

The complaint

Mr G complains that a car he acquired financed through a hire purchase agreement with BMW Financial Services (GB) Limited wasn't of satisfactory quality.

What happened

The details of this complaint are well known to both parties and have been set out by the investigator so I won't repeat them again here. Instead I'll focus on giving the reasons for my 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 agree with the conclusions reached by the investigator for the reasons I've outlined below:

- A used car was supplied to Mr G under a hire purchase agreement with BMW he signed in June 2022.
- BMW, as supplier of the car, was responsible for ensuring that it was of satisfactory quality at the time of sale – whether it was satisfactory quality will depend on several factors, including age, mileage and the price that was paid for it.
- The car supplied to Mr G was four years old, had been driven for just over 30,000 miles and had a price of £28,450.
- Satisfactory quality also covers durability which means the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on several factors.
- Within a few days of acquiring the car Mr G said he had issues with the remote car control set up and the start-stop ignition. He said he spoke to the dealership in early July which advised booking the car into a service centre. I've seen a copy of an invoice from the service centre associated with the manufacturer dated 27 July 2022. It says:

"Investigated loss of power, requires new VCT Solenoid"

Mr G said the service centre repaired the remote car control and the start-stop issue (related to the VCT Solenoid). It said it also repaired a third issue – referred to on the invoice as *"timing cover blanking replaced"*.

- I'm satisfied that within several weeks of Mr G acquiring the car faults became apparent that required repair. Given the very short time Mr G had the car I'm persuaded the remote control fault and the start-stop fault were either present or

developing at the point of sale. It's also possible the third fault relating to the timing cover was also present or developing at the point of sale. I'm also satisfied Mr G brought the first two faults to the attention of the dealership quickly and that it recommended repair.

- On 1 September Mr G reported an error message on the dashboard regarding the Diesel Exhaust Fluid (DEF) level being low. He brought this to the attention of the dealership who again advised Mr G take the car to the service centre. I've seen an invoice dated 26 September 2022. It says:
 - *"Confirmed customer concern with dosing malfunction lamp illuminated. Scanned for DTCs. DTCs indicate vehicle has been run with too low level DEF level. Requires fluid drain and refill"*
- In its evidence to this service BMW said there was no mention of the start-stop issue on the diagnostic report (September 2022), but there is mention in relation to the DEF. It said it's the owner's responsibility to top up the DEF.
- I've seen an email from the Head of Business at the manufacturer's service centre. He said:
 - *"With reference to the vehicle concern please be advised after a discussion with the diagnostic technician I am able to confirm that the fault on your vehicle has been present for some time and is not an instant failure. The technical advice given to me with reference to your fault is this would have developed over some time possibly months resulting in where we are today."*
- In December 2022 and January 2023 the vehicle was seen again by the service centre. I've seen a copy of the invoice dated 25 January which says:
 - *"Requires DEF injector as it's failed test. DEF injector refit kit. Clean DEF line from tank to injector."*
- In its response to our investigator's view BMW said there are several factors at play regarding the DEF. It said it had spoken to the service centre and the DEF was drained and refilled with poor quality fluid. It said the DEF hadn't been adequately refilled. BMW went on to say
 - *The customer purchased the vehicle in June 2022 with 30,590 miles and as of May 2023 the customer has 34,530 miles. As with any filter it can become clogged from time to time and the DPF and indeed the DEF are designed to reduce emissions in diesel vehicles. As you can see from the mileage readings provided, the vehicle has covered less than 5,000 miles in nearly 12 months therefore the likelihood is that the engine does not get to an optimum temperature as required. In this case, the exhaust gases may not have been hot enough to react properly with DEF. As per the above DEF is a serviceable requirement and should be monitored and maintained by the customer in line with manufacturer recommendations.*
 - *Based on all of the information available including but not limited to the expert advice received from the inspecting garage, with the exception of the issue with the vehicle in July all other issues are related to the DEF.*
- While generally I would agree with BMW that maintaining DEF levels is a maintenance requirement it does appear that the fault identified in September 2022

regarding DEF levels is related to the DEF injector failure. Mr G had only had the vehicle for two months when the issue first presented itself. So I wouldn't consider this a service related problem that Mr G would be responsible for. There isn't an independent inspection, but as mentioned above the service centre Head of Business provided a statement *before* the second DEF failure confirming that the diagnostic technician believes the problem developed possibly over some months. And I consider this testimony to be reliable. So I'm persuaded that the problem(s) concerning the DEF were likely either present or developing at the point of sale.

- BMW has had one attempt to repair the vehicle, with the start-stop and remote control issues. The Consumer Rights Act allows the business one opportunity to repair. Having had that opportunity the car has failed again so I now think it fair and reasonable that Mr G should be able to reject the car and be refunded for any repairs he has paid for.
- Mr G has taken the car into the service centre a few times and been without use of it during repairs. BMW should refund one monthly payment to reflect this.
- Mr G has explained in some detail the problems with the car and how he has tried to get a resolution with BMW and that this situation has caused him some distress and inconvenience. As such I agree with the investigator that BMW should pay Mr G £150 in compensation.

Putting things right

To put things right BMW Financial Services (GB) Limited must:

1. End the hire purchase agreement and arrange for the car to be collected from Mr G – both at no cost to him;
2. Refund the deposit paid by Mr G;
3. Refund to Mr G all the amounts he has paid for the repairs upon receipt of proof of payment;
4. Refund to Mr G one of his monthly payments to reflect the time he was without use of the car;
5. Pay 8% simple yearly interest on these refunded amounts in 2, 3 and 4 above, from the date of payment until the date of settlement;
6. Pay a further amount of £150 for any distress or inconvenience that's been caused;
7. Ensure that no adverse information about the agreement is recorded on Mr G's credit file.

My final decision.

My final decision is that I uphold this complaint and BMW Financial Services (GB) Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 September 2023.

Maxine Sutton
Ombudsman