

## The complaint

Mr D complains about the quality of a used car that was supplied through a hire purchase agreement with BMW Financial Services GB trading as BMW financial services.

## What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

In August 2023, Mr D acquired a used car through a hire purchase agreement with BMWFS. The car was around seven years old and had travelled around 31,344 miles, as shown on the vehicle invoice when it was supplied to Mr D. The cash price of the car was £14,950. Mr D traded in a car listed at £17,000 on the invoice. The total payable under the agreement was £20,251.86, over 58 monthly payments of £349.17. Mr D also arranged a separate fixed sum loan agreement with BMWFS to settle his existing finance agreement. The amount of credit was £1,898.62, payable over 58 monthly repayments of £41.35, with the total repayable being £2,398.30.

Mr D said that when the vehicle was delivered, the seats were ripped and stained and after around two weeks the car's engine was smoking and a tapping noise was coming from the top of the engine. Mr D said he had to call for assistance, and the car was eventually taken back to the dealership. Mr D also said he spoke to an agent of BMWFS, who informed him he had the right to reject the vehicle within the first 30 days. Mr D says he then opted to reject the vehicle and bought a replacement car on finance.

BMWFS raised this rejection request and opened a complaint for Mr D. As part of this request, BMWFS were informed by the dealership that there were no major faults with the vehicle, they couldn't find evidence of the car smoking, they did find a faint ticking sound which led to them replacing a tank venting valve and offered to rectify the trim of the car as a gesture of goodwill. This meant that BMWFS didn't accept rejection of the vehicle and didn't uphold Mr D's complaint. In its final response, BMWFS said as there is no evidence of a major fault affecting Mr D's ability to use the car, the complaint won't be upheld, and it won't offer rejection of the car.

Mr D remained unhappy and brought his complaint to this service where it was passed to one of our investigators. Mr D said to resolve his complaint he wanted the money he paid towards the agreement refunded, and to reject the vehicle. The investigator upheld Mr D's complaint. He said that because the car needed breakdown assistance, along with the tank venting valve being replaced this showed there was a fault with the car.

The investigator considered that the fault would have been present or developing at the point of supply, and that this meant the car was of unsatisfactory quality when it was supplied. The investigator said Mr D should be able to reject the car as he exercised his right to do so within the first 30 days. The investigator also said Mr D should have payments refunded when he didn't have use of the car alongside some compensation for the inconvenience.

Mr D accepted this recommendation, however BMWFS didn't provide a response to the

view, so I've been asked to review the complaint to make a decision.

I sent Mr D and BMWFS my provisional decision on 29 November 2024. I explained why I thought the complaint should be upheld. The key parts of my provisional findings are copied below:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

Mr D acquired a car under a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr D's complaint about BMWFS. BMWFS is also the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply of the car and its quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory, fit for purpose and as described". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale, the vehicle's history and the condition it was supplied in.

In this case, Mr D acquired a car that was just over seven years old and had travelled around 31,344 miles. As this was a used car with this mileage and age, it's reasonable to expect parts may already have suffered more wear and tear when compared to a new car. There's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn. Having said that, the car was priced at £14,950 which isn't insignificant, and research suggests the car had travelled less than the average UK mileage at the point of supply. So, I think it's fair to say that a reasonable person would expect it to be supplied in a suitable condition, expect it to be reasonably well maintained and as such to be free of unexpected defects.

I've reviewed the available evidence about the issues Mr D experienced with the car. Based on what I've seen, I'm satisfied that there is a fault with the tank venting valve and the trim of the car. I say this because I've seen an email from the supplying dealership confirming they found the noise Mr D referred to and replaced the venting valve to fix this. The dealership also confirm in an email that they will rectify the trim of the car.

Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply. As part of this, I've thought about if the vehicle was supplied with an appropriate appearance and finish, and if it was supplied free from minor defects as laid out by the CRA.

As mentioned, in its final response letter, BMWFS stated that as there was no major fault with the car, it wouldn't accept rejection. Importantly in this case, The CRA explains that for goods to be considered of satisfactory quality, they should meet the standard a reasonable person would consider satisfactory taking account of amongst other things, appearance and finish and freedom from minor defects.

