

## **complaint**

Mrs E complains that a car she acquired under a hire purchase agreement (“HPA”) with BMW Financial Services (GB) Limited (“BMWFS”) wasn’t of satisfactory quality. She would like the car to be repaired.

## **background**

In July 2017 Mrs E acquired a nearly new car under a four year HPA with BMWFS. The car was around 10 months old and had only travelled a few miles.

In December 2017 Mrs E was experiencing problems with the clutch as it was tight on changing gear and the car would shake when driven at over 30mph. She contacted the dealership and made arrangements to take the car in.

Unfortunately a few days before the car was to be booked in it broke down and Mrs E had to call out roadside assistance. The car was taken to the dealership where it was stripped down and inspected. The dealership found that the clutch plate was worn to the metal and the flywheel had been damaged. The dealership took photographs of the damaged parts and sent them to the manufacturer to see if the repairs would fall under the warranty.

The manufacturer declined to cover the repairs as it said the damage was due to wear and tear caused by Mrs E’s driving style. For this reason it said the warranty didn’t cover the damaged clutch and flywheel.

Mrs E was unhappy at the dealership’s response and complained to BMWFS. She said she had only driven around 5000 miles in the car and disagreed it was her driving that caused the damage to the clutch. Mrs E said the clutch had a manufacturing fault and so wasn’t of satisfactory quality. As BMWFS wasn’t able to resolve her complaint within eight weeks it told Mrs E she could complain to this service.

Mrs E complained to us. BMWFS then arranged to have the car independently inspected. The independent engineer said that the clutch friction plate had completely disintegrated and concluded that this was due to driver misuse as there had been no signs of mechanical failure. In light of the independent engineer’s report our adjudicator didn’t recommend Mrs E’s complaint should be upheld.

Mrs E disagreed with our adjudicator’s opinion. She arranged for the photographs of the clutch to be looked at by a third engineer who said that in his opinion the damage to the clutch arose from an inherent fault and not from Mrs E’s driving style. Mrs E also said that an employee of the dealership had been with her when she test drove the car and hadn’t raised any issues with her driving, and that her other car was now driven by her husband who hadn’t found any problems with the clutch in that car.

As the parties couldn’t agree the complaint was passed to me. I gave an initial view along the following lines.

As the car had been acquired through a HPA with BMWFS then it was BMWFS who was liable if the car wasn’t of satisfactory quality at the point of sale. I’d seen two different opinions from engineers about whether the problem with the car’s clutch was inherent or due to wear and tear. So the issue for me to decide was what the most likely cause of the damage had been.

I appreciated that as Mrs E acquired a virtually new car it was reasonable that she'd have expected the car to be free from faults. And she said that having driven so few miles the clutch shouldn't have worn as it did.

Looking first at the report prepared by the engineer instructed by BMWFS, I was satisfied that they were independent as they were employed by a vehicle inspection company and had no connection to either BMWFS or the dealership. This engineer saw the car at the dealership and after the gearbox and clutch had been removed. After physically inspecting the parts the engineer said that there "was no sign of mechanical failure or breakage" and that in his opinion the clutch had been "worn out due to driver misuse."

The independent engineer set out his qualifications in his report and I'd seen he has undertaken a number of courses to receive accreditations to inspect vehicles.

Mrs E also arranged for the car to be inspected. This engineer said that the dealership wouldn't allow him to physically examine the car and so instead his view was based on the photographs of the damaged parts taken and supplied by the dealership.

I didn't know how Mrs E knew the engineer she approached so I can't have the same confidence in his independence as I could in the engineer instructed by BMWFS. Mrs E's engineer said in his opinion the disintegration of the clutch disc was "the result of product failure". He said that when a clutch breaks down due to wear and tear the clutch disc remained intact as this was a gradual process whether it was caused by time or driving style. He also said that he has experienced Mrs E's driving personally.

Mrs E's engineer also set out his qualifications which showed that although experienced he wasn't as qualified as the independent engineer.

Looking at these two reports, on balance I preferred the report prepared by the engineer arranged by BMWFS as I was satisfied he was independent and qualified to reach the opinion that he had about the clutch. He'd also reached his opinion after he saw and handled the parts.

I also appreciated Mrs E says her other car hasn't suffered the same problem, but I understood this was a heavy car and it may be that was a factor in how the wear to the clutch disc arose. So I'd concluded on balance that the damage to the clutch was the result of the driver misuse and not an inherent mechanical fault. Therefore, I didn't have any evidence that car wasn't of satisfactory quality at the point of sale.

This complaint had taken many months and I'd seen that there was a delay in arranging an independent inspection of the car which was crucial to the decision, especially as this problem arose within Mrs E's first six months of having the car. Mrs E said she has struggled to pay both the monthly payments for the car and cover additional travel costs. I thought this matter should've been sorted out much faster and this had been to Mrs E's detriment.

BMWFS didn't issue a final decision letter and only arranged for the car to be inspected once this service was involved. I thought BMWFS's handling of Mrs E's complaint had caused her unnecessary distress and inconvenience and that it was fair and reasonable to require BMWFS to pay her compensation for that.

