

## The complaint

Mrs G complains that BMW Financial Services(GB) Limited trading as Mini Financia Services ("BMWFS") supplied her with a car under a hire purchase agreement that wasn't of satisfactory quality.

## What happened

In April 2023, Mrs G acquired a used car financed by a hire purchase agreement from BMWFS. The car was around 4 years old and had travelled around 18,000 miles. It had a cash price of £16,987. Under the hire purchase agreement, Mrs G was required to pay 47 monthly repayments of £314.48, followed by a final optional payment of £7,391.55 if she wanted to take ownership of the car.

Mrs G says that since taking possession of the car she has had problems with the gears, they would stick, not go into gear and occasionally pop out of gear while driving. In October 2023, Mrs G took the car back to the supplying dealer. The dealer accepted there was a fault and replaced the gearbox.

A few weeks later Mrs G returned the car as the issues with the gears were still apparent. The dealer carried out a further repair, but this did not resolve the problem. The dealer then replaced the clutch and the gear cables. However, Mrs G said the problem persisted and she contacted BMWFS to reject the car as repairs had failed and the supplying dealer was no longer willing to help her.

BMWFS didn't accept rejection of the car. This was because the dealer had said the final repair had resolved the problem. Mrs G later took the car to another garage which provided a report setting out that there were problems with the gears that required repair.

I sent Mrs G and BMWFS my provisional decision on 11 December 2024. I explained why I thought the complaint should be upheld. I said:

*Mrs G acquired the car under a hire purchase agreement and our service is able to consider complaints relating to these sorts of regulated consumer credit agreements. The Consumer Rights Act 2015 ("CRA") covers agreements like the one Mrs G entered into. The CRA implies terms into the agreement that the goods that are supplied are of satisfactory quality. BMWFS is the "trader" for the purposes of the CRA and is responsible for dealing with a complaint about the quality of the car that was supplied.*

*The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price and all other relevant circumstances. I think the other relevant circumstances would include the age and mileage of the car at the point of supply.*

*The car supplied was used, around 4 years old and had covered around 18,000 miles when Mrs G took possession of it. It had a cash price of £16,987. What would be considered satisfactory would therefore be different to if this had been a new car.*

*But given the low mileage and the price paid, I think it would be expected to last a reasonable period of time before requiring significant repairs or maintenance.*

*Mrs G reported issues with the gears within the first six months of her having the car. By the time the first repairs were carried out, she had covered around 7,000 miles in the car. I've not been presented with anything to indicate the issues with the gears at the time were caused by poor maintenance from Mrs G or anything else she may or may not have done. It seems unlikely that repairs would have been authorised and paid for had that been the case.*

*From everything I've seen, it doesn't appear to be in dispute that the issues Mrs G initially reported made the car of unsatisfactory quality. For completeness, I also think these issues meant that car wasn't of satisfactory quality when it was supplied. I don't think the car was sufficiently durable given that it required the gearbox and clutch to be replaced after only around 25,000 miles.*

*The issue left for me to decide therefore is whether the issues persist and whether that means the car continues to not be of satisfactory quality. In other words, do I think the repairs that were carried out were successful or not.*

*While I can accept the supplying dealer is a specialist in the type of car Mrs G had, I find what they have said to be far from persuasive evidence of the current condition of the car and the effectiveness of the repairs.*

*I say this for several reasons. The supplying dealer originally sold the car, and completed three repairs on it, so their view on its condition and the success of those repairs is naturally less likely to be unbiased. Further, the issues Mrs G has complained about have not changed since before the first repair. The supplying dealer clearly accepted there were faults with the gears initially as it replaced both the gearbox and clutch. As the same problems still persist, I find it surprising the supplying dealer has now chosen to suggest those issues are not faults but are actually a normal expected characteristic of this model of car. If these were normal characteristics of the car, I don't think it would have initially agreed to carry out three separate repairs.*

*I note also that when BMWFS wrote to the supplying dealer for its view on the condition of the car, BMWFS intimated to the supplying dealer that if the complaint were upheld, that it might need to indemnify BMWFS for any losses. With this context, I don't think what the supplying dealer has said can be taken to be particularly persuasive.*

*In any event, I've found the findings of the garage that Mrs G took the car to most recently to be both plausible and persuasive. The garage Mrs G took the car to said:*

*"Found gears hard to select, especially reverse. [Occasionally] found to pop out of first gear...Faults suspected are cables, clutch or gear box."*

*The issues are the same as those Mrs G complained about prior to the first repair, so I'm satisfied that the repairs the supplying dealer carried out did not resolve the underlying issue. The garage has identified that the current issues with the car relate to either the clutch or gearbox, both of which have already undergone a replacement by the supplying dealer. I'm therefore satisfied the repairs carried out by the supplying dealer have not been successful and the car continues to not be of satisfactory quality.*

*While I'm mindful Mrs G didn't go to BMWFS in the first instance to carry out the repairs, I don't think this has caused BMWFS any material loss. This is because I'm satisfied that had Mrs G gone to BMWFS first, I think it's more likely than not BMWFS would have directed her back to the supplying dealer to carry out repairs on its behalf.*

*As the repairs have now not been successful and the car remains of unsatisfactory quality, I think Mrs G is entitled to reject the car. BMWFS should therefore collect the car at no cost to Mrs G and end the finance agreement with nothing further to pay.*

*Mrs G has clearly not had trouble free motoring while in possession of the car. Her use of it has been quite noticeably impaired for the whole time she has had the car. Taking everything into consideration, I think BMWFS should also refund 20% of each monthly repayment she had made to compensate her for the impaired usage. It should also add interest to each of those refunds at 8% simple per year from the date of each payment to the date of settlement.*

*Lastly, the issues with the gears have clearly caused Mrs G a great deal of upset and worry, as well as inconvenience in the numerous trips to the supplying dealer for repairs that were ultimately unsuccessful. Mrs G has described the car popping out of gear, something the independent garage Mrs G took the car to also commented on. She's described a number of incidents of how this has affected her while driving the car, including causing near misses and potential road traffic accidents. Taking everything into consideration, I think BMWFS should also pay her an additional £400 compensation for the distress and inconvenience caused.*

BMWFS didn't respond to my provisional decision. Mrs G accepted the provisional decision but said that it was incorrect for me to say that she hadn't contacted BMWFS first.

### **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'll firstly clarify the comments made in the provisional decision regarding Mrs G not going to BMWFS first. The supplying dealership and BMWFS are separate legal entities. Mrs G went to the supplying dealer first, not BMWFS. However, as I set out in my provisional decision, I don't think in the particular circumstances of this case it makes any material difference that Mrs G didn't reach out to BMWFS first.

As Mrs G has accepted the provisional decision and BMWFS didn't respond, I've seen no reason to reach any different outcome. I'm therefore satisfied that the car Mrs G was supplied with wasn't of satisfactory quality and BMWFS needs to put things right in the way I've set out in my provisional decision.

### **My final decision**

For the reasons given above, I uphold this complaint and direct BMW Financial Services(GB) Limited trading as Mini Financial Services to:

- End the finance agreement with nothing further to pay.
- Collect the car at no cost to Mrs G.
- Refund 20% of each monthly payment Mrs G has made for the impaired usage she has had of the car, adding 8% simple interest per year from the date she made each payment to the date of settlement.

- Pay £400 for the distress and inconvenience caused.

If BMWFS considers tax should be deducted from the interest element of my award, it should provide Mrs G with a certificate showing how much it has taken off, so she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 28 January 2025.

Tero Hiltunen  
**Ombudsman**