

## The complaint

Mrs S is unhappy that a car supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited trading as Aston Martin Financial Services (BMW) was of an unsatisfactory quality. She's also unhappy that interest was charged on a payment deferral.

## What happened

In June 2019, Mrs S was supplied with a new car through a hire purchase agreement with BMW. She paid an advance payment of £5,000 and the agreement was for £146,385 over 49 months; with 48 monthly repayments of £2,469.81 and a final payment of £52,745.05 if she wanted to keep the car at the end of the agreement.

In May 2020, the rear windscreen of the car shattered when the boot was closed, resulting in Mrs S' child, who was in the back seat, being showered with broken glass, causing some minor injuries. The damage was caused because of an issue with the roof panel, and the car was fixed by the supplying dealership. Around this time, the dealership also investigated a squeak in the brakes and deglazed the brake pads. Following the roof repair there were no further problems with the rear windshield.

In October 2020, Mrs S had an issue with the traction control on the car, which caused her to spin while driving. This was identified as a wiring issue which was fixed by the dealership. And, following this repair, there were no further issues with the traction control.

During this period, Mrs S' income was also affected by the coronavirus (Covid-19) pandemic. BMW initially agreed to a payment deferral (otherwise known as a payment holiday) to cover the payments due from June to August 2020. However, this was extended to eventually cover the payments due from September to November 2020.

Mrs S complained to BMW that she hadn't been told about any additional interest costs when the payment deferrals were agreed, and she thinks these are unreasonable. She also complained that the car is a "*death trap*", and it's sat unused on her drive, as she doesn't feel safe driving it.

BMW agreed the faults with the car meant it wasn't of a satisfactory quality at the point it was supplied. But they thought that, since the faults had been repaired, and there was no evidence the faults had returned, this was reasonable. And Mrs S didn't have the right to reject the car now. BMW also said that the payment deferrals were offered in line with the Covid-19 guidance issued by the Financial Conduct Authority (FCA). So, they didn't think they needed to do anything more.

Mrs S wasn't happy with BMW's response, and she referred her complaint to the Financial Ombudsman Service for investigation.

Our investigator agreed the faults with the car made it of an unsatisfactory quality when supplied. But they also said Mrs S had accepted repairs, which had resolved the issues. And the faults hadn't reoccurred. The investigator also said that Mrs S hadn't asked to reject the car when either fault occurred.

They acknowledged that Mrs S didn't think the traction control was working, but that she'd also refused the option to have the car inspected to confirm if this was the case. And she didn't mention an ongoing issue with the traction control when the car was serviced in November 2021. Given these circumstances, they thought the repairs to the car were a fair remedy.

However, the investigator thought the issues with the rear windscreen shattering and causing injury to Mrs S' child; and the nature of the traction control failure that left Mrs S on the wrong side of the road, facing oncoming traffic, would've caused her significant distress. And, because of this, they thought it was fair that BMW pay Mrs S £450 compensation.

With regards to the payment deferral, the investigator said BMW had written to Mrs S on five separate occasions during the payment deferral process, explaining that additional interest would be charged on the deferred payments. So, they thought BMW had acted fairly by telling Mrs S what impact the deferral would have, and they didn't think BMW needed to do anything more.

BMW agreed with the investigator, but Mrs S didn't. She said BMW never offered her the option to reject the car in October 2020. And, if they had, she would've done so as she felt it was unsafe. She also said that *"the interest payments were never made clear to me"* and the additional interest was unfair. Mrs S felt that *"I have been sold a faulty car that I have been over charged for with terrible customer service and I feel £450 is a bit of an insult considering the impact and stress this has had."*

Mrs S went on to explain that the car has now developed a new fault that's causing reduced engine performance. Because of this, along with the fact that she says BMW didn't inform her of her right to reject the car, Mrs S feels that *"I should therefore be allowed to return the car immediately and be provided with significant compensation for the £25-£30,000 I have subsequently had to pay since the car was in the workshop."*

Because Mrs S didn't agree with the investigator, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

satisfactory quality

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMW are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances.

The CRA implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed that the fault was present when the car was supplied, unless BMW can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mrs S to show that it was present when the car was supplied. So, if I thought the car was faulty when Mrs S took possession of it, and this made the car not of a satisfactory quality, it'd be fair to ask BMW to put this right.

It's not disputed there were faults with the car, relating to the roof and wiring. Nor is it disputed that the causes of these faults were present when the car was supplied to Mrs S, and that these faults made the car of an unsatisfactory quality. As such, I won't be specifically addressing the faults within my decision, and instead will focus on what was done to put things right.

Where there's a fault that makes the goods of an unsatisfactory quality, the CRA allows for one chance at repair. And, if this repair is unsuccessful, it allows for the right to reject the goods. However, as this is a right and not a requirement, the CRA also implies that the customer can agree to accept further chances to repair instead of rejection.

