

The complaint

Miss M is unhappy with the quality of a car supplied under a hire purchase agreement by BMW Financial Services(GB) Limited trading as MINI Financial Services ('BMWFS').

What happened

Around September 2020 Miss M acquired a new car using a hire purchase agreement provided by BMWFS. The car cost £35,861.24 and Miss M was due to make repayments of £450 over 47 months, with a final payment of £14,211.24. The agreement shows a deposit was made of £500.

Miss M said there was an issue with the car in relation to decals on the bodywork, where they began to peel off. She complained to BMWFS, who did not uphold the complaint, and this was then referred to our service.

Our service upheld the complaint. In summary, our investigator said she didn't think the car supplied to Miss M was of satisfactory quality as it was not durable. Our investigator recommended a repair.

Both parties agreed to this resolution and the complaint was closed.

Unfortunately, Miss M says the repair was not successful, and in fact made the appearance of the car worse. She said, in summary, that when attempting to remove the decals paintwork had been blistered. She said several marks had been left by a sharp knife on the car. She said the decals themselves were poorly fitted and were not straight. And she said the car hadn't been cleaned properly before the application so there was dirt underneath the decals.

Miss M contacted our service about this and let BMWFS know of the complaint around October 2023. In the complaint, Miss M also noted that she wished to exercise her final right to reject the car.

Miss M didn't receive a response from BMWFS. Our service attempted to mediate a resolution with BMWFS, but we also didn't receive a response. So, our investigator issued a view and upheld the complaint.

In summary, he said he thought the repairs had failed. He said this meant Miss M had the final right to reject the car. He said BMWFS should reimburse Miss M 5% of her repayments from June 2021 to reflect impaired usage. And he said it should pay her £350 to reflect the distress and inconvenience caused.

Miss M responded and said she had sold the car. She confirmed the finance agreement had been settled.

Our investigator contacted both parties and explained this meant the car could no longer be rejected, but said BMWFS should still carry out the other recommendations to put things right.

BMWFS didn't respond and so the complaint was passed for an Ombudsman's decision.

BMWFS later got in touch and offered to reimburse Miss M £765 as full and final settlement, which it said was the 5% of the repayments as recommended by our investigator. But it said it didn't think anything further was reasonably due.

Miss M responded and said she didn't think BMWFS' offer was fair. And she said the loss in value to the car when sold, due to the failed repair, hadn't been taken into account.

The complaint was passed to me to decide. I sent BMWFS and Miss M a provisional decision on 2 December 2024. My findings from this decision were as follows:

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

It's important to note in this case that a previous complaint has been referred to our service about this car, under which a resolution was agreed between all parties. So this decision will only consider matters that took place after this point.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This says, in summary, that under a contract to supply goods, the supplier – BMWFS here – needed to make sure the goods were of 'satisfactory quality'. It's important to note in this case the CRA specifically states durability can be considered when assessing if goods are of satisfactory quality or not.

Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors. I'm satisfied a court would consider relevant factors, amongst others, to include the car's age, price, mileage and description.

It has already been concluded in Miss M's previous complaint that the car was not of satisfactory quality when it was supplied to her as it wasn't durable. So I don't need to make any findings on this point here. All parties agreed to a repair as a resolution to this complaint.

So, I need to think about what happened following this.

Miss M says the repair did not fix the issues with the decals and made the situation worse. She said this meant she wanted to reject the car. The CRA explains Miss M would have the final right to reject if:

"after one repair or one replacement, the goods do not conform to the contract"

'Conform to the contract' here can be taken as putting the car back to being of satisfactory quality. It follows that the specific issue I need to consider in this case is whether the repair was a success, or if the car remained of unsatisfactory quality when it was given back to Miss M.

I've looked at the photos Miss M provided from after she collected the car following the repair. These show the decals, in parts, to be overlapping panels, have mixed distances to panel gaps, be peeling off, have marks on and I can see 'bubbling' underneath.

The damage to the paintwork Miss M describes is a little less obvious to me, but I do think on balance it's most likely the issues she describes are present. I can see what appear to be scratches that may have come from the knife Miss M explained caused damage. And I can

see what might be blistering to the paintwork in a couple of the photos.

Either way, even if I discounted the damage to the paintwork, I would still reach the conclusion the repair didn't return the car to satisfactory quality due to the issues with the decals.

Miss M contacted BMWFS and exercised her final right to reject. Given the car had been repaired and returned to Miss M and was still not of satisfactory quality, I'm satisfied she had this right when she asked to return the car. And I can understand her frustration at not getting a response from BMWFS.

But, Miss M then sold the car and settled the finance. It follows that it can't now be rejected.

So, I need to consider what else BMWFS needs to do to put things right.

I have thought about the fact Miss M says the car was devalued when she sold it because of the issues, but I've seen no evidence of this loss. And while I appreciate there was a delay, it was Miss M's decision to sell the car and so I'd need to consider if she mitigated any losses here. Thinking about this, I'm satisfied BMWFS doesn't need to take any action on this point.

Our investigator recommended that Miss M should be reimbursed 5% of the monthly repayments made to reflect the impaired usage of the car. I've thought about this. While cosmetic in nature, I think some of the issues with the repair are quite obvious, and I think it's fair to say in this case this means Miss M did have impaired usage of the car. And I agree with our investigator that 5% is a reasonable amount to reflect this.

Where I differ from our investigator's opinion is in relation to the period this amount should be paid for. He recommended it should be paid from when the issues first appeared, in June 2021. But, I note that this period has already been considered in Miss M's previous complaint. All parties agreed on the proposed resolution to this complaint and it was closed.

So, I don't think it's fair and reasonable, nor in the scope of this decision, to make any awards on top of what was already agreed on the previous case.

To reiterate what I set out above, this decision solely considers what happened when the repair attempt failed. So, I find BMWFS should reimburse 5% of the monthly repayments from the repair date to when the agreement was settled.

I also agree with our investigator that Miss M has been caused distress and inconvenience by what's happened since the repair attempt. I think it must have been stressful and upsetting to realise that the repairs had failed. And I think she was also caused distress by BMWFS' customer service when it didn't respond to her exercising her right to reject the car. This situation went on for quite a significant time. Thinking about this, I agree £350 is a fair reflection of what happened.

I gave both parties two weeks to come back with any further comments or evidence. Neither BMWFS nor Miss M responded.

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 thought about all of the information on this complaint again, I still think it should upheld and I still think what I recommended to put things right in my provisional decision was

fair and reasonable. This is due to the reasons set out above.

My final decision

My final decision is that I uphold this complaint. I instruct BMW Financial Services(GB) Limited trading as MINI Financial Services to put things right by doing the following:

- Reimburse Miss M 5% of the monthly repayments made from the date of repair to the date the account was settled*
- Pay Miss M £350 to reflect the distress and inconvenience caused

* BMWFS should pay 8% simple interest on this amount from the time of payment to the time of reimbursement. If BMWFS considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 15 January 2025.

John Bower
Ombudsman