

The complaint

Mr R is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited ('BMWFS') was of an unsatisfactory quality.

What happened

In December 2021, Mr R was supplied with a used car through a hire purchase agreement with BMWFS. He paid a £22,400 deposit and the agreement was for £52,600 over 49 months; with 48 monthly payments of £599.63 and a final payment of £35,992.90. At the time of supply, the car was around three months old, and had done around 1,500 miles.

During 2022 and 2023, Mr R had issues with the gear selector switch, the ambient lighting, a wheel bearing, the transmission, and the accelerator sensors. All these issues were repaired under warranty, but Mr R says there has been a recurring warning message relating to chassis stability over the last 12-months, and he says this issue still remains.

Mr R complained to BMWFS in June 2023, but they didn't uphold his complaint because they said there were no current faults with the car. Unhappy with this response, Mr R brought his complaint to the Financial Ombudsman Service for investigation. In raising the complaint with us, Mr R said that he wanted to reject the car.

Our investigator said the faults Mr R had suffered made the car insufficiently durable and therefore of an unsatisfactory quality when supplied. However they said that these faults were repaired, Mr R was provided with a courtesy car while the repairs were taking place, and there's no evidence to show any of these repairs failed.

Given the issues with the car, the investigator said that BMWFS should pay Mr R £250 to compensate him for the impact the situation has had on him.

The investigator also said that, although Mr R has provided evidence of a current warning message on the car, there's nothing to show what this message means and whether there is any fault that requires attention. So, without this information, the investigator couldn't recommend that BMWFS take any further action.

Mr R didn't agree with the investigator's opinion. He said that he'd been paying for a car that was consistently in the garage being repaired, and "*I have been caused all sorts of physical and mental problems as a result of this.*" So, he didn't think the £250 compensation was sufficient. And he's asked for an ombudsman to make a final 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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete

or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr R was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMWFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMWFS can show otherwise. So, if I thought the car was faulty when Mr R took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMWFS to put this right.

The evidence I've seen shows that Mr R had five warranty repairs done to the car between June 2022 and June 2023, when the car had travelled between 10,000 and 16,000 miles. While these repairs were for the gear selector switch, the ambient lighting, a wheel bearing, the transmission, and the accelerator sensors; there's no evidence to show there has been an ongoing fault with the chassis stability, as Mr R has said.

Mr R has provided a photograph of a warning message for a driver assist restriction. Although this was provided in December 2023, there's nothing on this photograph that shows either when it was taken, or the mileage at the time. Despite having had the opportunity to do so, Mr R also hasn't provided any evidence, for example a report from an independent engineer, that shows there is an ongoing fault with the car.

Mr R was supplied with a high value very low mileage car that was only a few months old. As such, I'm satisfied that any reasonable person would expect the car to be without any faults for a significant period of time. Which wasn't the case. So, while the faults didn't occur until after Mr R had had the car for six months, and there's nothing to show me the faults were present or developing at the point of supply; I'm satisfied the car wasn't sufficiently durable when it was supplied to Mr R, and this makes it of an unsatisfactory quality at the point of supply. Therefore, BMWFS should do something to put things right.

Putting things right

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is also clear that, if the single chance at repair fails, then the customer has the right of rejection. However this doesn't mean that the customer is required to reject the car, and they can agree an alternative remedy i.e., further repairs to the car.

It's clear from the evidence that Mr R accepted further repairs, instead of rejecting the car, after the warranty repair on the gear selector switch. While he's said there's a current fault with the car, and he wants to reject it, I've not seen anything to show me that's the case.

As such, I'm not satisfied that any of the warranty repairs have failed and/or the car is still faulty. So, and while I appreciate this will come as a disappointment to Mr R, I'm also satisfied that he doesn't have the right to reject the car.

Mr R has been able to use the car while it's been in his possession. And while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage. So, I won't be asking BMWFS to refund any of the payments he's made.

I note our investigator also recommended BMWFS pay Mr R an additional £250, to recognise the distress and inconvenience he's been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the trouble and upset Mr R would've felt by having to arrange for the car to be repaired on multiple occasions, and the impact this had on him attending social events and taking family members to medical appointments. And I think it also fairly reflects Mr R's disappointment and annoyance at being provided with a high value low mileage nearly new car that wasn't sufficiently durable.

However, while Mr R has said the situation has caused him both physical and mental problems, he hasn't explained why this was the case i.e., what specifically was it with the issues with the car that has caused him physical injury. As such, I'm satisfied that the recommended payment is one BMWFS should make.

Therefore, BMWFS should:

- pay Mr R £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

My final decision

For the reasons explained, I uphold Mr R's complaint about BMW Financial Services (GB) Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 October 2024.

Andrew Burford
Ombudsman