

## **The complaint**

Mrs W complains that BMW Financial Services(GB) Limited trading as BMW Financial Services (“BMWFS”) supplied her with a car that wasn’t of satisfactory quality.

## **What happened**

Mrs W took out a hire purchase agreement with BMWFS in June 2022 to acquire a new car. The agreement was for 48 months, where regular, monthly repayments of £671.70 were to be paid, with an optional final repayment of £34,048.43 owed. The total cash price of the car listed on the agreement was £82,350 and the total amount payable was £91,118.33. An advance payment of £25,500 was made.

Mrs W said over the initial months after being supplied the car she experienced several issues with it, such as with phone and general connectivity problems.

The car was taken in for repairs in September 2022 and the job card said the steering wheel module was replaced, as well as the programming/encoding of the control unit. At the time, the car had been driven for 5,807 miles.

Mrs W said she continued to experience issues with the car which varied from continued problems with connecting her phone to it; to one of the screens in the car appearing blank at times; to the car alerting her that the driver assist aids needed to be inspected.

Mrs W said there were more occasions where the car had been sent in for repairs, but no job cards were provided. Mrs W instead provided emails with the supplying dealership of agreed appointments and details of issues identified. Some of the emails to the supplying dealership were between a third-party who was communicating on behalf of Mrs W. For ease, I have addressed these as from Mrs W throughout.

Frustrated with the issues with the car and the on-going repairs, Mrs W complained to BMWFS and asked to reject the car in January 2023. In March 2023, BMWFS issued their final response where they explained they didn’t uphold Mrs W’s complaint. In summary, they said the supplying dealership repaired the faults in September 2022 and that they had no evidence of a diagnosed fault since the repairs were completed. So, BMWFS did not accept the rejection of the car.

The car was then taken in for further repairs to the supplying dealership and job cards for some of the repairs have been provided.

- On 4 May 2023, the car was taken in for diagnostics and the program of the control unit took place at 16,548 miles.
- On 17 August 2023, the telematics control unit was replaced at 20,149 miles.

In August 2023, Mrs W referred her complaint to our service as she didn’t feel BMWFS looked into things fairly. BMWFS said they asked Mrs W for evidence and diagnostics of the faults that she believed were still present with the car, but they hadn’t been provided to them.

BMWFS also provided an email between themselves and the supplying dealership. The supplying dealership said in February 2023 to BMWFS that they couldn't identify a fault with the car when they investigated it. They said they carried out three recalls on it which were software related, but they were unable to replicate the issues afterwards.

Other emails between the customer services department of the retail unit of the manufacturer and BMWFS in February 2023 said that no warranty claims were recorded against the car, other than a "technical campaign".

In November 2023, Mrs W said that the car was still experiencing issues. An email exchange between Mrs W and the supplying dealership explained that while some faults like the phone connectivity persisted, other new issues had emerged. Mrs W said they varied from issues with charging, remote control parking, and remote lock/unlock.

Another email towards the end of November 2023, between Mrs W and the supplying dealership, showed that while the supplying dealership had the car for inspection, they experienced a fault in the "communications area" and the navigation also failed whilst driving. The email said they needed to carry out tests to determine further diagnosis and were also in the process of contacting the manufacturer's technical team.

An investigator issued their view where they upheld Mrs W's complaint. In summary, he said, it is likely there was a fault with the car, in particular with the control unit, after having reviewed the job cards for repairs. The investigator also said there was enough evidence to suggest the repair that had been undertaken on the car in September 2022 was unsuccessful and that the issues still persisted, and he concluded the car wasn't of satisfactory quality when it was supplied to Mrs W. The investigator thought it was fair for Mrs W to reject the car as it had already been attempted to be repaired. He also recommended BMWFS pay Mrs W £300 to reflect the distress and inconvenience caused.

BMWFS didn't initially respond to the investigator's view to confirm whether they accepted his opinion. And so the complaint was passed to me to decide.

