

## **The complaint**

Miss M complains that a car supplied to her under a hire purchase agreement with BMW Financial Services(GB) Limited (BMWFS) is of unsatisfactory quality.

## **What happened**

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

In December 2023 Miss M entered into a hire purchase agreement with BMWFS to acquire a used car. The car was around three years old being first registered in September 2020, with a mileage of around 31,760. The cash price of the car was £21,999.00 with a deposit of £7,700.00 being paid by method of cash payment and dealer contribution as listed in the invoice. The total payable on the agreement was £26,021.60, payable over 48 months. This was made up of 47 monthly repayments of £381.70, with a further final repayment of £381.70 including any applicable purchase fee being due.

Miss M explained she noticed an issue with the tyre pressure sensors on the vehicle during test drive, and was told by the dealership these would be fixed when she picked up the vehicle to take it home.

In December 2023, after collecting the vehicle, Miss M contacted BMWFS to explain she'd noticed the key they'd given her was damaged, the dust-caps on the vehicle didn't match and that the tyre pressure sensor warning light was illuminated indicating a problem with the sensors. Miss M also explained she could hear a clunking noise that wasn't present during the test-drive. Miss M said she was told to book the vehicle in with her local associated dealership for repair if it was driveable.

Miss M contacted her local dealership repairer in late December 2023, and was told a courtesy car wouldn't be available until around mid-January. Miss M booked the car in with her local associated dealership for 17 January 2024. During this, the dealership found the sensor issue, and carried out the repair needed. They also found an issue with an engine mount that needed replacing, to stop the clunking noise. The dealership didn't have the parts in stock to carry out this part of the repair the same day. Miss M was unhappy with the fact the car needed something else repairing other than the sensor issue, alongside the damage to the key and the mis-matched dust caps. Miss M was also concerned about the clunking noise coming from the car. As such, Miss M wanted to reject the vehicle.

Miss M complained to BMWFS, raising the above issues and asking to reject the vehicle.

BMWFS issued a final response to the complaint in May 2024. BMWFS acknowledged issues with the vehicle. It stated the issue with the key was considered wear and tear and didn't affect the operation of the key, that a tyre pressure sensor was replaced on the vehicle before Miss M collected it, however this had since failed and had to be repaired. It also explained at handover, no fault with an engine mount was noted, and that it is believed this has happened between Miss M collecting the vehicle, and the vehicle being booked in for repair on 17 January 2024. Due to this, it believes the engine mount issue wasn't present at

the point of sale. BMWFS did offer £100.00 to Miss M for the service received.

Miss M was unhappy with this response and had already brought her complaint to our service to investigate before this response had been sent to her.

As this didn't resolve things, the complaint was passed to one of our investigators.

The investigator upheld the complaint in part. She said that the issues with the key and the dust-caps were likely wear and tear related and cosmetic in nature and didn't think anything needed to be done differently by BMWFS to put things right on those issues.

The investigator explained in their outcome they found the vehicle to be not of satisfactory quality when it was supplied. The investigator didn't support rejection of the vehicle, as she stated BMWFS had one chance to repair the vehicle outside of the first 30 days of the agreement, and this was the repair on 17 January 2024, including the need to order the part for the engine mount constituting the same chance to repair and stop the clunking noise. The investigator did think BMWFS should pay £200 to Miss M for distress and inconvenience caused.

Miss M was unhappy with this and raised some questions that the investigator answered.

These were mostly centred around the issue with the repair to the engine mount, and if this related to a different attempt to repair the vehicle as they didn't have the parts immediately in stock. Further down the line, Miss M arranged for this repair to take place, and was still encountering trouble with the vehicle making the clunking noise despite the repair taking place. Miss M had two different independent repairers I'll refer to as 'B' and 'A' look at the vehicle to try to find out why the vehicle was making this clunking noise as the sensor repair and the engine mount repair had not sorted this. Both repairers suggested different things were causing the noise, with repairer A eventually finding the cause and rectifying it at Miss M's cost.

The investigator explained this information didn't change her opinion on the complaint.

As Miss M remains unhappy, the case has been passed to me to review the complaint to make a decision.

I sent Miss M and BMWFS my provisional decision on 13 March 2025. I explained why I thought the complaint should be upheld. The key parts of my provisional findings are copied below:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Miss M acquired a car under a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Miss M's complaint about BMWFS. BMWFS is also the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply of the car and its 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.

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.

In this case, Miss M acquired a car that was around three years old and had travelled around 31,760 miles. As this was a used car with this mileage and age, it's reasonable to expect parts may already have suffered more wear and tear when compared to a new car or one that is less travelled. There's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn.

I've reviewed the available evidence about the issues Miss M experienced with the car. Based on what I've seen, I'm satisfied that there were faults with the car. I say this because neither BMWFS or Miss M dispute the vehicle has been faulty. BMWFS have agreed there were faults with the tyre pressure sensors and the engine mount and these have required repair. I've also seen invoices for other work carried out on the vehicle. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

Firstly, I've looked at the issues Miss M had, to see if the car had faults that were present or developing at the point of sale.

