

The complaint

Mr C complains about the quality of a car supplied to him by BMW Financial Services (GB) Limited (“BMWFS”).

What happened

Mr C has been represented by a third party throughout his complaint. However for clarity, I’ve only referred to Mr C in this decision.

Mr C acquired a used hybrid car under a 49 month hire purchase agreement with BMWFS in November 2019. The car was around four years old and had covered around 28,364 miles when it was acquired. The car cost £31,750.

The day after acquiring the car, Mr C contacted the supplying dealership to let it know the hybrid car battery wasn’t charging as expected. Mr C said he expected the car to be able to achieve around 19 miles on electric power. He returned the car to the supplying dealership so it could carry out tests. In the meantime, he contacted BMWFS to report the problem with the hybrid battery on 17 December 2019. He collected the car from the supplying dealership on 21 December 2019, following it carrying out a reconditioning of the hybrid battery and telling Mr C the car was showing a range of 11 miles when the hybrid battery was charged fully.

Unhappy with this, Mr C emailed BMWFS later that month and told it:

- he chose that model of the car due to the hybrid battery advertised range of 19 miles, which suited his needs. But he could only achieve a range between four and seven miles on a full charge.
- the supplying dealership told him the three-pin cable would be suitable for charging at home, but he said he had since been told this should only be used for occasional use as it can damage the hybrid battery.
- he had raised concerns with the supplying dealership about the media entertainment system before acquiring the car. He says he wasn’t told part of the system required an annual subscription
- one of the keys had bad cosmetic damage with broken plastic casing and discoloration.
- all four alloy wheel centre caps were damaged with visible areas of surface plastic missing.
- a piece of the metal trim in the boot was broken and had come away from the body of the car – but this had been replaced by the supplying dealership.
- one of the tyres, which was brand new, had a tread depth of 6mm when it should be 8mm.
- there was a rattle from the boot whilst he was driving the car. This was caused due to incorrectly positioned latches which had since been adjusted by the supplying dealership.

- the issue with the hybrid battery capacity meant that the car was inefficient when considering miles per gallon, running costs and environmental considerations.
- the rear passenger floor mat was missing.
- he wanted to exercise his right to reject the car.

In February 2020, BMWFS looked into Mr C's complaint. It said, in summary, that electric range is only a guide and this will vary. It said whilst Mr C had said the car he had acquired could only achieve between four and seven miles when fully charged, the dealer had achieved higher numbers than this and it couldn't find a fault. It also said it understood that the use of a three-pin plug for home charging was acceptable. It confirmed the supplying dealership had rectified the other issues which were expected due to the age and mileage of the car.

Mr C continued to complain to BMWFS. He said the information provided to him about the range the car could achieve was incorrect. He said he was induced into entering into the agreement as a result of the incorrect information provided to him. He also referred his complaint to this service in August 2020. He said he stopped using the car two weeks after he acquired it and he acquired another car under a separate finance agreement.

In September 2020, Mr C told BMWFS that the car had broken down and been recovered to a garage. He said the fault messages appearing said the car's hybrid battery wasn't being charged and there was a drivetrain fault. The garage said it would need to remove the hybrid battery to inspect the individual cells but if it did this, historic data would be lost. In October 2020, BMWFS said it recommended that Mr C allowed the garage to carry out the investigation and repair work. It said if a fault was found and due to the amount of time that had passed, it was entitled to an opportunity to repair the car. It said it would arrange a loan car for Mr C whilst the investigation was being carried out.

In October 2020, Mr C responded and said he had told the supplying dealership about the issue with the electric range within 30 days of acquiring the car and it had carried out a repair by conditioning the hybrid battery. He said as the car had been with the supplying dealership for 235 days before it was sold to Mr C, this period of inactivity was wholly or in part a cause of the degradation of the hybrid battery cells.

Our investigator looked into the complaint in August 2021. He thought Mr C should be entitled to reject the car, as he thought it wasn't of satisfactory quality at the time it was supplied to Mr C. He thought a range between four and seven miles was significantly lower than what a reasonable person would expect considering the age, mileage and price of the car. He recommended BMWFS take back Mr C's car, end the agreement, refund the deposit and any rentals paid since December 2019, pay 20% of any monthly rentals until December 2019, pay 8% simple interest on the refunded amounts and remove any adverse information from Mr C's credit file.

Mr C agreed with the investigator and said he was prepared to accept the outcome to draw the complaint to a close. He also mentioned some additional costs such as insurance for the car, the cost of a hire car, the cost of a tyre, DVLA fees and the cost of insurance for another car he had obtained.

