

The complaint

Mr and Mrs K have complained that they are unhappy with the quality of a car they bought in July 2021 using a hire purchase agreement with Advantage Finance Ltd ("Advantage").

What happened

In July 2021, Mr and Mrs K acquired a BMW 116D M Sport that was just under six years old. The cost was just under £12,300.00, and Mr and Mrs K borrowed this amount from Advantage over 60 months. The monthly cost was £368.64. The mileage noted on the MOT certificate dated July 2021 was 67,096.

Mr and Mrs K said that the car developed faults within the first three months. They said the car was making a loud knocking noise and losing power. They took it back to the supplying dealer, and its investigation showed that the oxygen sensor, auxiliary belt and tensioner, and inlet manifold needed to be replaced.

Mr and Mrs K complained to Advantage in November 2021. Advantage commissioned an independent inspection report. Following this, Advantage said that it wouldn't uphold Mr & Mrs K's complaint, because although the report confirmed there were some faults identified with the vehicle, they would not affect the vehicle being fit for purpose now nor at point of sale. The faults identified were considered to be a minor issue, and were due to general wear and tear.

Mr and Mrs K were unhappy with this, and brought their complaint to this service. In December 2021 they also asked a separate garage for an assessment of the car, and they were told that the car had faults with the oxygen sensor, inlet manifold, auxiliary belt and crankshaft/bottom pulley. Although not a detailed report, the mechanic had noted that the state of the inlet manifold suggested that it had been in that state for four to five months and noted stored faults from the car's computer from July 2021.

This was sent to Advantage, which referred it to the independent examiner for comment. The examiner said that, at the time of inspection, he could not identify any issue with the inlet manifold, and a breach of the manifold would normally affect the vehicle's emissions. The vehicle passed an MOT around the date of sale, suggesting that there was no manifold breach at the time of the MOT. The most likely cause was general wear and tear rather than a manufacturing defect.

Our investigator looked into this complaint, and concluded that Mr and Mrs K's complaint should be upheld. Advantage disagreed, and asked that it be reviewed by an ombudsman.

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've decided to uphold Mr and Mrs K's complaint. I'll explain why.

Because Advantage supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was nearly six years old. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

I set out above the information that Mr and Mrs K provided about the sequence of events. None of the faults described occurred within the first 30 days after they took delivery of the car, so the short term right to reject under the CRA doesn't apply here.

Mr and Mrs K sent in all the paperwork they had on the car, including the independent report commissioned by Advantage, their own assessment from another garage, previous service records, and two MOT certificates - one from June 2021 and another from July 2021, carried out on the day they acquired the car. There was an invoice for repairs carried out on the day of the earlier MOT, addressed to what seems to be the dealership that supplied the car to Mr and Mrs K, showing that the auxiliary belt was replaced (amongst other things). One of the previous service records, from August 2020, shows an oxygen sensor fault, but there is no record confirming that it was replaced.

Mr & Mrs K also arranged for the car to be repaired at the supplying dealership in February 2022, and they sent in the invoice showing the repairs and the cost. The manifold, oxygen sensor and belt and tensioner were replaced, at a cost of £987.77. The faults listed on the invoice were "clicking noise on start-up, pulley loose, engine losing power".

Advantage sent in copies of the hire-purchase agreement and the independent report, as well as further commentary, by the examiner, on the information provided by Mr and Mrs K and on our investigator's view.

The repairs actually carried out in February 2022 accord with the those identified in the quote from the supplying dealership in November 2021, and in the assessment given to Mr and Mrs K when they took the car to a different garage in December 2021. However, the independent examiner did not identify a fault with the inlet manifold, and said his opinion was that it was not faulty, as the fault codes that were noted during the inspection were indicative of a restriction in gas flow that had been caused by a faulty oxygen sensor. Nonetheless, there clearly were faults with the car when Mr and Mrs K complained to Advantage – the issue I have to decide is whether the car was of satisfactory quality in July 2021 when Mr and Mrs K acquired it.

I note that, in his report, the independent examiner said "*immediate upon start-up, I heard a rhythmic, metallic rattling and knocking noise emanating from the front of the engine. This noise changed in direct relation to the engine speed. There was a light red, rusty-coloured*

dust debris coating on the exposed drive belt and alternator". The examiner could not complete a test drive because of this.

He went on to say *"This vehicle is not currently fit for purpose due to audible noise from the engine; further investigation under workshop control conditions will be necessary to ascertain the cause of this noise, but we believe this is possibly coming from one or more of the auxiliary drive belt components. There are also fault codes stating that the oxygen sensor is faulty, since this can fail suddenly and without warning, it cannot be said that it was present at the point of purchase, but this is a minor issue and can be easily rectified by replacing the sensor and would not affect the vehicles overall general condition now or at the point of sale."*

Based on the vehicle owners' statement that the symptoms only appeared recently, we can confirm that the noise was not present at the point of sale."

I should say here that Mr and Mrs K told us that said that they had only just realised there was a noise – rather than it had only recently started - because it wasn't audible inside the car.

The examiner concluded *"Our opinion that the vehicle was road legal and fit for purpose at the point of sale is reaffirmed by the fact that it passed an MOT in and around the date of purchase; if the audible engine noise had been present at the time of the MOT, the MOT tester would have issued a notification of refusal to test the vehicle in fear of damaging the engine."*

The most likely cause of the current issue is considered to be progressive, age-related, general wear & tear to one or more of the auxiliary drive belt components, but to confirm this, closer examination under workshop control conditions will be necessary, as previously stated, and assuming the symptoms can be attributed to general wear & tear, this would not affect the vehicle being considered fit for purpose."

