

## **complaint**

Mr P complains that BMW Financial Services (GB) Limited (BMWFS) refused to let him reject a car.

## **background**

In June 2018 Mr P bought a new car at a cost of some £68,000 which was part funded by a hire purchase agreement. When it was taken back for its 1,200 mile service some six weeks after purchase the garage told him it would have to be fully checked as it was one of the models which had been caught up in a sand storm prior to delivery. He was without the car for seven or possibly ten weeks, but was provided with a courtesy car for a couple of those weeks.

Mr P was told that the pre delivery inspection (PDI) hadn't been carried out by the garage which had supplied the car to the dealer. He says the dealer told him it was unaware that this was one of the cars affected by the sandstorm. Mr P was told BMW would exchange the car once he put the original alloy wheels back. He also cancelled the transfer of a personalised registration plate.

BMWFS then told Mr P that the PDI had been carried out and as no faults had been found there was no basis for a rejection. His complaint was rejected and so he brought the matter to this service. The complaint was considered by one of our investigators who recommended it be upheld.

Mr P supplied evidence that the full PDI checks hadn't been carried out and the quality enhancement check hadn't been done. He said he was concerned that some long term damage may be caused by sand in the engine or other key components. Later, in December 2018 the car developed a fault with it going into limp mode. It was repaired, but this added to Mr P's concerns about what further issues might arise.

BMWFS said that as gesture of goodwill it had offered Mr P a watch, two payments of £725.48 had been suppressed for the length of time the vehicle was being repaired (totalling £1450.96). It also included some performance alloy wheels worth £4373.48 and a service worth £301.56. It said that these had been offered on the basis Mr P agreed to keep the car.

The investigator said a reasonable person wouldn't expect a car and every component to last forever. But there was a reasonable expectation that the components of a car function without any significant issue or problem for a reasonable period of time. For there to be concerns about key components of an expensive new car was unreasonable. She believed Mr P wouldn't have bought the car had he known it had been affected by the sandstorm and so she recommended BMWFS allow him to reject it.

BMWFS didn't agree and said no faults had been found. It added that BMW had only written off some of the cars which had been caught up in the sandstorm and if the car had had any faults it wouldn't have been released for sale. It said Mr P had accepted around £6,000 worth of goodwill contributions and if it had to take the car back it would be deducting £4,373.48 for the cost of alloy wheels.

Mr P said he had been told he had to return the car with standard wheels even though the dealer had supplied the performance ones. He had sold the originals £1,400 and that meant he had to buy them back at a premium of £250. He also said he had paid GAP insurance.

## my findings

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 need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

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

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law 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 can be aspects of the quality of the goods.

I have a number of concerns about this complaint. The incident of the cars being damaged by the sandstorm was widely reported and I gather BMW had to write off a number of cars. However, those which weren't written off were supposed to be subjected to a check before being released for sale to ensure they were of satisfactory quality.

It seems this check wasn't carried out on Mr P's car. It was subject to the standard PDI, but when it was taken in for the 1,200 mile service some six weeks after purchase the diagnostic read out said the car wasn't to be released for sale. I find that rather puzzling that this car could have slipped through the net. It also means that Mr P wasn't able to make an informed decision about whether to buy a car which had been caught up in the sandstorm

The check was carried out when it was taken back and I gather part of the delay was a wait for vacuum cleaner to be delivered to allow the dealer to remove any sand from the car. Although the business says there wasn't a fault with it, I can see why Mr P would have concerns about buying an expensive car which might be affected by sand at some point later on. This was the view taken by the dealer at the time Mr P first complained, but it wasn't supported by BMW. The car did suffer problems which required repairs in the first six months and this only adds to the suspicion that it may encounter further issue in the future.

On balance I think Mr P was misled when he bought the car since he wasn't told it was part of the consignment which had been affected by the sandstorm and as such I consider he should be allowed to reject it. As far as the alloy wheels are concerned I am satisfied that Mr P bought those separately and that he suffered £250 loss for which he should be compensated. I have seen nothing that allows me to conclude that BMWFS supplied the

wheels. The GAP insurance was part of the original price and so I don't consider BMWFS need take any further action on that.

### **my final decision**

My final decision is that I uphold this complaint and I direct BMW Financial Services (GB) Limited to:

- end the agreement with nothing further to pay
- collect the car at no further cost to Mr P and refund any payment made by him since the investigator issued her view on 30 January 2019
- refund the deposit and pay 8% simple interest from the date of the payment until the date of settlement
- refund 10% of repayments for the period the car was with the dealer (apart from the two months for which the payments were refunded) for loss of enjoyment
- pay £300 for any trouble and upset and inconvenience caused
- refund the consequential costs incurred by having to change the private plate and £250 for his loss on the alloy wheels
- cover the insurance cancellation fee, (providing Mr P can provide T&C of his insurance policy showing cancellation fee amount)
- remove any adverse information from Mr P's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 May 2019.

Ivor Graham  
**ombudsman**