I intended to require BMWFS to pay Mrs E £250 compensation for the poor service she received when she complained, but I didn't intend to uphold her complaint regarding the car not being of suitable quality.

Mrs E had also raised with us a complaint about the Car Care Plan that was sold to her at the time she'd acquired the car. BMWFS said this wasn't part of Mrs E's original complaint and it would like to look into this as a separate issue. I thought that was reasonable and so I didn't deal with that matter here. If Mrs E should be unhappy with the decision BMWFS reached on that matter then she could always bring another complaint to us.

BMWFS has accepted my provisional decision but Mrs E has disagreed. She says that the dealership should've booked the car in for inspection faster than it did when she raised the problem. She says the delay in getting the car looked at and being advised she was okay to keep driving resulted in the damage to the clutch being greater than it should've been. She also said she was unhappy that the dealership didn't allow her engineer to inspect the car and that this together with the delay in arranging the independent inspection leads her to suspect the dealership may not have been entirely honest in its dealings. Mrs E says it would've been fair to get a third report as the two engineers didn't agree. She also says she doesn't think the independent engineer's report was as clear about what the damage would look like if due to her poor driving, whereas her engineer's report was fuller and more descriptive on this issue.

Mrs E also says that she was misled about the age of the car and thinks that the damage may have arisen because the car wasn't used for a long period of time. She also disputes that her driving style was the cause of the damage as since the repair there has been no problems.

Finally Mrs E says the compensation isn't sufficient, because if the report had been carried out faster she wouldn't have experienced the lengthy delay, extra costs and inconvenience caused to her.

### **my findings**

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

I've looked carefully at the points made by Mrs E but I'm afraid I haven't changed my mind and I will explain why.

Firstly, I don't have any evidence that the dealership acted in bad faith, that is that its behaviour was underhand or less than open and honest. I don't think there was an undue delay in getting the car booked in for an inspection as at the time Mrs E raised the issue with the garage she was still able to drive it. I'm not surprised she had to wait for a slot to be available and I think that would be the case for most garages. I also don't think I can hold BMWFS responsible for the booking-in system used by the dealership.

I don't think any advice that Mrs E could keep driving until the appointment date for the inspection was reached would've led to substantially more damage being caused. I've seen that the car broke down before the appointment date was reached which means it's more likely than not that the damage to the clutch was already extensive by the time Mrs E raised the problems she was having with the car with the dealership.

I can appreciate Mrs E's frustration that her engineer wasn't allowed to inspect the car by the dealership but I can also understand why the dealership may have been reluctant to have an unknown engineer look at the car at its premises. The dealership would've, at that time, been responsible for the car. This was a decision made by the garage so I don't think I can fairly hold BMWFS responsible for any policy the dealership may operate in regards to outside engineers inspecting cars. BMWFS agreed to have the car independently inspected, albeit after some delay, and I think that was reasonable.

Mrs E disagrees with the weight I've attached to the independent report. But I'm satisfied that this engineer was qualified and objective when making his report. I still think the independent engineer was the better qualified and his independence was established. I don't agree that it was unfair not to seek a third opinion when Mrs E's engineer disagreed with the findings of the independent report. I think there was sufficient evidence on which I could make a fair decision. I appreciate Mrs E thinks her engineer was more detailed in explaining why he'd reached the conclusions that he had but I thought the independent engineer's report was clear about what he'd seen and the conclusions he'd drawn from that.

Mrs E says she was misled about the age and condition of the car. But I've seen that on the hire purchase agreement (signed by Mrs E at the time she acquired the car) the car was described as "used" and the date of its first registration was given. Mrs E says that the clutch may have corroded due to standing unused for a period of time. However, I have no evidence that this type of damage was noted by either the independent engineer or Mrs E's engineer.

There is some discrepancy as to the number of miles the car had been driven at the point of sale. The finance agreement says 10 miles and Mrs E says the mileage was actually 100 when she took the car. Whichever mileage is correct it is still, in any event, too low for the damage to the clutch to have arisen from another driver's driving style. I also suspect the car wouldn't have had only one driver in the past.

Mrs E says that since the car has been repaired she has had no further problems with the clutch. She says this shows her driving style isn't at fault. However there could be a number of reasons for this such as she has now changed her driving style. So I don't think I can give that much weight in reviewing my initial decision.

I agree that BMWFS didn't resolve this matter as quickly as it should have and that resulted in Mrs E suffering unnecessary distress and inconvenience. However, I'm satisfied that the car was in a satisfactory condition at the point of sale so in assessing the impact this delay has had on Mrs E I still think that compensation of £250 is fair and reasonable in all the circumstances.

### **my final decision**

For the reasons given above I'm partially upholding Mrs E's complaint. I'm asking BMW Financial Services (GB) Limited to pay Mrs E £250 as compensation for the distress and inconvenience caused by its delay in dealing with her complaint.

BMW Financial Services (GB) Limited must pay the compensation within 28 days of the date on which we tell it Mrs E accepts my final decision. If it pays later than this it must also pay

interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 17 February 2019.

Jocelyn Griffith  
**ombudsman**