

## The complaint

Mr K is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS") was of an unsatisfactory quality.

When I refer to what Mr K has said and what BMWFS has said, it should also be taken to include things said on their behalf.

## What happened

The background to this complaint was set out in my second provisional decision dated 27 February 2025. I've set out below in italics what I provisionally decided and why. This forms part of my final decision.

*"In April 2023, Mr K was supplied with a new car through a hire purchase agreement ("HPA") with BMWFS. The cash price for the car was £117,844.01; Mr K paid a deposit of £16,500.00. Under the HPA he was provided with credit of £101,344.01 with interest of £15,644.91, so that the total amount payable was £133,488.92, which was to be repaid over 48 months, via 47 instalments of £1,194.44 per month and an optional final payment of £60,850.24.*

*In December 2023 Mr K made a complaint to BMWFS relating to the vehicle. They investigated the matter, and the job card recorded that the car was jumping and sliding when turning left and right. At this point the car had done 5,170 miles; the tyres were replaced free of charge, but this did not resolve the problem. On the 25 March 2024 the car was returned to the dealer for further investigation work related to problems including engine noise, leaking oil and a problem with a seat. In May 2024 Mr K complained to BMWFS about the time taken to repair the car and the lack of updates provided. On 13 July 2024 Mr K referred his complaint this Service; he said he wanted to reject the car. On 30 July 2024 BMWFS issued a response to Mr K and confirmed that they were still investigating his complaint.*

*On 2 August 2024, BMWFS wrote to Mr K and offered to suppress eight monthly payments due under the HPA as a goodwill gesture in recognition of the time Mr K had spent without the car due to the need to replace the engine. On 13 August Mr K replied by email and accepted this offer. However, that was not the end of the matter. The car had ongoing problems. On 20 August BMWFS wrote again to Mr K. They said that they were happy to cover 8 monthly payments to recognise the issues experienced with the vehicle and the inconvenience caused in dealing with the complaint, and they offered £150.00 in full and final settlement of Mr K's complaint. They hoped this would bring the matter to a close, but it did not.*

*Mr K did not accept that offer. He wished to reject the car. In a final response letter to this Service dated 11 September, BMWFS said they partially upheld Mr K's complaint: they repeated the offer made on 20 August and said they hoped this would be taken into consideration when assessing Mr K's complaint. This offer was put to Mr K on 16 September by our Service: Mr K rejected it. He confirmed he wished to return the car.*

*By this time BMWFS still had the car and were still trying to rectify issues with it. In an email dated 19 September to Mr K they confirmed that: (i) they were still in the process of diagnosing problems with the car and would replace a bottom control arm, shock absorber and top mount, due to noise; (ii) they had ordered speaker trims which would be fitted to the vehicle on the 20 September; (iii) parts for the front axle were on back order but they did not know when they would be delivered ; and (iv) that the skipping out issue on corners was still on going, and they were going back and forth for technical advice.*

*The matter was referred to one of our investigators. He issued his view on 2 October 2024 and upheld Mr K's complaint. He said that in his view the car was not of satisfactory quality when it was supplied and, in particular, that it wasn't reasonably durable. And, as the car was not of satisfactory quality when supplied BMWFS needed to put things right. Mr K responded to the investigator and noted that he had returned the car to the dealer on 25 March not 30 April; and he provided a copy of an appointment confirmation card to support this. Thereafter, BMWFS asked the investigator to provide some documentation, which was done, but otherwise BMWFS did not respond to the investigator's view and therefore this matter has been passed to me to make a final decision. I understand from Mr K that on 14 October 2024 BMWFS returned the car to him and collected a courtesy car that they had provided to him. Mr K says that since then he has not used the car due to safety concerns and not being able to do so has had an impact on his family and his income as he is self-employed.*

*My first provisional decision was issued and sent to both parties on 11 December 2024. They were each asked to make any final points and/or to provide any further information by 25 December 2024.*

*Mr K replied on 13 December. He said that on the whole he believed the decision to be fair but he asked that 100% of the monthly payments made since March 2024 be refunded due to: (i) the considerable periods of time when BMWFS did not provide a courtesy car; the number of different courtesy cars provided and returned; such cars not being equivalent to the car supplied under the HPA, and not being entirely suitable for him and his family; and, (ii) the costs he had incurred related to the car supplied under the HPA since March 2024 including road tax and insurance. We asked and Mr K was able to provide further details in support of some of these claims.*

*BMWFS did not respond to my provisional decision but given what Mr K had said, we asked BMWFS to provide details of the courtesy cars provided and when they were provided. We asked BMWFS to respond by 27 January 2025, but BMWFS did not respond.*

### ***What I've provisionally 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 this complaint I've also had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr K was supplied with a car under the HPA which is a regulated consumer credit agreement which means we are able to investigate complaints about it.*

