

The complaint

Mrs B complains that a used car she acquired with finance from BMW Financial Services (GB) Limited (BMWFS) is of unsatisfactory quality.

Mrs B is represented by a family member but I'll refer (generally) to everything that's been said on her behalf as if Mrs B said it herself, to keep things simple.

What happened

Mrs B got this car under a hire purchase agreement (HPA) she took out with BMWFS in June 2019. The car was about a year old with 11,000 miles on the clock. Mrs B had problems with water ingress and the supplying dealer tried to fix things - the car was taken back several times - but the issue wasn't resolved. In October 2021 Mrs B complained to BMWFS. She wanted to reject the car as electronics were failing and she was worried it was unsafe. She thought water mixing with electrical parts might create a fire hazard and the car smelt strongly of mould and damp which made it very unpleasant to travel any distance.

BMWFS agreed that Mrs B could reject the car in January 2022 and offered to refund the deposit and pay £500 towards a new vehicle. Mrs B didn't think this was fair. Among other things, she considered this didn't take account of "equity" she'd built up and she felt it didn't compensate her adequately for everything that happened.

BMWFS didn't think it should have to take account of any equity or refund any monthly payments. It says the car had over 25,000 miles on the clock in January 2022 against an annual allowance of 8,000 miles under the HPA. And this suggests Mrs B had reasonable use of the car at that point, more than she anticipated when she took out the finance.

Mrs B referred the matter to our service. Our investigator thought the car probably had faults present at the outset so it was fair that BMWFS agreed to take it back and refund the deposit. He didn't think BMWFS should have to refund any monthly payments initially - given the distance covered after supply. But, he was satisfied that being supplied with this faulty car had a significant adverse impact on Mrs B. And he thought it was fair that BMWFS should pay £750 compensation - which should not have to be paid towards a new vehicle. The investigator recommended BMWFS should cancel the HPA, collect the car, refund the deposit plus interest, pay £750 compensation for distress and inconvenience and mark the HPA as settled on her credit file.

BMWFS didn't accept the investigator's conclusions. It thought the remedy offered - including £500 compensation only - was sufficient. Mrs B also disagreed. She said she stopped using the car in September 2021 due to concerns about her own health and that of her baby. And she only drove it after that when absolutely necessary which has been extremely stressful and inconvenient. Her baby has a heart condition and she's been unable to use the car for transport to regular hospital appointments, for example. Mrs B supplied evidence from the odometer that showed 25,607 miles had accrued in February 2022. She thinks BMWFS should refund monthly payments from September 2021 and pay more compensation for the distress and inconvenience she experienced.

Our investigator considered the additional evidence. He accepted it was probably very upsetting and inconvenient for Mrs B to have to deal with this faulty car. He remained of the view £750 is fair compensation for that. He was satisfied however that Mrs B probably hadn't used the car much since December 2021 due to faults present when it was supplied – she travelled about 500 miles between December 2021 and February 2022. And he thought it was reasonable for BMWFS to refund payments made from December 2021 until the car is collected - in addition to his previous recommendations – to compensate Mrs B for loss of use.

BMWFS didn't respond and the matter was passed to me for a decision. Having considered the evidence available, I was minded to uphold the complaint. My reasoning wasn't quite the same as the investigator's - and I was minded to reach a slightly different outcome overall. So, I thought it was fair to let the parties see my provisional findings and allow them to respond (if they wanted to) before I made my final decision. I issued a provisional decision on 8 July 2022. I've set out what I decided provisionally and why below - and this forms part of my final decision.

My provisional decision

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, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. And, where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mrs B brings her complaint to our service because she acquired this car under a HPA. And I'm satisfied that BMWFS was required under the Consumer Rights Act 2015 (CRA) to ensure (amongst other things) that the car was of satisfactory quality at the point of supply.