In March 2023, BMWFS got in touch and said that the supplying dealership advised them that Mrs W did not wish to reject the car and had allowed them to carry out a further diagnostic. Mrs W then confirmed to the investigator that she still wished to reject the car.

*I issued a provisional decision on 30 July 2024 where I explained why I intended to uphold Mrs W's complaint. In that decision I said:*

*"Mrs W complains about a car supplied to her under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mrs W's complaint about BMWFS.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – BMWFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.*

*So, it's important to note here that the car Mrs W acquired was brand-new and cost over £80,000. I think a reasonable person would expect it to be in excellent condition, with no faults or issues. And I think they would expect trouble free motoring for a significant period.*

*What I need to consider is whether the car was of satisfactory quality or not. And in order to do that, I first need to consider whether the car developed a fault.*

*It isn't in dispute here that the car initially developed a fault. I say this because the car was repaired in September 2022 and the job sheet for it said that the steering wheel module was replaced and the programming/encoding of the control unit was completed.*

*So, I'm satisfied there was a fault with the car, and I'm also satisfied the fault was present or developing at the point of supply.*

*I don't think a reasonable person would have expected the issues Mrs W said she had with the car, especially considering these first presented themselves within four months of the car being supplied to Mrs W.*

*Mrs W complained to BMWFS as she believes the fault with the car still persists and that other issues have since arisen.*

*BMWFS say that there is insufficient evidence to show that there is a fault with the car since it was repaired in September 2022. They say this as they relied on information supplied to them by the supplying dealership, where they told BMWFS that a fault couldn't be identified, despite various attempts to investigate and diagnose an issue with it. BMWFS also say that they requested evidence of faults still present with the car but were not supplied it.*

*On the other hand, Mrs W has supplied job sheets of repairs that have occurred since September 2022, along with various emails between herself and BMWFS and/or the supplying dealership. The further job sheets show works carried out to the telematics control unit, with it being replaced in August 2023. Mrs W has also provided an email which shows the supplying dealership were able to replicate some of the issues Mrs W experienced intermittently, most notably in the communications area and with the navigation system. This email was sent on 27 November 2023 – after the repair had taken place.*

*So, I'm not persuaded by what BMWFS have said about there not being evidence of faults still persisting, as job sheets and email exchanges provided by Mrs W corroborates what she has said and is consistent with her experiences she has described. So, I'm more persuaded by what Mrs W has told our service than by what BMWFS has said.*

*Considering things here, I think it is likely the September 2022 repair failed or the faults have returned.*

*Mrs W has made it clear she wants to reject the car. I've explained above that I'm satisfied a repair has been carried out but didn't resolve the issues. The CRA explains this means Mrs W now has the final right to reject. And I'm satisfied she has exercised this right, so it seems fair and reasonable to me that Mrs W is now allowed to reject the car. I now need to consider what else BMWFS needs to do to put things right under the circumstances.*

### *Impaired usage*

*In addition to what our investigator directed the business to do to put things right, I'm also mindful that Mrs W has had several issues with the car, which initially presented themselves from September 2022. So, I've considered Mrs W's usage over the time the car had a fault.*

*The issues were intermittent in nature, but Mrs W has explained in detail how the faults impacted her daily driving. Mrs W was also unable to use some of the features of the car at times, such as phone connectivity, navigation, and driver assist aids.*

*I'm satisfied Mrs W suffered impaired usage of the car, as at times it wasn't performing as it should, particularly considering it was brand new. But, I also need to consider the specific circumstances here. By the end of December 2023, the car had covered over 23,500 miles and it has likely covered more miles since. So, Mrs W has had reasonable use of it. And, as the issues were intermittent, it does appear that for times during the agreement the car was performing as it should.*