*The Consumer Rights Act 2015 ("CRA") covers agreements such as the one Mr K entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I*

*think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*So, if I thought the car was faulty when Mr K took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMWFS to put this right.*

#### Complaint Handling

*Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here, and how. I note Mr K has complained about how BMWFS handled and responded to his complaint. But complaint handling is not a regulated activity in and of itself and so, falls outside of this Service's jurisdiction to consider. So, the way the dealer and BMWFS handled Mr K's complaint hasn't been considered as part of my decision.*

#### Faults with the car

*In this instance, it's not disputed there have been a number of faults with the car which have taken a considerable time to diagnose and attempt to correct. The issue I need to consider is whether those faults were present at the time of supply. BMWFS has told Mr K that the right to reject is lost if a fault is reported more than 6 months after the time of supply. But that is not correct. The time that a fault is first reported is an important consideration because under the CRA the onus on proving when a fault first occurred passes to the consumer if it is reported more than 6 months after the date of supply. Here the first complaint was it seems made on 1 December 2023, which was over 7 months since the date of supply. But that does not mean that the fault was not present at the time of supply or that the car was of satisfactory quality. Here there appear to have been a number of serious faults: the first was reported when the car had travelled just over 5,000 miles and this wasn't fixed. And after just over 7,000 miles the engine had to be replaced. And other reported problems don't appear to have been resolved when the car was finally returned to Mr K on 14 October 2024.*

*In this regard, I note that there has never been any claim or suggestion from BMWFS that these problems, which appear to be a of a serious magnitude, were due to anything other than inherent defects with the car. Given this was a new car, the mileage covered, and its specification and cash price, and the fact that neither the dealer nor BMWFS itself has been able to remedy some serious faults I think that on a balance of probabilities it is only fair and reasonable to conclude that more likely than not the car was not sufficiently durable nor of satisfactory quality, at the point of supply. Furthermore, BMWFS itself "partially upheld" Mr K's claim, which also leads me to conclude that the car wasn't of satisfactory quality at the time of supply.*

*So, I need to consider whether Mr K has the right to reject the car.*

#### Single Chance at Repair

*Under the CRA after 30 days from the time of supply, the right reject is subject to giving the supplier the opportunity to repair or replace the vehicle. 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 confirm 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.*

*The CRA is clear that, if the single chance at repair fails, as was the case here, then the customer, in this case Mr K, has the right of rejection.*

#### **Delay in Repair**

*BMWFS had the opportunity to repair the car. Section 23 of the CRA states:*

*"If the consumer requires the trader to repair or replace the goods, the trader must –  
(a) do so within a reasonable time and without significant inconvenience to the consumer."*

*Given that the car was returned to the dealer in both December 2023 and March 2024 and by October 2024 it had still not been fixed, it seems clear that BMWFS has failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr K should also be able to reject the car.*

#### **Putting things right**

##### **Payment Refund**

*Mr K was able to use the car when it was in his possession, but his use has been denied he says for two months when he returned the car for investigation in December 2023 and between 25 March 2024, when he returned the car for further investigation, and 14 October 2024, when it was finally returned to him. However, because of concerns over safety, he says he hasn't used it since.*

*In the period from 25 March 2024 to 14 October 2024 Mr K says that he was supplied with courtesy cars, but they had to be returned and replaced regularly and sometimes he had no courtesy car at all. He has also said that the cars weren't entirely suitable for him and his family nor equivalent to the car supplied under the HPA. In the period prior to 25 March 2024, Mr K has paid tax, insurance and monthly instalments under the HPA during the period he says the car was returned for investigation but he couldn't use it, and thereafter he's had to pay tax and insurance also without being able to use it. I've noted that BMWFS had previously offered to suppress 100% of eight monthly payments as a gesture of goodwill when it offered to settle his claim in August 2024, as referred to in my first provisional decision.*

*For the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as BMWFS failed to provide a wholly suitable replacement I'm satisfied that BMWFS should refund 100% of the instalment payments Mr K has made since 25 March 2024, which I think is fair in the circumstances. I've not made any award that BMWFS should refund tax and insurance paid by Mr K as he didn't have to pay tax or insurance for the courtesy cars; however, I've taken this into account in the award to refund monthly payments.*

##### **Repair Costs**

*It would appear that neither the dealer nor BMWFS has charged Mr K for the cost of repair or inspection relating to the problems with the car. Mr K said that he incurred costs of £500.00 relating to a detailing appointment but he hasn't provided any evidence to support this claim and therefore I'm not intending to make any award for this.*

##### **Distress and inconvenience**

*It's clear that Mr K has been inconvenienced by having to arrange for the car to be returned and repaired, and by this repair being unsuccessful. And he was further inconvenienced by*

