

## **The complaint**

Miss C complains about the quality of a car she has been financing through an agreement with BMW Financial Services (GB) Limited, who I'll call BMWFS.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my 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.

I know it will disappoint BMWFS, but I don't think this car has been of satisfactory quality. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Miss C acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then BMWFS, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Miss C. The car here was about four years old and had already completed about 45,300 miles. So, I think a reasonable person would expect it to be experiencing some wear and tear.

The relevant legislation explains that when we think about whether a car has been of satisfactory quality we should also consider whether it has been durable.

As Miss C had been in possession of the car for quite a long time when the turbo failed I think the onus was on her to demonstrate the car hadn't been durable. But I don't think she needs to provide any further evidence. The turbo charger failed after the car had completed only 67,980 miles and online research suggests a turbo should last the lifetime of a car. I can't see that there is evidence Miss C contributed to that failure by, for instance, not having the car serviced properly, so I think it hasn't been durable. And I'm further persuaded that is the case as I can see the exhaust and Diesel Particulate Filter (DPF) also failed and that the bill was almost £8,500; a little over half of what Miss C paid for the car. I don't think a reasonable person would think a car had been durable if they were faced with such a significant repair bill within such a short period of ownership.

### **Putting things right**

In those circumstances, and as Miss C has now returned the car and ended the agreement, I think it would be fair for BMWFS to refund the repair cost Miss C incurred to replace the turbo, DPF and exhaust system, on provision of receipts from Miss C. They'll need to add interest to that refund as Miss C has been deprived of the money.

It's not fair that Miss C was paying for a car she couldn't use. BMWFS should therefore refund any monthly finance instalments Miss C may have paid between 4 March 2022 when the health check was completed and the faults were diagnosed, and 13 April 2022 when the car was repaired.

Miss C has also been inconvenienced by these issues. She's had to have the car repaired and she's had to escalate her complaint to this Service. In the circumstances I think BMWFS should pay her £200 compensation.

I understand that Miss C is upset she had to pay about £2,700 to terminate her finance agreement, when she experienced further issues with the car. That's not something that BMWFS have had the opportunity to consider, and Miss C will therefore need to give them the chance to do so if she wants to pursue that complaint point. It's not something this Service can consider until BMWFS has.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell BMW Financial Services (GB) Limited to:

- Refund the repair costs for the turbo, DPF and exhaust system, on provision of receipts and/or proof of payment from Miss C. Add 8% simple interest\* per year from the date of payment to the date of settlement.
- Pay Miss C £200 to compensate her for the distress and inconvenience she experienced.
- Refund any finance instalments paid from, and including, 4 March 2022 to 13 April 2022. Add 8% simple interest\* per year from the date of payment to the date of settlement.

\*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 4 September 2023.

Phillip McMahon  
**Ombudsman**