

The complaint

Mr F complains about the quality of a car supplied to him by BMW Financial Services(GB) Limited trading as MINI Financial Services ("BMWFS") under a hire purchase agreement.

What happened

In June 2021 Mr F entered into an agreement with BMWFS for a used car costing £13,490. Under the terms of the agreement – everything else being equal – Mr F undertook to make 47 monthly payments of £220.64 followed by 1 monthly payment of £6,617.31 – making a total repayable of £16,987.39 at an APR of 8.9%.

In January 2023, after the car broke down, Mr F had the car inspected by the original supplying dealership who I will call "L". L diagnosed that a new fuel pump was required at a cost of approximately £1,800.

In March 2023 L, before fitting the required new fuel pump, identified swarf within the system. This led L to diagnose that a new fuel system was required at a cost of over £8,000. Mr F didn't go ahead with the identified repair and had L return the car to him.

In April 2023, and after Mr F had complained that he had been supplied with a car that was of unsatisfactory quality, BMWFS issued him with a final response letter ("FRL"). Under cover of this FRL BMWFS said that given how long Mr F had been in possession of the car before the fault with it came to light, it wasn't upholding his complaint.

Unhappy with BMWFS' FRL Mr F referred his complaint to our service.

Mr F's complaint was considered by one of our investigators who came to the view that Mr F had indeed been supplied with a car that was of unsatisfactory quality. She then went on to explain what, in her view, BMWFS should have to do to fairly and reasonably compensate Mr F.

BMWFS didn't agree with the investigators view so Mr F's complaint has been passed to me for review and 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 don't intend on commenting on everything that occurred, or every complaint point, concern, or issue the parties have raised. Instead, I'll focus on what I think is important in reaching a decision which is fair and reasonable in all the circumstances. I don't mean this as a discourtesy to either party, instead it reflects the informal nature of this service and my role within it. But I'd like to reassure both parties that I've considered all the information that has been provided when reaching my decision.

Mr F acquired the car through a hire purchase agreement with BMWFS and as the supplier

of the car, BMWFS is responsible for the quality of it. Where the car is found to not be of satisfactory quality, BMWFS can be held liable for that. The Consumer Rights Act 2015 ("CRA") is relevant legislation when considering the quality of goods and services. This essentially says that the car should be of satisfactory quality at the time it's supplied to Mr F.

Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car. Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods, (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

The used car that Mr F acquired in June 2021 cost nearly £13,500, was a little over five and half years old and had travelled approximately 44,500 miles. When considering a car of this age and mileage it would, in my view, not be unreasonable to expect it to be showing signs of wear and tear and not be in the same 'as new' condition that it would have been in when first manufactured. This will be in relation to the mechanical components and its cosmetic appearance. The price Mr F paid for the car was considerably cheaper than the cost of the car new, and this is to take into account the general condition, mileage and wear and tear the car had experienced since first being manufactured.

There is no dispute there is a problem with the car and the estimate from L is sufficient evidence in my view to demonstrate that there is a serious problem with the car preventing it from being used.

BMWFS states that given how long Mr F had been in possession of the car before the fault with it came to light it isn't liable, under the CRA, to meet his claim against it for compensation. But I disagree and I'm not persuaded that BMWFS has taken into consideration of the CRA requirements around durability.

As referred to above, one element of satisfactory quality under the CRA relates to durability and that ultimately means that goods should last a reasonable amount of time. Exactly what is a reasonable amount of time will depend upon a number of factors. But of significant relevance here, in my view, is the nature of the fault and the mileage the car has travelled.

The fault is a significant one and relates to key parts of the car. And generally speaking it would be reasonable to expect the fuel system and pump to last in excess of ten years and/or 100,000 miles. So what has happened in this case is, in my view, a significant premature failure.

I've seen nothing to suggest Mr F has misused the car or done anything to cause the fuel system and pump to fail. Having considered all that has been provided in this case I'm satisfied the car, and in particular the fuel system and pump, weren't sufficiently durable when considering the requirements of the CRA. And as it wasn't sufficiently durable, I'm satisfied the car wasn't of satisfactory quality.

The required repairs to the car are significant and expensive. In addition to this, the car has been idle for a significant amount of time and further faults with it might be present. So with this in mind, and what I say above, I'm persuaded that Mr F should be allowed to reject the car and that BMWFS should end Mr F's agreement with nothing further payable under it and that it should collect the car from its current location at no cost to Mr F.

For the periods Mr F had use of the car I consider it reasonable for him to pay for that use through the monthly agreement repayments. It's not however reasonable for Mr F to be expected to pay for the use of the car after January 2023 and BMWFS should therefore refund the monthly repayments Mr F has paid since this date together with simple interest at 8% a year.

I'm also satisfied that being supplied a car that was of unsatisfactory quality has caused Mr F some considerable trouble and upset. And taking everything into account I'm satisfied, like the investigator, that BMWFS should pay Mr F £200 for this.

Finally, and for the sake of completeness, I would like to make it clear that I'm satisfied that Mr F acted in good faith and reasonably in approaching L (the original supplying dealership) rather than BMWFS in January and March 2023. And it wouldn't be fair, or reasonable, for BMWFS to hold Mr F liable for anything L has done, or failed to do, whilst the car was in its possession.

My final decision

My final decision is that BMW Financial Services(GB) Limited trading as MINI Financial Services must:

- end the agreement with nothing further for Mr F to have to pay
- collect the car at no cost to Mr F
- refund to Mr F all the agreement payments he has made since January 2023
- pay Mr F 8% simple interest a year on the above refunds from the date of payment to the date of settlement*
- pay Mr F £200 for distress or inconvenience this matter has caused him
- remove any adverse information it has recorded with credit reference agencies in respect of Mr F's agreement

** HMRC requires BMW Financial Services(GB) Limited trading as MINI Financial Services to take off tax from this interest. If Mr F asks for a certificate showing how much tax has been taken off this should be provided*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 December 2023.

Peter Cook
Ombudsman