BMWFS disagreed and said neither the supplying dealership nor Mr C had been able to find a fault with the hybrid battery of the car. It said the performance of the hybrid battery was dependent on a number of factors, such as how the car was used and the conditions it was used in. It also said there were no issues with the combustion engine, so Mr C was still able to use the car.

As BMWFS remained in disagreement, the case was passed to me.

I issued a provisional decision on 15 February 2022, in which I said the following:

“Following repairs being carried out to the car by the supplying dealership, Mr C only appears to be complaining about the hybrid battery and the three-pin charging plug that was supplied to him. So my provisional decision has only focused on these two complaint points.

What I’ve provisionally 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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I’ve read and considered the whole file and acknowledge that Mr C has raised a number of different complaint points. I’ve concentrated on what I think is relevant. If I don’t comment on any specific point, it’s not because I’ve failed to take it on board and considered it – but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. BMWFS is the supplier of the goods under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The car Mr C acquired was from a premium manufacturer, around four years old and it had covered around 28,364 miles at the time it was supplied. He was paying nearly £450 a month to hire the car and paid a deposit of £500. The car was used, so I don’t think a reasonable person would expect it to be perfect. But, thinking about the price paid and the model, I do think they would expect it to be in good condition and free from any faults at the point of supply.

In this case, on 2 December 2019, around 12 days after Mr C acquired the car, he took it back to the supplying dealership. At this point the mileage was 28,663.

What I need to consider here is whether the hybrid battery was performing as it should. I then need to think about whether this means the car was of unsatisfactory quality.

Mr C complained about the range the hybrid battery was able to achieve. I’ve thought about how I think the hybrid battery should have operated, given the age, mileage and price Mr C paid at the time the car was supplied to Mr C.

At the time Mr C obtained the car, the manufacturer’s website stated, “when running on electricity alone, the vehicle has a range of approx. 19 miles (31km). Figures according to EU test cycle for plug-in hybrid vehicles, may vary depending on the tyre format specified”.

The website explains the range can be affected by a number of factors such as the external temperature, use of air conditioning or heating, the load carried and driving style.

I've also considered the discussions between the manufacturer and BMWFS. In an email the manufacturer explained:

"With any vehicle, regardless of being an PHEV or not, the range available in both fuel capacity (MPG) and battery range is merely a guide of figures/range that can be achieved, however how they can be achieved is a different matter depending on the testing factors. I am sure you can both agree, the literature supplied by (manufacturer name) states that MPG or electric only range is up to a certain figure".

From this, I understand the range of around 19 miles per full charge was only obtainable in certain test conditions. I don't think it's likely that Mr C was driving the car in the same test conditions. And I note that Mr C obtained the car towards the end of the year, when external temperatures are generally colder. This is likely to have had an impact on the range of the car's hybrid battery as soon as Mr C drove it. So, I don't think the fact the car couldn't drive 19 miles on electric power only means that there was something wrong with it.

But, Mr C complained that he could only get the car to achieve a range of up to seven miles on a full charge. The supplying dealership's technician looked into this. I've seen a copy of the job card and the notes show that Mr C complained the car is only achieving a range of 10 miles. The technician has handwritten next to this, "Only (unclear) 4-6 miles". This suggests that the technician found the car's range was between four and six miles on a full charge. This is less than Mr C reported at the time. Following this, the supplying dealership emailed Mr C and told him they were able to increase the mileage to seven miles. And when they returned the car, they said they conditioned the hybrid battery and had managed to increase the car's range to show as 11 miles after a full charge.

The supplying dealership in an email to Mr C said:

"I appreciate this is way off what (manufacturer name) Quote when the vehicle was NEW. But we do not know how the previous owner drove or used it, so they may never have used the hybrid battery system at all. We simply do not know.

Electric and hybrid vehicles can suffer with range depletion as they get older, we cannot fault the battery system as the codes we initially had have not come back after extensive road conditioning and testing."

However, Mr C says the car continued to be unable to achieve a range showing higher than around nine miles.

The technology in the car is connected to an app which can be controlled on a mobile phone device. This shows the charging status and the amount of mileage the car can achieve. Mr C has provided a screenshot of the app which he says is from after the hybrid battery was conditioned. This shows the range of the car is nine miles with a fully charged hybrid battery.

