

The complaint

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

What happened

In December 2020 Mr B acquired a used car through a hire purchase agreement. There was an engine management light on the dashboard when Mr B went to collect the car, and the dealership carried out repairs to the ad blue pump before Mr B could take possession of the vehicle.

Mr B says the issue wasn't fixed properly, so he took the vehicle to a manufacturer garage for investigation. The garage said that as the ad blue pump had already been replaced, there was likely to be an ECU fault. Mr B paid £813.60 in June 2021 for repairs to be completed.

In July 2021 the manufacturer garage said there was pressure in the ad blue system after the ECU replacement, but it wasn't building up pressure in time. They said the parts should be replaced as a full module and gave Mr B a quote for this.

Mr B complained to BMW about the quality of the car in July 2021. BMW sent Mr B their final response to his complaint in October 2021. They said they didn't think the vehicle was of satisfactory quality at the time it was supplied to Mr B, and so he was able to reject it. They said Mr B had a payment deferral in place on the agreement until June 2021, but they hadn't received payments for July, August or September. So, as Mr B had use of the vehicle, he would be required to make three monthly payments before the rejection took place. They also said that they wouldn't remove the late payment markers from Mr B's credit file as it was an accurate representation of Mr B's account.

Unhappy with BMW's response, Mr B brought his complaint to us for investigation. He said he stopped making payments because the car wasn't driveable. He didn't agree to the rejection of the vehicle because BMW wouldn't provide a new finance agreement for a new vehicle.

Mr B took the vehicle to the manufacturer garage in January 2022 because the ad blue countdown kept coming on. He paid £988.20 to strip, clean and replace the ad blue tank, but this didn't resolve the problem.

Our investigator gave their view that along with rejection of the vehicle, BMW should refund Mr B's deposit, the £813.60 that Mr B paid to attempt to repair the vehicle and pay Mr B £150 compensation. She didn't think BMW were responsible for the cost of repairs after they had made the offer to reject the vehicle. She said Mr B should pay his monthly payments for the time he'd had use of the vehicle, and any excess mileage that he'd travelled as Mr B had exceeded the annual mileage allowance on the agreement. Our investigator said BMW should remove any adverse information from Mr B's credit file once the payments had been made.

Mr B didn't agree. He said he shouldn't have to make monthly payments for the car when it was faulty.

BMW didn't confirm if they accepted our investigator's view. But they said the dealership replaced the part initially under warranty, and so it would've been covered under the parts guarantee if it failed. They said Mr B didn't pay the full deposit to the dealer, only £1,000 of the £4,000, and they said Mr B had travelled over 18,000 miles over the agreed mileage allowance, so they didn't think Mr B had been unable to drive the car.

Mr B confirmed he paid £1,000 of the deposit, and our investigator said BMW would only need to return to him that portion of the deposit he'd paid.

In March 2022 Mr B said he'd accept the investigator's recommendation. He said he'd make the three missed payments and reject the vehicle. BMW disagreed, they said Mr B had never made a monthly payment, and as so much time had passed, they wouldn't now accept only three payments.

As an agreement can't be reached, the case has been passed to me for a 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.

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".

BMW have accepted that Mr B's vehicle wasn't of satisfactory quality at the time it was supplied, so I've focussed on what BMW should 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. There has been an opportunity to repair Mr B's vehicle, undertaken by the dealership. This has failed, and Mr B has made further attempts to repair the vehicle, but it hasn't been returned to a satisfactory condition. So, I'm satisfied that Mr B should be allowed his final right to reject the vehicle, and BMW agreed to this in October 2021.

This means that the car is collected from Mr B, the finance agreement is brought to an end, and Mr B has his deposit refunded (plus interest). The agreement shows a deposit of £4,000, but Mr B has confirmed he only paid £1,000 of this. BMW aren't responsible for refunding a sum that Mr B hasn't actually paid, so BMW should refund the £1,000 plus 8% simple yearly interest from the date of payment to the date of settlement.