*I also accept Mrs W was nervous driving the car in case issues with it occurred whilst she drove it. Considering things here, I think it is fair for BMWFS to reimburse Mrs W 15% of monthly repayments across the entire period the car wasn't working as it should have been. So, from September 2022 up until when the agreement ends and the car is returned.*

#### *Distress and inconvenience*

*I think it must have been frustrating and inconvenient for Mrs W to have to deal with the issues the car had. The issues have lasted well over a year and from my understanding, they still haven't been resolved. Mrs W explained to BMWFS that due to the connection issues, she at times kept a back-up sat nav and Bluetooth speaker in the car. Mrs W has evidenced the occasions she had to return the car to the supplying dealership to have it investigated or repaired. With all this in mind, I think BMWFS should also pay Mrs W a slightly higher amount than that recommended by our investigator, of £400 for the distress and inconvenience caused."*

I set out that I intended to uphold this complaint. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

#### *Responses to the provisional decision*

Mrs W responded and said, among other things, that she was disappointed with the service she received from BMWFS and the way they investigated her complaint. She provided a summary of the inefficiencies she found BMWFS to have made when investigating her complaint.

Mrs W also explained that the car had been back to the supplying dealership on 12 occasions, for at least a week on each occasion and sometimes much longer.

Mrs W also said she was concerned BMWFS would prolong acting on the direction I make if she was to accept it. So, she suggested a way forward to ensure a smooth transition if she was to accept. She suggested:

- BMWFS make payment in full to her for the sum directed in my decision.
- BMWFS to take ownership of the car on the date a final decision is issued.
- For every day BMWFS fail to collect the car, Mrs W wished to put in place a penalty fee of £250 as she was concerned that BMWFS would prolong doing what they would be directed to do.

BMWFS didn't respond to my provisional decision before the deadline I set.

#### **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'm not persuaded to change my opinion from the provisional decision I made.

I appreciate the further comments Mrs W has made about her experiences with BMWFS and I mean no discourtesy to her to summarise them as brief as I had above. But I'm satisfied I had taken BMWFS' interactions into account when determining the distress and inconvenience award I intended BMWFS to make.

Turning my attention now to Mrs W's other comments made. She said she was concerned whether aspects of what I intended BMWFS to do would be acted on in a timely manner, and that it was important to her that BMWFS did so. She suggested, for example, a penalty fee to be charged to BMWFS.

I cannot direct BMWFS to act on certain aspects of my decision first, but I would expect BMWFS to be understanding of Mrs W's circumstances and to help resolve this complaint with her. If Mrs W accepts my decision, I suggest she contacts BMWFS directly to discuss next steps and I would expect them to resolve things in a timely way.

But to be clear, I would not expect or think it is fair for BMWFS to act on my direction the moment I issue a final decision. I accept that it can take time for a decision to be accepted by Mrs W – and then for this to be communicated to BMWFS and actioned by them. Considering the above, I would expect BMWFS to be in touch within four weeks to resolve things in the way I set out things below after a decision is accepted.

In summary, I think BMWFS needs to do more in this instance to put things right. I'm satisfied the outcome reached is fair and reasonable given the circumstances.

### **My final decision**

For the reasons I've explained, I uphold this complaint and I instruct BMW Financial Services(GB) Limited trading as BMW Financial Services to put things right by doing the following:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mrs W.
- Refund Mrs W's advance payment towards the agreement of £25,500. If any part of this advance payment was made up of funds through a dealer contribution, then BMWFS is entitled to retain that amount. \*
- Reimburse Mrs W 15% of repayments made towards the agreement from when the car presented faults in September 2022 to when the agreement ends and the car is collected. \*
- Pay Mrs W £400 to reflect the distress and inconvenience caused.
- Remove any adverse information from the customer's credit file in relation to the agreement, if any.

\* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If BMWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs W how much it's taken off. It should also give Mrs W a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

If BMWFS has already given compensation in relation to this specific complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 11 September 2024.

Ronesh Amin  
**Ombudsman**