Mr C has also provided a set of pictures showing the dashboard of his car. One of these pictures show the hybrid battery is 100% charged and there is a range of nine miles. Another set shows the hybrid battery fully charged with a range of 11 miles, but subsequent pictures from the same journey show the hybrid battery being near depletion after the car has travelled just seven miles.

Overall, I accept the 19 miles advertised range is only obtainable in certain test conditions.. And I appreciate over the lifetime of a hybrid battery, it will become less efficient. However, I wouldn't reasonably expect a four year old car which has only covered around 29,000 miles to only achieve around half of the advertised range. I'm satisfied the evidence provided by

Mr C demonstrates the hybrid battery's lifespan continued to deteriorate despite a repair being carried out.

Thinking about all of this, I'm satisfied the car supplied to Mr C wasn't of satisfactory quality. So, I've thought about what BMWFS should do to put things right.

I'm satisfied Mr C exercised his short term right to reject the car. As I think the car supplied to Mr C wasn't of satisfactory quality, I think Mr C should have been entitled to reject it. So BMWFS should end the hire purchase agreement and collect the car from the supplying dealership at no further cost to Mr C. It should also refund the deposit Mr C paid and pay any applicable interest.

Email correspondence from before the car was supplied to Mr C suggests that Mr C needs to pay a deposit of £1,000 to acquire the car. However, the sales invoice for the car only lists a deposit of £500. And the finance agreement lists that no deposit has been paid. Mr C hasn't provided supporting information to show a deposit payment of £1,000 was paid. If Mr C is able to provide supporting information to show he paid £1,000 as the deposit, I intend to ask BMWFS to pay this amount. However, currently without this supporting information, BMWFS should reimburse £500 to reflect the deposit paid.

Mr C says he stopped using the car two weeks after acquiring it because it wasn't performing as he expected. At this point, Mr C had been able to drive the car for around 300 miles. Further evidence has been supplied to confirm the mileage was 28,728 after this. Mr C says the car broke down in September 2020 and it hasn't been returned to him since.

Public records show the mileage of the car until November 2019. They show the car's MOT expired in November 2020. This service has been unable to find out what the mileage of the car was when it was recovered from Mr C in September 2020. But given that Mr C had some use of the car, I think he should pay to reflect this use. I've only been provided with information to suggest Mr C was able to drive around 400 miles in the car. So I think Mr C should pay one monthly rental to reflect this use. And any further payments Mr C has made under the finance agreement should be refunded to him with applicable interest. However, if the dealership or BMWFS can provide this service with evidence to show the mileage of the car when it was recovered from Mr C in September 2020, I'll reconsider this.

Mr C has provided evidence to show he hired a car between 7 January 2020 and 16 March 2020. However, he would have always likely had to pay for the use of a car to keep mobile. So because I've recommended that BMWFS refund all but one monthly rental that Mr C has paid, I don't think it would be fair or reasonable to also ask it to pay Mr C's cost to hire another car in addition to this.

When Mr C acquired the car, he had some outstanding finance to pay towards a previous agreement. This wasn't carried over as negative equity into this hire purchase agreement. Instead, Mr C entered into a separate finance agreement with BMWFS to repay the outstanding amount. Having thought about this, this amount was something that Mr C would always likely have been liable for one way or another, So I don't think it would be fair or reasonable for BMWFS to pay the outstanding finance Mr C owed under his previous finance agreement, as this would put him in a significantly better position than if he hadn't entered into the contract.

Mr C has also provided documentation to show that he paid for a private number plate to be registered to this car on 15 November 2019. This was at a cost of £80. He's provided further documentation to show this number plate was removed from the car by 7 January 2020. However Mr C hasn't provided evidence to show a cost was associated with the removal.

Mr C hasn't had benefit of the cost of transferring the number plate, so I think it's fair BMWFS reimburse this.

Before the car was supplied to Mr C, email correspondence shows it was agreed that a new tyre would be fitted to the car. Mr C has provided an invoice to confirm that the tyre was fitted to the car. But the invoice is unpaid and no further supporting evidence has been provided to confirm that Mr C paid the cost. So I don't think BMWFS should pay for the cost of the tyre as it appears the supplying dealership paid this cost rather than Mr C.

Mr C has asked for some legal costs to be reimbursed to him. Our service is a free alternative to the courts. Any expense Mr C has had will have been his choice, so I don't think it's reasonable to hold BMWFS responsible for this.

Finally, I've thought about what Mr C said about the three-pin plug. There is limited information here. Mr C said he was told the car could be charged using a three-pin charger. But he believes this can cause damage. I don't think Mr C has demonstrated the three-pin charger would damage the hybrid battery of the car. But, either way, I'm already recommending that he is allowed to reject it, so I don't think I need to comment further on this as it wouldn't affect what I think is fair to put things right.