From the information I have, Miss M explained there was an existing issue with the tyre pressure sensors during her test drive, and said she was told these would be repaired before she collected the vehicle. I can see an invoice dated 21 December 2023, appearing to show the car was brought in on 6 December 2023 for work on the tyre pressure sensors. This suggests BMWFS repaired or replaced the sensors before the vehicle was collected but didn't create the invoice until 21 December 2023.

The next invoice is created on 18 January 2024, showing the car was brought in on 17 January 2024. This invoice shows an issue with the tyre pressure sensors was found, alongside checking for and reporting on a noise or clunk from the vehicle that Miss M had raised shortly after collecting the vehicle. A further invoice was created on 19 January 2024, again referring to the car being brought in on 17 January 2024. This invoice shows an issue with an engine mount on the vehicle.

Having looked at this information, I'm satisfied the issues with the vehicle were present or developing at the point of sale. I say this because these issues all seem to have happened within a month or two of the sale of the vehicle, and in relation to the tyre pressure sensors appear to stretch back to before the sale. In cases like this one where issues are reported within the first six months of an agreement, the onus can be on BMWFS to investigate whether the issues were present or developing at the point of sale. I can't see that this has happened, but I also can't see that BMWFS have refused to acknowledge the issues where they've been raised as these have been acted on and attempted to be repaired by BMWFS.

For the repeated sensor issues, the engine mount and the continuing clunking noise to have all happened so soon after purchase persuades me these issues were present or developing at the point of sale.

These repairs took place, initially for the tyre pressure sensors, and later the engine mount when rebooked by Miss M. After these had taken place, Miss M still hadn't had the clunking noise sorted. As mentioned earlier, Miss M took the vehicle to two independent repairers to try to figure out what was happening. The first independent repairer, referred to here as repairer B investigated, and thought the issue was related to subframe bolts not being at the correct torque. These were set to the correct level according to repairer B at a cost to Miss M for which I've seen the invoice.

This still didn't stop the clunking noise, so Miss M arranged for a second repairer to look at the car, referred to here as A. A appears to have looked at the car alongside an MOT test. During this, A found an old tyre pressure sensor rattling around inside one of the wheels, with the new sensor still intact and working. They removed the old sensor and resealed the rim at cost to Miss M. This then appears to have finally resolved the noise.

From the information I have, I'm persuaded this issue was caused during work to repair the sensors carried out by the dealership before Miss M collected the car. I say this because the noise was reported early on by Miss M, alongside issues with the tyre pressure sensors. I'm persuaded that if the sensors were replaced on 6 December 2023 as stated by BMWFS, that this issue is likely to have happened between 6 December 2023 and 17 January 2024 with the sensor either falling in whilst being replaced, or not being secured correctly due to when the sensor lights came on, and when Miss M reported the noise. I can also see that BMWFS replaced the engine mount as this had an issue with it so soon after purchase and they also believed this would resolve the noise issue.

As I've found the issues were present or developing at the point of sale, I'm persuaded the car was not of satisfactory quality when it was supplied. Miss M entered into this agreement and was due to pay a cash price for the car of around £21,999.00 which is not an insignificant amount. I can appreciate why she was unhappy with the ongoing clunking noise so soon after purchase alongside the repeated sensor issues. I agree with the investigator that the issues with the key and dust-caps are cosmetic in nature, and do not mean that the vehicle was not of satisfactory quality in these areas. The key was functional and appears to have suffered wear and tear related issues, with the dust caps being replaced by BMWFS.

Whilst I acknowledge Miss M would have liked a matching set when this was carried out, this doesn't make the vehicle of unsatisfactory quality.

I invited both parties to make any further comments. Miss M responded with some information that affected the actions I was minded to direct BMWFS to take. BMWFS did not respond. Now both sides have had an opportunity to comment and have been made aware of what I'm likely to decide following further comments, I can go ahead with my 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.

Miss M supplied information in response to my provisional decision, however this information does not change what happened or the reasoning for why the vehicle was not of satisfactory quality. The information only affects the actions BMWFS need to take to put things right. As such I see no reason to depart from my provisional findings outlined above.

Miss M responded to explain that due to personal circumstances, she was required to settle the outstanding finance with BMWFS in September 2024. Miss M states she paid £12,753.06 settle the outstanding finance. Miss M also explained she paid for a service on the vehicle in December 2024 and also paid for replacement tyres for the vehicle in February 2025. Some of this information does slightly change the actions I was minded to direct BMWFS to take. Now I've let both parties know my updated thoughts, I've updated my final decision below to reflect this.

### **Putting things right**

As I've concluded that the car was not of satisfactory quality when it was supplied, I think it's

reasonable that BMWFS should put things right. In this case, I do think it's reasonable that BMWFS had one chance to repair the issues with the vehicle, as rejection was not raised within the first 30 days of the agreement starting. I also think it's reasonable to allow BMWFS time to arrange these repairs where a repair can't be carried out on the same day due to needing to order a part, as this will constitute the same chance to repair. However, Miss M did eventually give BMWFS the chance to complete their one chance at repair, and BMWFS were not able to successfully remedy the issues with the vehicle. It's at this point, when the engine mount work does not resolve the issues, that Miss M was within her rights to reject the vehicle as laid out in the CRA.