What amounts to "satisfactory" quality will vary depending on individual circumstances. There appears to be no dispute that this car had ongoing issues caused by water ingress which affected the electrics at times and resulted in the car having a most unpleasant smell. And BMWFS seems to accept the car was unsatisfactory quality when it was supplied, so I don't need to make any further findings about that.

BMWFS has offered to take the car back and refund the deposit - which seems fair in the circumstances. The parties disagree however about what else, if anything, BMWFS needs to do to put things right- and that's what I'm looking at in this decision.

I think it's likely Mrs B was caused a considerable amount of trouble and upset because she was supplied with this faulty car. It looks as if she had to arrange for it to go back and forth to the dealership for various repair attempts over a number of months. And I'm satisfied that must have been stressful, inconvenient and, no doubt, frustrating for her – especially when the repairs didn't work. BMWFS offered to pay Mrs B £500 compensation towards a new car. So, I think it recognises she experienced significant distress and inconvenience here. But, having considered all of the circumstances carefully, I'm minded to agree with our investigator that this offer doesn't go far enough.

I say this because I'm satisfied that Mrs B had genuine concerns about driving this car – especially as time went by and repairs were attempted but the problems weren't resolved. Paperwork from the dealer confirms that the car was leaking and it had heavy water deposits in both rear carpet areas and smelled. I can see a number of repair efforts were made -

following guidance provided by the manufacturer (which suggests this was a known issue) - and some electrical parts also had to be replaced.

Mrs B has explained that she very worried about driving the car because she was concerned that water mixing with electrics might be a safety hazard - and she also found it increasingly difficult to drive because of an overwhelming mouldy, damp odour. I can see she was expecting in 2021. I find it understandable that she found it particularly un-nerving and unpleasant to drive a car with a noxious smell that she felt could go wrong at any time. And I can see why this got worse after her baby arrived, given his health issues. I'm satisfied that Mrs B likely experienced significant distress and inconvenience over many months because this car was of unsatisfactory quality when it was supplied. So, I'm minded to agree with the investigator that BMWFS should pay £750 compensation to reflect this (which should not be conditional upon applying the funds towards a replacement car).

I've also given some thought to the use Mrs B had of the car. I'm satisfied she seems to have been kept mobile in a loan car most of the time her car was off the road for repairs. There's no dispute that she was able to cover some 14,000 miles by January 2022 - I appreciate Mrs B may well say this was done with some reluctance - because the car smelled and she was worried about safety. And I've taken her distress and inconvenience into account in the compensation award above.

Mrs B says she stopped using the car in September 2021 and she'd like all her monthly payments refunded from then. Odometer readings - from job cards in August and December 2021 - show the car covered about 1,500 miles during this time. I think it's right Mrs B should pay for the use she had of the car so I'm not persuaded that I can reasonably require BMWFS to refund any monthly payments before December 2021. But, like the investigator, I think it looks as if the car wasn't used much after that - and this was probably due to the impact of faults present since the outset. I can't reasonably exclude the fact that Mrs B was able to travel about 500 miles or so between the middle of December 2021 and February 2022, however. And I think it's more likely than not she'd stopped using the car - to all intents and purposes - by January 2022.

In these very specific circumstances, I don't think that was unreasonable. I'm minded to find it fair therefore for BMWFS to refund any monthly payments made from January 2022 in full to reflect Mrs B's loss of use (subject to Mrs B confirming that the mileage hasn't increased significantly since the last odometer reading of 25,607 miles). I realise BMWFS considers the mileage accrued already means Mrs B isn't entitled to a refund. It thinks she had fair use of the car because her contracted mileage was 8,000 a year and, taking this pro-rata at over 600 miles a month, she'd covered more than this distance by January 2022. I don't think it's quite as simple as that however and I'll explain why.

