

The complaint

Mr G complains about the quality of a car that was supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS").

What happened

On 28 January 2022, Mr G took out a hire purchase agreement with BMWFS for a used car. At that time, the car was just over four years old and had travelled approximately 12,167 miles. The cash price was £20,950.

Mr G says that, within a week of collecting it, he was disappointed to discover the car's fuel economy was poor and it had stored fault codes. He complained to the dealer, who investigated the problem and replaced the tank vent valve. Mr G has told us that he was left without a car over the weekend whilst this was fixed. He says he had to pay for a taxi to the dealership to collect the car on 21 February 2022.

Mr G says that, on 13 April 2022, the car developed a severe misfire and went into limp mode whilst he was driving on the motorway. He says he was stranded at a motorway service station for four hours, before he was able to drive home in a rental vehicle. The car was recovered back to the dealer, who replaced a faulty spark plug.

Mr G says that, when the car was returned to him three days later, he compared the health check reports the dealer's technician had completed on 17 February and 14 April 2022. He noticed a discrepancy in the recorded thickness of the brake pads. He felt this showed a continued lack of due care and attention by the dealer's service department.

On 19 April 2022, Mr G contacted BMWFS to raise a complaint. He said he wanted to reject the car and end the finance agreement due to the problems he'd had with it. BMWFS didn't uphold his complaint, so one of our investigators looked into what had happened.

Our investigator initially didn't uphold Mr G's complaint. Mr G provided more information, stressing that he believed the car had been supplied to him with existing faults, in breach of the Consumer Rights Act 2015.

Having reviewed things again, our investigator said she didn't think the car had been of satisfactory quality when BMWFS supplied it to Mr G. But she was satisfied that he'd accepted repairs, which had been successful. So, she didn't think he had the right to reject the car.

The investigator thought BMWFS should reimburse Mr G £15.15 to cover his taxi fare. And she said they should pay him £150 compensation for the distress and inconvenience he'd been caused by being supplied with a car that wasn't of satisfactory quality.

Mr G didn't agree that he'd accepted a repair – he said this was the only option the dealer had offered him. He said the fact that he'd raised a complaint within a few days of the car being returned suggested he didn't accept the repairs as satisfactory.

BMWFS accepted the investigator's view as to how the complaint should be resolved. But as Mr G didn't agree, the case has come 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.

Mr G entered into a hire purchase agreement, so this service can consider complaints relating to it. Under this type of agreement, BMWFS is also the supplier of the car and is therefore responsible for a complaint about its quality.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of the goods is satisfactory. It explains that things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. It seems likely that in a case involving a car, the relevant circumstances a court would take into account might include things like its age, mileage, and history.

In this case, I bear in mind that the car was just over four years old and had covered around 12,167 miles when it was supplied to Mr G. It cost £20,950, which is significantly less than it would've cost when it was new. I don't think a reasonable person would have the same standards for this car as they would a newer one with less mileage.

I don't think a buyer would expect the car to be in perfect condition - I think they'd probably expect some parts of the car to have suffered a bit of wear and tear. But I do think they'd still expect it to be free from anything other than minor faults when it was supplied - and to be able to drive the car for a reasonable amount of time without major issues.

It isn't disputed that there have been two issues with the car since it was supplied to Mr G. I've seen evidence showing it went back to the dealer within the first month to investigate his concerns about poor fuel economy and stored fault codes. I've seen a copy of the dealer's health check and technician's report dated 17 February 2022, confirming the tank vent valve was replaced and faults were cleared. The health check records the car to have covered around 12,550 miles at that time.

Given how quickly this first fault came to light, I think it most likely that it was already present when BMWFS supplied the car. Bearing in mind this was a used car, the fact that it was supplied with one or more minor faults doesn't necessarily mean it wasn't of satisfactory quality. I haven't seen anything to confirm whether the fault with the tank vent valve was a significant problem. But given the price Mr G paid for this car, I'll assume that it was.

I've seen evidence confirming the car went back to the dealer again around two months later, after it developed a severe misfire. I've seen a copy of the dealer's health check and technician's report dated 16 April 2022. The health check records the car to have covered around 14,083 miles at that time. The technician's reports says "*found spark plug insulation broken away from main body*". It confirms the technician replaced the spark plug and cleared a fault.

Spark plugs are items that require replacement from time to time, due to normal wear and tear. Mr G has shown us a copy of an entry in the car's service history dated 20 November 2021, when the car was recorded to have covered 12,168 miles. This shows a service was carried out, which included spark plugs. So, I'm satisfied that the spark plugs were likely to have been replaced shortly before Mr G got the car.

The evidence I've seen shows Mr G had less than three months' and 2,000 miles' use of the car by the time the spark plug was found to have failed. So, I'm satisfied that this problem was most likely to have been present or developing when he got the car.

I consider this to have been a significant issue because Mr G has told us the car went into limp mode, leaving him stranded at a motorway service station. So, I don't consider the car to have been of satisfactory quality when BMWFS supplied it.

The CRA sets out rights for consumers who've been supplied with goods that aren't of satisfactory quality - and explains when those rights are available. The available remedies include the right to a repair. The CRA says that, if the goods still don't conform to the contract after one repair, the consumer has a final right to reject the goods. But section 20 of the CRA explains that:

"The right to reject is exercised if the consumer indicates to the trader that the consumer is rejecting the goods and treating the contract as at an end.

The indication may be something the consumer says or does, but it must be clear enough to be understood by the trader."

Mr G has told us that, after the car broke down on 13 April 2022, it was recovered to the dealer where the fault was investigated and repaired. In the absence of any evidence to the contrary, I think it's reasonable to assume Mr G agreed to this. I've seen nothing to suggest he gave any indication that he wanted to reject the car at that time.

Mr G has told us that the car was returned to him on 16 April 2022 after the repair was completed. He says he became concerned because he discovered discrepancies in the dealer's health check reports. The evidence provided by both parties confirms Mr G told BMWFS he wanted to reject the car three days after it was returned to him.

I've seen no evidence to suggest there was a fault with the car after the second repair. So, although I appreciate that Mr G has lost confidence in the car, I'm not persuaded that it was of unsatisfactory quality when he complained to BMWFS on 19 April 2022. So, I don't think he had the right to reject the car at that point. And I don't think it would be fair for me to direct BMWFS to allow Mr G to reject the car after the fault had been successfully repaired.

Mr G has told us that he's incurred some additional cost due to the car having to go back to the dealer for repairs. He says the dealer wasn't able to provide a courtesy car whilst the first repair was carried out, so he had to pay for a taxi. I think it's fair that BMWFS should reimburse him for this.

Although Mr G didn't have to pay for the car to be recovered after it broke down in April 2022, I think that situation would have been stressful and inconvenient. He's told us that he was stranded at a motorway service station for four hours before he could continue his journey. And having raised a complaint to BMWFS, he waited until August 2022 for a response.

I think BMWFS should pay Mr G £150 compensation for the distress and inconvenience caused by being supplied with a car that wasn't of satisfactory quality.

My final decision

For the reasons I've explained, I uphold this complaint and direct BMW Financial Services (GB) Limited to:

- Reimburse Mr G £15.15 to cover the taxi fare he paid on 21 February 2022, plus interest calculated from the date of payment to the date of settlement at 8% simple per year.
- Pay Mr G £150 compensation for the distress and inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 30 March 2023.

Corinne Brown
Ombudsman