

The complaint

Mr K has complained about the quality of a car he acquired under a hire purchase agreement with BMW Financial Services (GB) Limited (BMWFS).

What happened

In March 2022 Mr K acquired a new electric car under a hire purchase agreement with BMWFS. The car cost around £36,000 and the agreement was due to be paid back over four years with monthly repayments of £400 followed by an optional final payment of around £13,600.

Mr K said he experienced acceleration issues and he complained the car wasn't of satisfactory quality. He said the first acceleration issue happened in July 2022 as he was parking the car. He said the car suddenly shot forward as if the accelerator had been floored but he managed to stop before it hit anything. He said the second issue happened in November 2022 when parking again, but this time the car went into a hedge. He said he thought there was a fault because the two incidents were identical. He said he'd found articles of similar incidents happening to other people.

Mr K said the car was sent for repair, but he didn't feel safe driving it and he says he stopped making repayments towards the agreement and complained to BMWFS.

BMWFS said any faults found outside the first six months are assumed to not be present or developing and it asked for evidence to prove when the faults were present or developing from. It said it discussed the issue with the dealer and that the car had been tested over 100 miles and no fault was found. It said it couldn't help with rejection without sufficient evidence and said it thought the acceleration may have been down to driver error.

The car was recovered by BMWFS and sold at auction, leaving a balance of around £5,000. Mr K referred his complaint to the Financial Ombudsman.

One of our investigators looked into things but didn't think he'd seen enough to demonstrate there was a fault with the car that made it of unsatisfactory quality. He said the car Mr K acquired was using the most up to date software. He said over 200,000 units had been sold, and there were only a handful of acceleration issues referred to in online forums. He said the manufacturer likely would have recalled the car if there was an issue. He described the type of acceleration system, and said electric vehicles provide instant torque to wheels. And he didn't think it was unreasonable for BMWFS to recover the car given Mr K wasn't keeping up with his repayments. He also noted the car was sold at a fair market price indicating no issues were present.

Mr K didn't agree with the assessment, and he reiterated other people had experienced the same issue. He said he thought the fault appeared to be in the regenerative braking whereby unwanted acceleration is caused by a bump when the car is travelling at slow speed. He said he'd provided several articles about the issue.

As things weren't resolved, the complaint has been passed to me to decide.

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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr K and BMWFS that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr K acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr K entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory. BMWFS is the "trader" for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.

The CRA says that the quality of the goods is satisfactory if they meet the standard a reasonable person would consider satisfactory – taking into account the description of the goods, the price or other consideration for the goods (if relevant) and all other relevant circumstances. For this case, I think the other relevant circumstances include the age and mileage of the car at the point of supply.

In Mr K's case, the car was new when it was supplied. It should have been in perfect working order and free from even minor defects.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

The problem in this case is I've simply not been supplied sufficient evidence there was a fault with the specific car Mr K acquired, and that the fault made the car of unsatisfactory quality. Our investigator gave some reasonable comments for not being able to uphold the complaint in his assessment, which I've referred to in the background. Moreover, while I appreciate it may have been hard to evidence an alleged fault that was intermittent, given how long Mr K had the car, I think the onus was on him to supply sufficient evidence.

The video Mr K showed of the accident isn't conclusive. The car went for extensive testing with the dealer and no fault was found. While I appreciate there are reports of others having an issue with the acceleration, I need to consider the specific circumstances of Mr K's complaint. Some of the articles Mr K referenced were for other models. And some of the articles he's shared indicate the problem was caused by driver error.

While I'm sorry to hear Mr K was unhappy with the car, and that it's now been recovered, I'd like to have had more certainty that there was a fault with it that made it of unsatisfactory quality in order to uphold the complaint. The car is now no longer available for further testing. But I don't think it was unreasonable for BMWFS to recover it seeing as though payments weren't being maintained. All things considered, while I sympathise, I don't find I have the grounds to uphold the complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 April 2024.

Simon Wingfield
Ombudsman