Mrs B took out this finance over four years. I think she probably expected, at the outset, to travel around a maximum of 32,000 miles during that time. And she would have been aware that BMWFS would charge for the excess (under the terms of the HPA) if she'd driven the car further when the term ended. I don't think it's out of the ordinary however for customers to drive further in one given year than another. And, in my experience, lenders don't usually hold customers to the annual mileage limit in each individual year - provided the mileage accrued at the end of the term is within the agreed overall limit. So, in real terms, if Mrs B travelled more than 8,000 miles a year in the first year or two but she hadn't covered more than 32,000 miles at the end of four years, BMWFS wouldn't have charged her for any excess.

BMWFS has accepted that Mrs B should be allowed to reject this car - due to no fault of hers - as a result of quality issues. This means it's going back sooner than either party anticipated at the outset. And I think the crux of this issue is whether Mrs B was able to use

the car in the way she reasonably expected during the time she had it. For the reasons I've set out, I don't think Mrs B was able to use this car as much as she otherwise would have because it was of unsatisfactory quality at the point of supply. And I'm minded to find it is fair and reasonable overall for BMWFS to refund monthly payments to reflect that lost use as outlined above.

I realise Mrs B feels she should have a bigger refund as there's some "equity" in the car due to the payments she made towards the finance. I'm not persuaded that's reasonable, however. I'm satisfied she was required to pay for the car under the terms of the HPA and there's nothing in that agreement to entitle her to "equity" in the way she suggests. So I can't reasonably find BMWFS should make a further refund on those grounds or do anything else.

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 invited the parties to consider my provisional findings and let me have any further comments or new evidence by 22 July 2022. I explained that I would review all the available evidence after that and make my final decision.

BMWFS accepted my provisional decision, subject to confirmation of the car's up to date mileage. I didn't think that was unreasonable and we asked Mrs B for the mileage but she was away and unable to provide this. I checked the car's MOT history and noted that 26,696 miles were recorded at the last MOT in May 2022. I thought this suggested Mrs B continued to use the car after the last odometer reading (of 25,607 miles) in March 2022.

I asked the investigator to write to both parties and let them know that (as I explained in my provisional decision) I consider it's fair that Mrs B should pay for the use she had of the car. So, in light of the mileage accrued since March 2022, I was minded to find it fair that BMWFS should refund three monthly payments only – from January until March 2022. The investigator also explained that the remainder of my provisional decision (and proposed award) remained unchanged.

We asked the parties for any further comments or information by 19 August 2022 (extended to 6 September 2022 after Mrs B indicated she had further comments). BMWFS hasn't objected or made any further submissions. Mrs B says (in summary) she accepts my provisional findings, for the most part. She wanted to be sure however that I had considered all the problems she had with the car when things first started to go wrong – as I'd only referenced refunds for the most recent period.

I want to assure Mrs B that I have taken everything that the parties have said and sent to us into account. I have considered all the evidence and thought about what happened, carefully. And, for the reasons I've set out above, I'm satisfied it is fair and reasonable for BMWFS to take the steps below to put things right.

I realise Mrs B may feel disappointed and consider she should be entitled to a bigger refund and/or more compensation. But, taking into account the use she had of the car as well as compensation award, I remain of the view it wouldn't be fair or reasonable to require BMWFS to do more than I have set out. Mrs B is not obliged to accept my decision, in which case it remains open to her to pursue this matter by any other means available.

My final decision

For the reasons I've given, my decision is I uphold this complaint and I require BMW Financial Services (GB) to:-

1. cancel the finance agreement and collect the car at no additional cost to Mrs B;
2. refund the deposit paid along with any monthly payments made from January 2022 until March 2022 (three in total);
3. pay interest at 8% simple a year on any refunds from the date of payment to the date of settlement;
4. pay Mrs B £750 compensation for distress and inconvenience caused; and
5. mark the finance as settled on her credit file.

If BMWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mrs B how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

If BMWFS does not pay the compensation for inconvenience and distress within 28 days of the date on which we tell it that Mrs B accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 6 October 2022.

Claire Jackson
Ombudsman