

## The complaint

Mr A is unhappy with a car supplied under a hire purchase agreement taken with BMW Financial Services(GB) Limited ('BMWFS') and what happened when he acquired a newer one to replace it.

## What happened

Around May 2023 Mr A entered into a hire purchase agreement ('agreement X') provided by BMWFS to acquire a new car ('car X'). The cash price is listed on the agreement as £35,547.80. Mr A paid a deposit of £5,000 and was due to make repayments of £438.31 per month for 48 months. The APR of the agreement was 4.9%.

Unfortunately, car X developed issues with the parking brake around November 2023 and it was returned to the dealer. Mr A was given various courtesy cars while awaiting a repair. The manufacturer had issues obtaining a part to repair the car, and Mr A was given multiple dates for a repair which weren't met.

Due to the delays, Mr A then handed back car X and ordered a new car ('car Y') around February 2024. Agreement X was settled.

Mr A was unhappy with this situation and complained to BMWFS. He said he was entitled to a replacement car. But, he said car Y was more expensive than car X, meaning he had to pay a "*luxury car tax*". He also said the APR under the quote for the newer agreement was higher than agreement X.

BMWFS issued a final response to Mr A's complaint in April 2024. This said, in summary, that due to the time Mr A was without his car it would refund the equivalent of two repayments, £876.62. It later offered a further £100 compensation.

Mr A then entered into a new hire purchase agreement ('agreement Y') to acquire car Y around May 2024.

Mr A remained unhappy with this and referred the complaint to our service. He reiterated the points he made to BMWFS. And he said he had to pay to transfer the gap insurance between cars.

When our service contacted BMWFS, it told us it was making a further offer of another £876.62 to reflect the fact that the courtesy cars were not of the same specification as Mr A's. It explained this meant Mr A had been offered a total of £1,853.24.

We also saw that the dealer said it would cover 50% of the car tax Mr A referred to.

Our investigator issued a view and didn't uphold the complaint. In summary, he said BMWFS had acted fairly as it allowed Mr A to reject car X. He explained Mr A would've understood the terms of agreement Y. And he said the offer BMWFS had made to put things right was fair and reasonable.

Mr A disagreed. In summary, he said he didn't have car X for four months. He said none of the courtesy cars met his needs. He said it wasn't legal to offer a higher APR on agreement Y. He said he'd not been compensated for the hours dealing with the situation and the poor service received. He said BMWFS were responsible for arranging the replacement of his car with a like for like one. And he reiterated he was going to be paying a higher rate of tax.

Our investigator explained this didn't change his opinion. So, the complaint has been passed to me to decide.

### **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 think the offer BMWFS has made to put things right is reasonable. I'll explain why.

Mr A 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 Mr A's complaint against BMWFS.

What I need to consider in this case is whether BMWFS acted reasonably when Mr A's car went wrong and whether the offer it made to put things right is fair and reasonable under the circumstances of the complaint.

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'.

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 isn't in dispute here that car X wasn't of satisfactory quality due to the parking brake issue, as all parties agree. So, I don't need to go into any detail about this, other than to say that I also agree this was the case due to how soon Mr A's brand new car suffered a failure.

So, I then need to consider what happened next.

The CRA explains when car X went wrong, one of the remedies available to Mr A would have been a right to get it repaired, which was agreed to. But, Mr A was waiting several months for this. The CRA explains:

*"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"*

I find, given how long Mr A was waiting, that the repair wasn't done in a reasonable time.

At this point, Mr A could technically still have the right to a replacement under the CRA. And I know this is what he has referred to as having happened. I can see, given the situation, what happened, and the language from the dealer, why he was given this impression.

But, despite Mr A going from car X to car Y, which were of the same model and a similar

specification, I'm satisfied a replacement did not take place under the CRA.

In order for a replacement to happen, BMWFS would've needed to supply Mr A with the 'same' car – but at the point this would've happened car X was already used. It wouldn't have been practical for BMWFS to source a car of the same specification, age and mileage. Car Y, despite being similar, wasn't the same as car X.

Instead, car X was returned and agreement X settled. I can see from agreement Y that the deposit Mr A paid under agreement X was taken forward. Under the very specific circumstances of this case I'm satisfied this was the equivalent of the funds being returned to Mr A, given it doesn't seem in dispute that he wished to acquire car Y.

So, I'm satisfied what happened here was that, effectively, car X was rejected. Because of the length of time waiting for a repair, rejection was one of the remedies available to Mr A under the CRA. So, I think BMWFS acted reasonably here and broadly met Mr A's rights.

In simple terms, this means car X wasn't replaced by car Y under agreement X. Instead, car X was rejected. Agreement X ended. And Mr A acquired car Y under agreement Y.

Car X is listed on an invoice with a cash price of £35,547.80. Car Y is listed on an invoice with a cash price of £40,628.72. And I agree that the APR on agreement Y was higher, as I can see this was 6.9%.

So, I fully accept Mr A's points about these changing. But because car X was rejected, BMWFS aren't responsible for the increase in price – it has no control over this. And I can see it appears Mr A was informed of the price of car Y before taking it. Nor did BMWFS need to keep the terms of agreement X and Y the same – so it needs to take no action over the interest rate changing.

That being said, in reference to the above I've seen an email that explains the dealer has made a significant additional dealer contribution towards agreement Y to keep Mr A's monthly repayments the same as under agreement X, despite the cost of the car and interest rate increasing. This is reflected in agreement Y, which shows the monthly payments as £438.31.

While this didn't come from BMWFS, I still need to consider this in the overall picture of how things have been put right.

I'm satisfied there are some additional things, aside from rejection, that BMWFS needed to consider when putting things right. It has paid Mr A the equivalent of four monthly repayments under the agreements and given £100 – a total of £1,853.24. So I've thought about whether this is enough.

Mr A has explained that the cars he had use of while car X was awaiting repair weren't suitable for him. I considered if Mr A should be reimbursed a percentage of his monthly payments during this period to reflect this. But BMWFS has already reimbursed Mr A the equivalent of four months full repayments. So I'm satisfied it has more than covered this issue.

When Mr A mentions the 'luxury car tax' I've assumed he refers to the 'additional rate (expensive car supplement)'. With regards to this, I find BMWFS are not responsible. So I find it needs to take no action here. That being said, I've noted the dealer has offered to cover 50% of this amount for Mr A.

Mr A also says he lost out on around £150 to transfer gap insurance. BMWFS don't seem to

have specifically addressed this. But I'm satisfied any loss has been covered by the overall offer made.

I'm satisfied Mr A has been caused significant distress and inconvenience here. I understand how frustrating it must have been for his car to go wrong and then to wait months for a repair, with several deadlines missed. And I've thought about how upsetting he says going between the dealer and BMWFS has been to try to resolve the failure. But, considering the offer BMWFS has made, I'm satisfied Mr A has already been fairly compensated for this.

In summary, I'm satisfied Mr A was supplied with a car that was not of satisfactory quality. I find his rights under the CRA were broadly met by BMWFS effectively allowing rejection of the car. And I'm satisfied BMWFS' overall offer already fairly compensates Mr A for all the other issues he raised.

### **My final decision**

BMW Financial Services(GB) Limited has already made an offer to pay Mr A £1,853.24 to settle the complaint.

My final decision is that this offer is fair and reasonable under all the circumstances of this complaint.

So, if it hasn't already, BMW Financial Services(GB) Limited should pay Mr A £1,853.24.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 April 2025.

John Bower  
**Ombudsman**