactory quality when it was supplied to Mr R.

In addition, while I said above that I haven't made a finding on the further issues Mr R says he experienced with the car since referring his complaint to our service, it is worth noting the number of issues that have presented themselves in the past year or so. I say this because, to a reasonable person, it may further suggest the car not being durable, when also considering its age and mileage.

#### Remedies under the CRA

Mr R says that both the rattling noise and the condensation on the windows forming are still present. The dealership who currently has the car for repairs for other issues has provided further evidence to show that the rattle in the car is still present. And Mr R has been able to provide photos to show the condensation on all the windows. Some of the photos also show part of the central display, with the climate control active.

I'm satisfied that both the issue with the rattling and condensation forming on all the windows is still present with the car. So, I've gone on to think carefully about the remedies available to Mr R under the CRA. One of the remedies is repair, but I'm not satisfied this would be a suitable remedy given the circumstances.

I say this because, BMWFS has supplied logs of instances when the dealership had the opportunity to rectify both issues in early 2024. So, I'm not satisfied giving BMWFS a further opportunity to repair things here will resolve the fault.

I've also noted that 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.

In this case, there was an attempt to repair the rattling noise. But then a different fault arose with the water ingress and condensation forming in the car. And I'm satisfied there is still an underlying fault with the car that was never put right.

From BMWFS's contact notes, I can see that Mr R told them as early as February 2024 that he also wanted to reject the car when it was returned to him faulty after repairs were carried out. As I'm satisfied that BMWFS has had at least one repair, and the car still has a fault due to the rattling noise and the condensation forming on the windows, it follows that I think it is fair and reasonable for Mr R to be allowed to reject the car.

#### Loss of use or impaired use of the car due to its faults

I have carefully considered Mr R's comments surrounding his experiences with the car. Mr R has explained the several occasions he has had to take the car to the dealership to be investigated or repaired. And he says, for significant periods, he didn't have use of it.

On the other hand, BMWFS has explained that on occasions, Mr R was only able to arrange collection of the car around family commitments, which prolonged its collection. While that may have been so, I'm mindful that had there not have been issues with the car in the first place, then he wouldn't have been without it or had to work around family commitments.

BMWFS explained that Mr R has already been reimbursed the equivalent of four months of monthly repayments. Considering Mr R was kept mobile in courtesy cars during the time his car was with dealerships, I think this is fair in the circumstances.

However, Mr R has explained in detail the frustration he has experienced with the ongoing rattling noises which were first investigated towards the end of November 2023, the condensation issues with the car since January 2024, and his impaired usage of it because of the issues. With that in mind, I think it is fair BMWFS reimburse Mr R 15% of monthly rentals from when the issues first appeared and were investigated on 28 November 2023 relating to the rattling noise, up until when the agreement is settled.

#### Distress and inconvenience

I have noted BMWFS offered Mr R £150 for the distress and inconvenience he experienced because of this complaint. From my understanding, this hasn't been paid as Mr R didn't accept it. I think BMWFS needs to do more in this instance.

Mr R has explained the several occasions he has had to take the car to the dealership to have it diagnosed or repaired. For each occasion, it took several attempts to be looked at, and he has explained how other issues were identified when he went to collect the car.

Mr R has also explained that these issues with the car were at a time when his late wife was extremely unwell, adding to the stress Mr R had at an already difficult time.

I think it must have been frustrating for Mr R to have to deal with the issues with the car. I'm also aware from emails BMWFS has provided that they were aware of Mr R's personal circumstances. Thinking about all this, I think it would be fair and reasonable for BMWFS to pay Mr R £300 in total to reflect the distress and inconvenience he suffered in relation to this complaint.

### **My final decision**

For the reasons I've explained, I uphold this complaint and I instruct BMW Financial Services(GB) Limited to put things right by doing the following:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr R.
- Refund Mr R's advance payment towards the agreement. If any part of this advance payment was made up of funds through a dealer or manufacturer contribution, then BMWFS is entitled to retain that amount. \*
- Reimburse Mr R 15% of repayments made towards the agreement from 28 November 2023 up until when the agreement ends and the car is collected. \*
- Pay Mr R £300 to reflect the distress and inconvenience caused.

\* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Mr R considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

If BMWFS has already given compensation in relation to this specific complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 April 2025.

Ronesh Amin  
**Ombudsman**