

## The complaint

Mr P has complained about the quality of a car provided on finance by BMW Financial Services (GB) Limited (BMWFS).

## What happened

Both parties are familiar with the events, so I'll briefly summarise them here. BMWFS supplied Mr P with a brand-new car on a hire purchase agreement in October 2023. The cash price of the car was around £92,500. The hire purchase agreement required payments of around £1,360 for 47 months followed by a final payment of around £41,115. Mr P paid a deposit of £5,000.

Mr P said the car had intermittent faults since he acquired it. He said that the towbar would not retract and the heating/air conditioning wasn't functioning.

Mr P complained to BMWFS in October 2024. He said that he'd had issues with the car since he acquired it and had taken it back to the retailer frequently only to be told nothing was wrong. Mr P asked to reject the car.

BMWFS looked into the complaint, and it accepted that there were faults with the tow bar and the heater matrix. It agreed that the retailer had incorrectly told him that there was nothing wrong, and when the car was brought back in for a repair neither issue was resolved. It said that the part required was available and the repair would be completed. It offered £350 for the length of time it had taken to respond to the complaint and for supplying a car with an inherent defect. It sent Mr P an acceptance form setting out compensation in full and final settlement. It issued a final response on this basis in April 2025.

Mr P referred his complaint to the Financial Ombudsman. He said that he didn't accept the offer and it had not been paid to him. An investigator here looked at the complaint, he said that the car wasn't of satisfactory quality. He said that BMWFS already had an opportunity to repair the car, so Mr P was entitled to reject it. He set out the steps he thought BMWFS needed to take to put things right which included rejection of the car, unwinding the agreement and a refund of the deposit.

Mr P agreed with our investigator, but BMWFS disagreed. It said that Mr P had agreed to a further repair but had changed his mind. It said as the parts were available rejection wasn't a suitable remedy, and the car should be repaired instead.

As an agreement couldn't be reached the complaint was passed to me to make a final decision. I issued a provisional decision which said:

*When considering what is, in my opinion, fair and reasonable, I must take into account relevant law and regulations; regulator's rules including Consumer Duty, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time.*

*I've read and considered the evidence submitted by both parties, but I'll focus my comments*

*on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.*

*Where the evidence is incomplete or inconclusive (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BMWFS is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.*

*The Consumer Rights Act 2015 (CRA) is also of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory."*

*The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances might include things like the age and mileage at the time of supply and the car's history.*

*The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality.*

*It doesn't seem to be in dispute that there were faults with the car, which made it of unsatisfactory quality when it was supplied. Our investigator has issued a comprehensive view setting out why he thought the car wasn't of satisfactory quality. It doesn't appear that BMWFS disagree on this point, and it had already set this out in its final response, so I won't spend a lot of time discussing the evidence of the faults in this decision. But for the avoidance of doubt, I will say that I agree.*

*In Mr P's case the car was brand new when it was supplied and the cash price was around £92,500. So, I think it's fair to say that a reasonable person would have expected the quality to be high, and that the car wouldn't have had any problems at all for quite some time.*

*The evidence demonstrates that there was a fault with both the retractable tow bar and the heater matrix. There were also earlier faults with the brakes which appear to have been repaired. These may have been intermittent faults, but they have been documented by both the retailer and BMWFS. I can understand why Mr P lost faith in the car and I think these defects are more than minor.*

*So, I'm satisfied that the car was not of satisfactory quality at the point of supply as it had an inherent defect, and BMWFS need to do something to put things right.*

*BMWFS' main argument seems to relate to what needs to be done to put things right. It said that Mr P had agreed to the repair as a resolution to his complaint and had chosen to take the car back into his possession while awaiting the part, instead of accepting a loan car. It said that rejection of the car wouldn't be an appropriate remedy.*

*I can understand BMWFS' position, but I have to say that I disagree. The CRA sets out that (outside the first 30 days) if the car isn't of satisfactory quality, there's been a repair attempt, and the car still doesn't conform to the contract; Mr P should be able to reject it.*

*Mr P tried to reject the car when he complained to BMWFS, although he's explained that he also tried to do this earlier with the retailer. I can see that the retailer and BMWFS have tried to persuade Mr P to have the repair completed after he validly tried to exercise his final right to reject. Acting reasonably, Mr P allowed a further final chance when the car was being serviced in April 2025 and he was assured it would be completed, but it was not, due to a part not being available. I think it would be unfair to force Mr P to accept the repair just because the parts are now available. I don't think Mr P did accept the resolution to his complaint as he's not accepted the full and final settlement offer by BMWFS nor have I seen evidence on how he had agreed to return to the retailer once the part was available. So, I agree with our investigator's assessment that Mr P should have been and should now be able to exercise his final right to reject.*