BMWFS will need to end the agreement with nothing further to pay if this has not already been formally ended after the settlement payment by Miss M, arrange to collect the vehicle at no cost to Miss M and refund the deposit paid, however BMWFS are entitled to keep any part made up of a dealer contribution. BMWFS should calculate how much Miss M should've paid from the start of the agreement to the date of this final decision (based on normal monthly repayments). BMWFS should deduct this amount from the total payments including the settlement figure Miss M has actually paid, and refund the difference ensuring Miss M has paid a monthly payment for each month she has owned the vehicle.

As Miss M had to pay two further repairers to try to resolve the noise issue after BMWFS failed to do so, it is fair that BMWFS cover the cost of these diagnostics and attempted repairs as had the repair not failed, she would not have had to incur these costs. In the case of the costs from repairer A, this included an MOT which Miss M would have to have carried out through normal ownership of the vehicle, and if this car had been rejected before, I think it's likely she'd still have had to incur an MOT cost on another vehicle, so I don't think it's fair for BMWFS to cover the MOT cost at repairer A, but they should cover the evidenced cost of removing the sensor and resealing the rim that eventually fixed the clunking noise with the vehicle.

I then considered whether Miss M should be due any monthly payments back for her use of the vehicle. I can see based on the MOT information in November 2024, that Miss M was able to travel around 7,000 miles during her ownership of the vehicle. The agreement states that there is no mileage allowance or charge for excess mileage within the agreement.

Based on the amount of miles Miss M was able to travel, I do think she's been able to carry on using the vehicle to a reasonable level. Because of this I'm persuaded that it's fair for BMWFS to retain the monthly payments Miss M made or should have made from the start of the agreement to the date of the final decision as this shows she was able to continue to have fair use of the vehicle during the time she has owned it.

I've also considered the impact these events had on Miss M. The investigator thought that BMWFS should pay £200 for distress and inconvenience caused during the issues Miss M was having with her vehicle. I can see BMWFS offered £100 to Miss M as part of their response to the complaint. I'm persuaded that a payment in total of £300 is a fair amount to recognise the ongoing distress and inconvenience caused to Miss M here. I say this because the issues have been ongoing for some time. This has taken up time on Miss M's side, with the noise causing her concern whilst using the vehicle and repeated trips to try to find out what was going wrong with the car. I can see based on the mileage recorded on her MOT in November 2024, Miss M has been able to use the car to a reasonable level, travelling over 7,000 miles in around 11 months of ownership. So, I can't say Miss M's use of the vehicle has been restricted, but I acknowledge Miss M was concerned about the noise and what the causes might be alongside the inconvenience of trying to have this sorted and this is why I feel the £300 distress and inconvenience payment is fair.

In regard to the service and tyre replacement costs, I will not be directing BMWFS to refund

these. I say this because servicing the vehicle and replacing tyres is expected in the upkeep of a vehicle to keep it in good roadworthy condition whilst the vehicle was in Miss M's ownership along with other potential costs. Had these not have been carried out, damage or higher wear could have taken place that BMWFS may have incurred greater costs to rectify. As Miss M has had use of the vehicle, it is fair that she's paid these costs to keep it in good condition as they have occurred through her ownership of it, although I can appreciate why Miss M has raised these.

### **My final decision**

For the reasons explained, my final decision is I uphold Miss M's complaint and instruct BMW Financial Services(GB) Limited must follow my directions above to do the following:

- End the agreement with nothing further to pay (if this has not formally been ended already after the settlement payment).
- Collect the vehicle at no cost to Miss M.
- Refund the deposit paid towards the agreement. BMW Financial Services(GB) Limited is entitled to retain any part of the deposit made up by dealer contributions if applicable.
- Calculate how much Miss M should've paid from the start of the agreement to the date of this final decision (based on normal monthly repayments). BMW Financial Services(GB) Limited should deduct this amount from the total payments including the settlement figure Miss M has actually paid, and refund the difference ensuring Miss M has only paid a monthly payment for each month she has owned the vehicle.
- Refund evidenced costs from repairer B's attempt to resolve the noise issue.
- Refund evidenced costs from repairer A resolving the noise issue. The cost of the MOT is not included in this.
- Pay 8% simple yearly interest\* on the above, to be calculated from when Miss M made the payments to the date of the refund.
- Pay Miss M a total of £300 for the distress and inconvenience caused. This includes any amount already paid.

\*HM Revenue & Customs requires BMW Financial Services(GB) Limited to deduct tax from the interest amount. BMW Financial Services(GB) Limited should give Miss M a certificate showing how much tax it has deducted If she asks for one. Miss M 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 28 April 2025.

Jack Evans  
**Ombudsman**