*being provided with courtesy cars that weren't suited to his needs and being unable to use the car when it was returned for repair, and after it was finally returned to him on 14 October 2024. I think Mr K wouldn't have had these issues had BMWFS supplied him with a car that was of a satisfactory quality. So, I think BMWFS should pay him £500.00 in compensation to reflect the distress and inconvenience caused.*

*Therefore, BMWFS should:*

- *end the HPA with nothing more to pay;*
- *collect the car at no cost to Mr K;*
- *remove any adverse entries relating to the HPA from Mr K's credit file;*
- *refund the £16,500.00 deposit Mr K paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMWFS is entitled to retain that proportion of the deposit);*
- *refund 100% of any instalment payments made by Mr K since 25 March 2024;*
- *apply 8% simple yearly interest on the refunds, calculated from the date Mr K made the payment to the date of the refund<sup>†</sup>; and*
- *pay Mr K an additional £500.00 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

*<sup>†</sup>If BMWFS considers that tax should be deducted from the interest element of my award, they should provide Mr K with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.*

### **My second provisional decision**

*For the reasons explained, I intend to uphold Mr K's complaint. And I intend to ask BMW Financial Services (GB) Limited to follow my directions above."*

### **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.

My second provisional decision was issued and sent to both parties on 27 February 2025. They were each asked to make any final points and/or to provide any further information by 13 March 2025.

Mr K replied on 27 February. He agreed and accepted the decision and said he had nothing further to add. BMWFS did not respond.

Having considered this claim, Mr K's response to my second provisional decision and BMWFS's failure to respond, I have reached broadly the same conclusion as set out in my second provisional decision. That is, due to the issues with the car, Mr K had the right to reject the car. Therefore, I uphold this complaint, and BMWFS is responsible for putting things right.

### **Putting things right**

#### Payment Refund

Mr K was able to use the car when it was in his possession, but his use has been denied he says for two months when he returned the car for investigation in December 2023 and between 25 March 2024, when he returned the car for further investigation, and 14 October 2024, when it was finally returned to him. However, because of concerns over safety, he says he hasn't used it since.

In the period from 25 March 2024 to 14 October 2024 Mr K says that he was supplied with courtesy cars, but they had to be returned and replaced regularly and sometimes he had no courtesy car at all. He has also said that the cars weren't entirely suitable for him and his family nor equivalent to the car supplied under the HPA. In the period prior to 25 March 2024, Mr K has paid tax, insurance and monthly instalments under the HPA during the period he says the car was returned for investigation but he couldn't use it, and thereafter he's had to pay tax and insurance also without being able to use it. I've noted that BMWFS had previously offered to suppress 100% of eight monthly payments as a gesture of goodwill when it offered to settle his claim in August 2024, as referred to in my first provisional decision.

For the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as BMWFS failed to provide a wholly suitable replacement I'm satisfied that BMWFS should refund 100% of the instalment payments Mr K has made since 25 March 2024, which I think is fair in the circumstances. I've not made any award that BMWFS should refund tax and insurance paid by Mr K as he didn't have to pay tax or insurance for the courtesy cars; however, I've taken this into account in the award to refund monthly payments.

#### Repair Costs

There is no evidence that the dealer or BMWFS charged Mr K for the cost of repair or inspection relating to the problems with the car. Mr K said that he incurred costs of £500.00 relating to a detailing appointment but he hasn't provided any evidence to support this claim and therefore I make no award for this.

#### Distress and inconvenience

It's clear that Mr K has been inconvenienced by having to arrange for the car to be returned and repaired, and by this repair being unsuccessful. And he was further inconvenienced by being provided with courtesy cars that weren't suited to his needs and being unable to use the car when it was returned for repair, and after it was finally returned to him on 14 October 2024. I think Mr K wouldn't have had these issues had BMWFS supplied him with a car that was of a satisfactory quality. So, I think BMWFS should pay him £500.00 in compensation to reflect the distress and inconvenience caused.

Therefore, BMWFS should:

- end the HPA with nothing more to pay;
- collect the car at no cost to Mr K;
- remove any adverse entries relating to the HPA from Mr K's credit file;
- refund the £16,500.00 deposit Mr K paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMWFS is entitled to retain that proportion of the deposit);
- refund 100% of any instalment payments made by Mr K since 25 March 2024;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr K made the payment to the date of the refund<sup>†</sup>; and
- pay Mr K an additional £500.00 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If BMWFS considers that tax should be deducted from the interest element of my award, they should provide Mr K with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

**My final decision**

For the reasons explained, I uphold Mr K's complaint about BMW Financial Services (GB) Limited, and I require it to carry out the remedy set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 April 2025.

Michael Hoggan  
**Ombudsman**