*The CRA says a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure. But as a starting point, in the particular circumstances of this case, I think the monthly repayment towards the hire purchase agreement is a reasonable figure to use for a months' worth of use of the car. Mr P has told us that he stopped using it fully in October 2024 when he bought another car, but he still had to drive this car in order to maintain it. But he's said that the mileage is currently around 40,000 which means that he's had significant use of the car and more than that set out in the mileage cap on the agreement which is 32,000. I appreciate that he's told us that his use of the car changed when he bought a replacement, but I don't think the fault has impacted his ability to cover more than was agreed, in just over two years. So, I think BMFS can retain the monthly payments Mr P made in recognition of the use he's had of the car up until the point it is collected.*

*However, it's also clear that Mr P hasn't been able to use the car without problems. The tow bar hasn't worked properly, and the heating/air-conditioning and brakes have also had faults. Some repairs have been made but he's still been unable to use the tow bar as intended, and this was an important feature for him. So, I agree with our investigator's recommendation that 10% of each monthly payment should be refunded to reflect the impaired use.*

*Mr P has had some major faults to deal with, several repairs and poor service from BMWFS. I think he has made more than a reasonable effort to sort things out and it has caused him distress and inconvenience. I can see that BMWFS already offered £350 in compensation, and our investigator also recommended the same amount. Considering the ranges of compensation on our website, I think this is a suitable amount to reflect the impact on Mr P.*

Mr P said that he was slightly disappointed that he wasn't getting a refund from when he stopped reasonably using the car as he thought that was fair. However, he accepted the decision in order to bring the matter to a close as it had caused a lot of stress and sleepless nights.

BMWFS responded to the decision. In summary it said:

- It might look to charge Mr P for excess mileage and any damage outside normal wear and tear when the car was returned.
- Mr P is a director of a company which specialises in recovery, so the car could have been used for business.

- The estimated costs for the refund were around £10,000 which was not proportionate to the complaint.

As both parties have responded I'll now go onto to make 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.

I'd like to thank both parties for their prompt responses to my provisional decision. I don't intend to address the same points again as in my provisional decision. Instead, I've tried to concisely explain why the additional comments and evidence I've received since I issued my provisional decision haven't changed my mind.

I can understand Mr P 's disappointment that my decision is slightly different to that of our investigator. But in considering whether the business can make a deduction for use, and the mileage he covered, I don't find I have the grounds to direct it to refund any of the full repayments that he made. But it's clear that his use has been impaired so I still think a 10% refund of each payment would be fair.

BMWFS says it might assess the condition of the car and pass on charges for excess mileage and damage when the car is returned. In this decision I'm not looking at events that haven't happened yet. I've set out that Mr P is not liable for monthly rentals after the car is returned. But if BMWFS think that it is entitled to charge for other items under the agreement then it will need to discuss that with Mr P at the time, and if he's unhappy with what happens, then he may be able to bring a further complaint.

BMWFS highlighted that Mr P is the director of a company which deals in recovery, and it alludes to his business use of the car. I have already considered this point, and I'm satisfied that Mr P was acting as a consumer when he entered into the agreement and had not intended to use the car wholly or predominantly for business use. He's described his main daily use including commuting and family use of the car, and occasional use of a trailer. So, I'm not persuaded that this information should change my decision.

I can also understand BMWFS' concern about the total amount of refunds. But I think the amount could have been lower had it accepted Mr P had validly exercised his final right to reject at an earlier stage, so I'm not persuaded that it should now be reduced. Considering this is a prestige high value car, the refund for impaired use (and other items set out) due to the faults seems reasonable and not excessive.

As I don't consider I've been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. As a reminder, Mr P doesn't need to accept my decision, if he thinks he can achieve a better outcome, he will then be free to pursue the matter by other means such as through the courts.

My final decision is the same as that set out in my provisional decision, and above.

### **My final decision**

My final decision is that I uphold this complaint and direct BMWFS Financial Services (GB) Limited to do the following:

- end the finance agreement ensuring Mr P is not liable for monthly rentals after the point of collection (it should refund any overpayment for these if applicable)
- take the car back (if that has not been done already) without charging for collection
- Refund Mr P's deposit of £5,000
- Refund 10% of each monthly payment for impaired use
- Pay 8% simple annual interest\* from the date of each payment above until the date of settlement.
- Remove any adverse information reported to the credit reference agencies.
- Pay £350 compensation.

\* If BMWFS Financial Services (GB) Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much tax it's taken off. It should also give Mr P 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 P to accept or reject my decision before 11 February 2026.

Caroline Kirby  
**Ombudsman**