

The complaint

Mr T complains about the quality of a car he acquired through a hire purchase agreement financed by BMW Financial Services (GB) Limited (BMW).

What happened

In October 2019 Mr T acquired a used car through a hire purchase agreement. In April 2020, he started to have problems with the car. Mr T had visits from five mobile engineers and visited the dealership for repairs on two occasions.

Below is a summary of the faults and work completed, compiled from the job sheets and BMW's system notes.

11 April 2020 – Fuel recently topped up but dash showing as empty. Problem with electric mirrors. Recommend a software update.

7 May 2020 – Multiple warning lights on dash. Braking system and pedestrian detection system. Faults cleared, awaiting software update.

20 May 2020 – Taken to the dealership and software update installed.

03 June 2020 – Dash not displaying gesture controls. Battery reset and fault codes cleared.

05 June 2020 – Warnings on dash including braking system. Fault codes cleared. Customer will take to dealership for investigation.

06 June 2020 – Warnings on dash including electronic power steering and braking. Engineer suggests the software download may have been corrupt and needs to be reinstalled. The engineer notes that the car is driveable.

08 August 2020 – Taken to the dealership and software update installed.

Mr T reports that he continues to experience intermittent electrical faults with the vehicle. He's asked BMW to reject the car and says he no longer feels safe driving it.

BMW didn't provide an answer to Mr T's request to reject the car. And they didn't answer his complaint, so he brought his complaint to our service.

Our investigator looked into things for Mr T. He felt that the car was of unsatisfactory quality when it was supplied and agreed that Mr T was able to reject it. He made several recommendations on how BMW needed to put things right.

BMW didn't respond to our investigator's view, so the case was been passed to me for a decision.

I issued a provisional decision on this complaint in January 2021 recommending that it was upheld. I made the following provisional findings:

I've asked Mr T for some further information relating to his losses, which he has supplied. I asked BMW if they had a response to our investigators view, but they haven't provided a response, so I've gone on to consider the merits of the complaint.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. BMW as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant 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”

To be considered “satisfactory” the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

My starting point is BMW supplied Mr T with a car that was 7 months old and that cost over £30,000. I don't have evidence of the mileage at the time of supply, but it is recorded as being 6,200 at the time of the first fault. So, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a cheaper more road worn vehicle. And, that it could be used, free from defects, for a considerable period of time.

Mr T began to experience faults with the electrics around six months after acquiring the car. He had several engineer visits to clear the faults in a short space of time and took the vehicle to the dealership for a software upgrade on two occasions. This doesn't seem to have remedied the problem or identified the root cause of the fault itself.

Based on the evidence, I am satisfied that there was a fault with the vehicle at the time of supply and that it wasn't of satisfactory quality. I don't think a reasonable person would expect numerous electrical issues within a few months of purchase.

Having made that finding, I need to decide what, if anything BMW need to do to put things right. The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. I think the two attempts at installing new software were BMW's opportunity to repair the goods and return them to a satisfactory state. So, Mr T should now be allowed to exercise his final right to reject the vehicle. This would mean the car is collected from Mr T, the finance agreement is brought to an end, and Mr T has his deposit refunded (plus interest).

Our investigator has recommended that BMW refund Mr T 50% of his monthly payments to reflect the loss of use of the car. The car was driveable, and Mr T has told me that its current mileage is approximately 8,000, so he has had some use of the car throughout the process of his complaint. But, one of the aspects of owning a car such as the one Mr T purchased is its comfort and style. Some of its functions weren't working correctly all the time, and some of the warning lights related to important safety aspects of the car, such as braking, so I can understand why Mr T might have felt unsafe in continuing to drive the car. Overall, I'm satisfied that a 50% refund of his monthly rental payments compensates Mr T for the loss of use and loss of enjoyment of the car.

Our investigator also recommended that BMW pay Mr T £200 compensation to reflect the distress and inconvenience caused. BMW have not responded to Mr T's initial request to reject the car which was made in June 2020, and so he's been put to inconvenience in trying to resolve the matter through other means. Mr T has had to make himself and the car available for a number of inspections to clear the faults, and he says that he's suffered

embarrassment in repeated visits by engineers to his home address. In the round, I think £200 is fair to reflect the distress and inconvenience experienced by Mr T.

Mr T responded to our investigators view to say that he's had to continue to pay to insure and tax the vehicle, will have to pay around £100 to remove his cherished plate and £25 to cancel the service plan on the vehicle so would like these costs refunded.

Mr T has used the car in some capacity during the course of his complaint, so I am satisfied that he is responsible for the cost of maintaining its tax and insurance. The rejection of the car does bring about the added cost of cancelling the service plan, and the cost for Mr T to remove his cherished plate that he wouldn't have faced otherwise. So, I think that BMW should refund him for these losses. The DVLA website states that the removal of a personalised plate costs £80, and I'm satisfied that £25 is a standard cancellation fee for a service plan.

BMW haven't responded to my provision decision.

Mr T has provided evidence that he paid £30 to cancel the service plan, but otherwise accepted my provisional 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 see no reason to alter my provisional decision as there hasn't been any further substantial evidence provided, save for the small increase in the refund for the cancellation of the service plan. I'm satisfied that Mr T has paid £30 to cancel this, and for reasons I've explained previously, that BMW should refund him for this loss.

My final decision

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

- End the finance agreement and collect the car at no further cost to Mr T
- Refund Mr T's deposit of £18,850 and pay 8% simple yearly interest from the date of payment to the date of settlement
- Refund 50% of Mr T's monthly rental payments that relate to use of the car from 1 April 2020 and pay 8% simple yearly interest from the date of payment to the date of settlement
- Pay Mr T a total of £110 for the cancelled service agreement and cherished plate costs
- Pay Mr T £200 compensation to reflect the distress and inconvenience caused. *BMW must pay the compensation within 28 days of the date on which we tell it Mr T 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.*
- Remove the finance agreement from Mr T's credit file.

If BMW considers that its required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr T how much it's taken off. It should also give Mr T 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 T to accept or reject my decision before 19 April 2021.

Zoe Launder
Ombudsman