The first issue was the rear windscreen in the car shattering due to a faulty roof panel. This was repaired by the dealership, and the fault has not reoccurred. This was the one repair allowed under the CRA and, as the fault was fixed, Mrs S has no right to reject for this issue.

The second issue was a broken wire to a wheel speed sensor, which resulted in dashboard warning lights being lit, and a loss of traction control. It's been acknowledged that this fault would've been present when the car was supplied to Mrs S so, under the CRA, Mrs S had the right to reject the car at this stage. Or she could've chosen to allow a further repair. In this instance, the car was repaired, and the fault hasn't reoccurred.

Mrs S has said that BMW didn't advise her of her right to reject the car at this point, and if they had done, she would've rejected the car as she no longer felt safe driving it. However, BMW weren't made aware of this second fault until after the repair had taken place, so they weren't in a position to provide Mrs S with this advice at the point the fault occurred.

The second fault occurred on 27 October 2020, at which point Mrs S had done 10,161 miles in the 16-months she was in possession of the car – an average of 635 miles a month. She had the car serviced in November 2021, when the car had done 16,837 miles – an average of 556 miles a month between the second fault and the service. And evidence of the mileage Mrs S provided on 1 February 2022 shows that the car was still being used to this point.

This shows that Mrs S continued to use the car at roughly the same rate in the 12-months following the second fault, as she did in the 16-month period before this. Which doesn't imply that Mrs S stopped using the car as she no longer felt safe driving it. What's more, I haven't seen anything that shows me that Mrs S raised any further issues with the traction control or advised the dealership/BMW that the car was undrivable.

Given this, while Mrs S may now no longer be using the car, as she continued to do so for a year after the traction control issue was fixed, I'm not convinced that she didn't feel safe driving the car. And, had she been advised of her right to reject in October 2020, I think it's more likely than not that she would have accepted the repair instead.

Notwithstanding this, as the repair took place and was successful, and as Mrs S continued to use the car for at least the next 12-months, I don't think it's reasonable to allow Mrs S the retrospective right to reject at this stage.

However, this isn't to say she wasn't inconvenienced by what'd happened. It would've been distressing to see the rear windscreen shatter, and this result in minor injuries to her child. What's more, having the traction control fail and finding herself spinning, crossing the carriageway out of control, and facing the oncoming traffic, would also have been distressing to Mrs S.

Given this, I'm in agreement that BMW should compensate Mrs S. The investigator has recommended a payment of £450, which I think is fair and in line with what I would direct in similar circumstances. So, I'll be adopting this as part of my final decision.

Mrs S has also referred to a further fault with the car. I've seen no evidence that there is any additional fault that was present or developing when the car was supplied to Mrs S, or that this has cost her the £25,000 to £30,000 she's said it has to repair. But, regardless of this, this isn't something she's raised with BMW, or that they've had the opportunity to investigate. As such, this isn't something we're currently able to look into, so I'm not considering it as part of my decision.

#### payment deferral

The FCA issued temporary guidance in April 2020 about customers who were faced with payment difficulties as a result of Covid-19. This allowed financial businesses such as BMW to grant payment deferrals to people like Mrs S.

The guidance said that *"a customer should have no liability to pay any charge or fee in connection with the permitting of a full or partial payment deferral ... the exception to this is where interest continues to accrue at the contractual rate ... the continuing accrual of interest on sums owed under the agreement that remain unpaid would not be inconsistent with this guidance."*

Given this, I'm satisfied that BMW could charge interest on the deferred payments and doing so wouldn't be outside of the guidance issued by the FCA. However, I would expect BMW to make this clear to Mrs S.

I've seen copies of letters sent to Mrs S on 7 May and 11 August 2020. These letters refer to a payment deferral coming to an end, and the new payments Mrs S was required to pay. As well as explaining the payment would increase due to additional interest being charged on the deferral; the letters broke down the payments and confirmed the overall cost of the *"total additional interest."*

Additionally, under the heading **"Additional interest to pay"** the letters all clearly explained that *"as it will take longer to pay back the amount borrowed, there will be **additional interest** to pay ... the interest you are charged for the deferral includes interest on [the optional final payment], because this will be outstanding for longer."*

Letters sent to Mrs S on 1 October 2020, 30 October 2020, and 23 February 2021 also explained additional interest would be charged but didn't include the 'additional interest to pay' paragraph referred to above.

As such, I think BMW acted in line with FCA guidance and informed Mrs S about the additional interest. So, I don't think there's anything more they need to do regarding this.

**Putting things right**

BMW are to pay Mrs S £450 for the significant distress that was caused to her as a direct result of the failures in both the rear windscreen and the traction control.

**My final decision**

For the reasons explained, I uphold Mrs S' complaint. BMW Financial Services (GB) Limited trading as Aston Martin Financial Services must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 14 September 2022.

Andrew Burford  
**Ombudsman**