My provisional decision

My provisional decision is that I intend to uphold Mr C's complaint. I'm minded to instruct BMW Financial Services (GB) Limited to put things right by doing the following:

- *End the hire purchase agreement with no further payments due from Mr C;*
- *Arrange collection of the car at no cost to Mr C;*
- *Refund Mr C's deposit payment of £500;*
- *Retain one monthly rental payment of £448.12 and refund Mr C any payments he's made in excess of this;*
- *Pay Mr C £80 for the transfer of the private number plate that Mr C paid for on 15 November 2019;*
- *Pay Mr C 8% simple interest on these amounts from the date of each payment until the date of settlement*;* and
- *Amend any adverse information reported to credit reference agencies about this hire purchase agreement.*

**If BMW Financial Services (GB) Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."*

Responses to my provisional decision

Mr C responded to my provisional decision and said he accepted it. But he also provided further evidence to show he had made two payments to the supplying dealership around the time he acquired the car. The first payment was for £500 and the second payment was for £600. Mr C also said that he had minimal use of the car and so he requested I consider whether BMWFS should be entitled to keep one monthly payment.

BMWFS said it didn't agree with my provisional decision. And it said I should obtain an up to date mileage reading for the car, as although Mr C was unable to use the hybrid battery due

to the range, the combustion side didn't register any problems. It also asked Mr C to provide it with details of the current location of the car.

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 responded to both BMWFS and Mr C about the issues they raised after I issued my provisional decision. Having reviewed all the information provided to me, no further information has been provided to suggest the car was of satisfactory quality at the time it was supplied to Mr C. So my findings from my provisional decision remain unchanged and I think the car supplied to Mr C wasn't of satisfactory quality.

Since issuing my provisional decision, our service has obtained information to confirm the location of the car and has provided this to BMWFS.

I've gone on to consider the further evidence both Mr C and BMWFS have provided concerning what BMWFS should do to put things right.

Mr C provided to show the amounts he paid to the supplying dealership. I sent this information to BMWFS. It explained the initial £500 payment was paid towards the separate agreement Mr C has to clear outstanding finance carried over from his previous agreement. I explained this to Mr C and he didn't dispute this. So I don't think BMWFS need to pay this amount to Mr C.

BMWFS explained the second payment of £600 was made up of £500 as a deposit under this agreement and £100 for the cost of a replacement tyre. I explained this to Mr C and he didn't dispute this. So I think BMWFS should refund Mr C £500 to reflect the deposit he paid.

When I issued my provisional decision, I didn't have supporting evidence to show that Mr C paid for the cost of the tyre. However, as BMWFS has now confirmed Mr C paid £100 for the tyre, I think BMWFS should pay this amount to Mr C.

I've also thought carefully about Mr C's comments concerning whether BMWFS should be entitled to keep one monthly deposit. And having done so, I think it should. I say this because since issuing my provisional decision, the dealership that collected the car from Mr C have confirmed the current mileage of the car. This is the same as what it was in September 2020, when the car was collected from Mr C. And it confirms that Mr C was able to travel around 400 miles in the car. So I think Mr C should pay one monthly rental to reflect this use. And any further payments Mr C has made under the finance agreement should be refunded to him.

No further comments were received from Mr C or BMWFS in relation to ending of the hire purchase agreement, collection of the car, the cost of transferring the private number plate, the amount of interest payable or the amendment of the credit file. So it follows that I see no reason to reach any different conclusions that I made in my provisional decision concerning these points.

Putting things right

My decision is that I uphold Mr C's complaint. To put things right, BMW Financial Services (GB) Limited should:

- End the hire purchase agreement with no further payments due from Mr C;
- Arrange collection of the car at no cost to Mr C;
- Refund Mr C's deposit payment of £500;

- Retain one monthly rental payment of £448.12 and refund Mr C any payments he's made in excess of this;
- Pay Mr C £80 for the transfer of the private number plate that Mr C paid for on 15 November 2019;
- Pay Mr C £100 for the cost of the tyre;
- Pay Mr C 8% simple interest on these amounts from the date of each payment until the date of settlement*; and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

*If BMW Financial Services (GB) Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."

My final decision

For the reasons I've explained, I uphold Mr C's complaint. BMW Financial Services (GB) Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 April 2022.

Sonia Ahmed
Ombudsman