Advantage cited the contents of the independent report and argued that while it was sympathetic to Mr and Mrs K, they hadn't provided any evidence confirming that the current faults were present at the time of purchase, and that the MOT carried out prior to the day of purchase confirmed the vehicle passed with no advisories. It also said that the car is a used six-year-old vehicle and so it would be expected that parts will need replacing and repairs carried out as general routine maintenance.

Advantage also said that Mr & Mrs K had completed 4,166 miles in the vehicle since inception, and the vehicle could not have been driven for that distance had the noise/issue been present at the point of sale, and as such it stood by the independent report and did not accept our investigator's view that issues were likely to have been present at the point of sale.

Having looked at the mileage, I note the MOT certificate in July 2021 shows a mileage of 67,096 and the independent report a mileage of 70,266, meaning the Mr and Mrs K could only have completed 3,170 miles rather than 4,166.

Following our investigator's view, Advantage obtained further commentary from the independent examiner. In summary, he said that his opinion was that the manifold was not faulty, as the fault codes that were noted during the inspection were indicative of a restriction in gas flow that had been caused by a faulty oxygen sensor. He believed that replacing the oxygen sensor and cleaning the DPF would have eliminated the fault with the vehicle's induction/exhaust gas flow system. He also said that there was no basis to assume that oxygen sensor was faulty prior to the date of purchase, and it had not been replaced. The

previous owner could have had repairs completed outside the BMW network, and not updated the vehicle's service history.

He reiterated that, in his opinion, the issues with this vehicle only developed after the point of sale and could be directly attributed to age-related, general wear and tear. This was reaffirmed by the fact the vehicle passed an MOT the day before the date of sale; if there was an audible noise coming from the vehicle's auxiliary belt system at that time, the MOT tester would have issued a notification of refusal to test the vehicle for fear of damaging the engine, and if the oxygen sensor was faulty at that point, this would have caused an increase in the vehicle's emissions, and would have resulted in an MOT failure.

He went on to say *"The need to replace an oxygen sensor multiple times throughout a vehicle's history would not be considered unusual as oxygen sensors can fail suddenly and without warning, particularly if the vehicle has been subjected to stop/start driving, and poor quality fuel is used. Poor quality fuels can cause carbon to build up very quickly in the oxygen sensor elements, and can result in the elements overheating, then failing prematurely."*

I accept that I can't be certain the oxygen sensor wasn't replaced in August 2020, but equally there's no evidence to say it was. And certainly it was faulty in November 2021, only four months after Mr and Mrs K acquired the car. I note the examiner's comments about oxygen sensors failing suddenly, and potential reasons for this, but there has been no suggestion that this car has been subjected to stop/start driving by Mr and Mrs K, or that they have used poor quality fuel. The mileage at the service in August 2020 was 60,598, so if the oxygen sensor was replaced around that time it had become faulty within a year and less than 10,000 miles. I understand that the failure of the oxygen sensor can lead to other components not working properly, especially those requiring oxygen, for instance the inlet manifold and ultimately these related parts will fail.

I noted above that the service history from June 2021 shows that the auxiliary belt was replaced. Haynes, the renowned car service manual publishers, indicate that an auxiliary belt should last between 50,000 and 100,000 miles. In this case, the belt required replacement after just over 3,000 miles. This suggests to me that there were underlying issues causing the failure of the belt after such a short time.

There are conflicting opinions about the inlet manifold – the independent examiner was firmly of the opinion that it was not faulty, whereas the dealership and the other garage consulted by Mr and Mrs K were of the opinion that it was. And it ultimately was replaced when Mr and Mrs K had the car repaired at the dealership.

Finally, as I noted above, although the independent examiner said in his report that the most likely cause of the faults were general wear and tear, he also said that *"to confirm this, closer examination under workshop control conditions will be necessary, as previously stated, and assuming the symptoms can be attributed to general wear & tear, this would not affect the vehicle being considered fit for purpose."* But no examination under workshop control conditions then took place, so I'm not persuaded it *can* be assumed that the issues were due to wear and tear.

I've also kept in mind that, whilst the car passed an MOT test in July 2021, the purpose of an MOT is to test important items on the car to check that they meet the legal standards. It doesn't require the general mechanical condition to be checked.

Having carefully considered all of the evidence provided by all the parties, on balance I'm not satisfied that Mr and Mrs K's car was of satisfactory quality when they acquired it in July 2021. The necessary repairs were quite substantial, and were required just a few months

after acquiring the car. Although this was a used car, I think it reasonable for Mr and Mrs K to expect the car to be in working order for some time before undertaking significant repairs. So my conclusion is that Mr and Mrs K's complaint should be upheld.

Mr and Mrs K were able to use the car for the first few months, but as the quote from the dealership and the independent report were both carried out in November 2021, and it is clear the car couldn't be used from then on, I think it fair that Advantage should refund the monthly payments made by Mr and Mrs K from November 2021 to February 2022, together with the cost of the repairs to the car. I also agree with our investigator that Advantage should pay £150 in recognition of the inconvenience caused by the faults occurring.

Putting things right

Advantage should:

- Refund the monthly payments Mr and Mrs K made under the hire purchase agreement from 1 November 2021 to 28 February 2022.
- Refund £987.77 in relation to the repairs carried out in February 2022.
- pay 8% simple interest* on all refunded amounts from the date Mr and Mrs K paid them to the date compensation is paid.
- Pay £150 for the inconvenience Mr and Mrs K experienced due to the faults with the car.
- Remove any adverse information from Mr and Mrs K's credit file (if any has been added).

**if Advantage considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr and Mrs K how much it's taken off. It should also give Mr and Mrs K a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

For the reasons given above, I have decided to uphold Mr and Mrs K's complaint and I direct Advantage Finance Ltd to compensate Mr and Mrs K as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 25 November 2022.

Jan Ferrari
Ombudsman