

The complaint

Mr C complains about the quality of a used car that was supplied through a hire purchase agreement with BMW Financial Services (GB) Limited (BMWFS).

What happened

In December 2023, Mr C acquired a used car which was financed by BMWFS. The car was around nine months old and had travelled 9,960 miles when it was supplied. The cash price of the car was £41,699. Mr C made an advanced payment of £31. So, the total amount financed on the agreement was £41,668 payable over 59 monthly repayments of £771.52 with an optional final repayment of £15,771.91.

Mr C complained to BMWFS saying that the day after delivery of the car he noticed a whistling sound whilst driving, so he contacted the dealership who advised him to take the car in for repairs at a local manufacturer dealership.

Mr C said he visited the local manufacturer dealership around four times where different repair attempts were made but the issue remained. He said it was determined that the bulkhead trim was faulty but that it couldn't be repaired as it was a factory defect.

Mr C said he's been trying to return the car but has been unable to do so. He said the whole situation has been handled poorly and has impacted him financially due to lost workdays when visiting the garage.

In October 2024, BMWFS issued their final response to Mr C's complaint. In summary, it confirmed Mr C raised his complaint to them in May 2024 and that several unsuccessful repair attempts were made by the dealership. To resolve the issue, BMWFS confirmed they supported Mr C's wish to reject the car and arrange to have the agreement unwound.

Unhappy with their decision, Mr C brought his complaint to our service where it was passed to one of our Investigator's to look into.

Within his submission Mr C confirmed he was provided with a courtesy car each time his car was in the garage; however, he said he wasn't happy that BMWFS were intending on charging him for mileage, considering the mileage included his travel to and from the garage for repairs. He confirmed he was still using the car.

The Investigator recommended that Mr C's complaint should be upheld. However, he concluded that in addition to rejecting the car, BMWFS should refund to Mr C 15% of all his monthly repayments made to reflect the loss of enjoyment, and £250 in compensation for the distress and inconvenience caused.

BMWFS agreed with the Investigator's assessment. Mr C didn't, he said he believed the usage charges would be unjust, he felt he should receive a full refund of all his monthly repayments and at least the amount he's lost through his business closure plus £1000 to reflect the inconvenience caused.

The investigator's opinion remained unchanged, so Mr C asked that his complaint be referred to an ombudsman for a final 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and 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.

Mr C complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr C's complaint about BMWFS. BMWFS is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

Here, the car was acquired used (at nine months old), with a cash price of £41,668 and with 9,960 miles. So, I think it's fair to say that a reasonable person would expect the level of quality to be fairly high, and more than an older and more road-worn car, and that it could be used – free from defects – for a considerable period of time

From the information provided I'm satisfied there was a fault with the car. Mr C has told us about the issues he's had with it and BMWFS has confirmed that the issue is present and that there was a failed attempt at a repair. So, in the circumstances I don't consider that the quality of the car is in dispute here. Both parties are in agreement that the car is of unsatisfactory quality.

However, what appears to be in dispute, is how the complaint should be resolved. BMWFS has agreed with what the Investigator has recommended, however Mr C believes he should be receiving more compensation to resolve the issues. So, I've focused this decision on what I think the fairest way to resolve this complaint is, given the circumstances.

Putting things right

In his complaint form, Mr C said he was trying to return the car, and more recently following the Investigator's assessment he said that he was open to an alternative resolution, such as a significant price reduction or a vehicle replacement.

In the circumstances, as the dealership has confirmed that a repair is currently not available on the car, I think a rejection is the most reasonable option and is what is available as a remedy under the CRA. Doing so would allow Mr C to enter into another agreement for a different or similar vehicle if he chooses.

In rejecting the car BMWFS should end the agreement and collect the car from Mr C. They should also refund to Mr C the deposit he paid.

However, I also acknowledge that Mr C has experienced some loss of enjoyment whilst using the car and so I'm in agreement with the Investigator that Mr C should receive some payment for that. I think 15% refund on his monthly repayments is reasonable in the circumstances. Mr C's monthly repayments were about £771, so 15% of this would be around £115, I think a refund of this amount for each monthly repayment Mr C has made is fair, in recognition of any loss of enjoyment due to the whistling noise or inconvenience caused whilst having to drive the car.

Mr C said he was given a courtesy vehicle for each time his car was in the garage, so I'm satisfied that he was kept mobile. A full refund of his monthly repayments I think would be disproportionate for the circumstances, and unfair to BMWFS. Despite the time it may have taken BMWFS to resolve matters, it is reasonable to expect that Mr C should pay for his usage of the car.

Mr C has described the inconvenience that this whole situation has caused him, and I don't doubt this would have caused some distress, however I agree with the investigator that £250 is a fair recognition of this in the circumstances. I acknowledge Mr C said he's had to close the business and has lost out on workdays as a result; however, I haven't seen anything which has persuaded me that this was Mr C's only option. For example, that BMWFS gave him no other alternatives to be flexible around his work.

I think this is the fairest resolution in the circumstances of this complaint, so I'll be instructing BMWFS to do the above.

My final decision

My final decision is that I uphold Mr C's complaint about BMW Financial Services (GB) Limited and instruct them to:

- collect the car at no additional collection costs to Mr C
- end the agreement and remove it from Mr C's credit file
- refund the deposit Mr C paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMW Financial Services(GB) Limited is entitled to retain that proportion of the deposit)
- refund 15% on all monthly repayments Mr C has made on this agreement
- Pay to Mr C £250 in compensation for the distress and inconvenience caused

BMW Financial Services (GB) Limited should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If BMW Financial Services (GB) Limited considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 August 2025.

Benjamin John
Ombudsman