Mr B said he didn't want to accept the rejection because BMW wouldn't give him a new finance agreement. BMW don't have to provide a new agreement as part of the rejection process, and it would be for them to decide if they wanted to enter into a new agreement with Mr B, in the same way as any proposed finance agreement.

Following the repair by the dealership at the start of the agreement, Mr B continued to experience a fault with the ad blue system. I've seen evidence that the vehicle entered limp

mode around every 500 miles, and Mr B said he kept having to take it to be reset so that he could drive it. He took the vehicle to the manufacturer garage and paid £813.60 to have the ECU repaired. I think this was reasonable action for Mr B to take. He was being inconvenienced in having the car reset every 500 miles, so I find it was reasonable to try and prevent this occurring. BMW should refund Mr B for these repairs, plus 8% simple yearly interest from the date of payment to the date of settlement.

Our investigator recommended that BMW pay Mr B £150 compensation. Mr B has been put to inconvenience in trying to have repairs completed on multiple occasions and taking his car to be reset regularly. Overall, I'm satisfied that BMW should pay Mr B £150 compensation for the distress and inconvenience caused.

BMW said in October 2021 that Mr B would need to make his monthly payments for July, August, and September 2021 as he'd had use of the vehicle. Mr B said he shouldn't have to make any monthly payments because the car was faulty. Our investigator said Mr B should pay for the use he'd had of the vehicle and should pay his monthly payments for the months he's had use of the car.

Mr B has continued to use the vehicle with the fault present and past the date of BMW's final response. I've seen evidence that the car had covered around 63,500 miles in February 2022, so Mr B had travelled around 18,500 miles in the 14 months he'd had the car and has continued to use the vehicle past this date. If Mr B didn't have use of this vehicle, he'd have needed to pay for another means of keeping mobile, so I think Mr B should pay for the use he's had of this vehicle, and his monthly payments reflect a fair cost for this use. So, Mr B should pay his monthly payments for the months he's had use of the car.

I appreciate that Mr B drove the vehicle with a fault present, and that he had to have the car reset on a number of occasions. I've considered whether Mr B should be entitled to a reduction from his monthly payments for impaired use. The agreement between Mr B and BMW has an agreed mileage of 6,000 miles a year. Mr B has exceeded this mileage considerably, so I don't think the fault impaired the use that Mr B intended to have of the vehicle when he entered the agreement. So, I don't think BMW need to reduce the monthly payment amount.

Our investigator said that Mr B should be responsible for any excess mileage charge. BMW agreed to enter the agreement for the monthly payment based on Mr B travelling no more than 6,000 miles annually in the vehicle. Mr B has significantly exceeded this, and so I find that BMW are able to charge for the excess mileage Mr B has covered when the car is collected.

Mr B had an obligation to make his payments on time under the agreement. As he didn't make the payments, BMW recorded missed payments on Mr B's credit file. Mr B didn't make his payments because of the problems with the car, and I haven't seen any evidence that suggests that Mr B wouldn't have made his payments otherwise. So, once Mr B has made the outstanding payments, BMW should remove the agreement and any adverse information from Mr B's credit file.

My final decision

My final decision is that I uphold this complaint and BMW Financial Services (GB) Limited trading as Alpha Financial Services must:

- End the finance agreement and collect the car at no further cost to Mr B.
- Refund Mr B's deposit of £1,000 plus 8% simple yearly interest calculated from the date of payment to the date of settlement.

- Refund Mr B £813.60 for the repair costs, plus 8% simple yearly interest calculated from the date of payment to the date of settlement.
- Pay Mr B £150 compensation to reflect the distress and inconvenience caused
- Remove the agreement and any adverse information from Mr B's credit file once the outstanding payments have been settled.

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BMW are able to charge Mr B for his use of the car, which includes his monthly payments from the end of the payment deferral date until the vehicle is collected, and any excess mileage charge. They can deduct any refund due from the outstanding amount.

If BMW considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B how much it's taken off. It should also give Mr B 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 B to accept or reject my decision before 31 May 2022.

Zoe Merriman
Ombudsman