So, I've thought carefully about these areas in relation to the age and mileage of the car

Mr D was supplied with, as this wouldn't be held to the same standard as a brand-new car.

The issues Mr D reported with the car are not in dispute as I've outlined above, except for the smoking issue. As there was no evidence found for this, and I have nothing from the assistance service used by Mr D, I can't say that there was a smoking issue causing a fault with the vehicle.

Moving on to the trim and venting valve, I do think this falls below the standard a reasonable person would expect when making this purchase. The vehicle was seven years old, so the trim and interior may not be expected to be perfect. However, for a car costing £14,950, with what research suggests is below average mileage for its age, a reasonable person may expect the car to have been well looked after, and that the trim would not be damaged to the level Mr D says it was, and required putting right by the dealership. This, alongside the tapping noise caused by the venting valve needing to be replaced, means I'm persuaded that the vehicle wasn't supplied in a suitable condition or free of minor defects even taking into account its specific circumstances including mileage and age.

Because it doesn't meet the standard set above, Mr D should have been allowed to reject the car as he tried to do so within the first 30 days of the car being supplied. The CRA lists this as his short-term right to reject.

I've seen emails between Mr D and BMWFS showing Mr D did ask to reject the vehicle within this timeframe.

I invited both parties to make any further comments. Mr D responded to say he accepted my provisional decision. BMWFS did not respond. Now both sides have had an opportunity to comment, I can go ahead with my final decision.

## **Findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither party responded to my provisional findings with any further information to be considered, I see no reason to depart from them above. I've copied below what I provisionally decided BMWFS need to do to put things right. As I received no further information or comments, this has also not changed.

## **Putting things right**

Under the CRA if goods are not of satisfactory quality they do not conform to the contract. Section 19 of the CRA sets out certain remedies available to the consumer for goods that do not conform. One of those remedies is the short-term right to reject the goods. And in the circumstances, I'm satisfied that this is the fairest option.

Mr D had some use of the car while it was in his possession, so I think it's only fair that he pays for this usage. I do agree with the investigator that Mr D should be refunded for payments made after the vehicle was returned as he had no ongoing use of it. Mr D has explained he was only able to use the car for two weeks, however the information I have suggests this was raised with BMWFS for the first time on 25 September 2023. As Mr D had around one month's usage of the car, returning it on 27 September 2023 and I can see the first payment was made on 28 September 2023, I think it is fair Mr D has paid for this month of usage and he should not be refunded for this payment to recognise this.

The investigator also thought BMWFS should pay Mr D £200 for distress and inconvenience

caused due to the issues with the vehicle and the rejection process. I do agree that a payment for distress and inconvenience is appropriate here. I say this because Mr D was unhappy with the car he was supplied with due to the interior damage, and when he tried to get on with using it, he found further problems resulting in the vehicle needing to be taken back to the dealership.

He exercised his short-term right to reject under the CRA, and from the emails I have, it looks like he was given the impression BMWFS had no problem with this. There is then an email from BMWFS suggesting he will only be able to reject the vehicle if a confirmed fault is found – which on inspection faults were found with the car. There was a later email from the dealership stating the venting valve that needed replacing wouldn't affect the performance of the car and the interior damage was cosmetic and not mechanic.

However, The CRA doesn't state that a fault has to be mechanical in nature, the relevant areas to this case are the ones I've outlined above in this decision. Mr D tried to reject the vehicle as was his right to do so, and this was denied by BMWFS. This will have undoubtedly been stressful for Mr D, as he'd been given the impression he could reject the vehicle and had already arranged another car on finance to replace this one.

I'm persuaded this will have caused Mr D some distress, when he found out his right to reject had been declined, leaving him responsible for two cars and two finance agreements.

It's for these reasons I agree with the investigator's recommendation for BMWFS to pay £200 for distress and inconvenience.

Regarding the separate personal loan agreement, this has not been considered or affected by this decision. Mr D understands his position around repaying this loan.

### **My final decision**

My final decision is I uphold Mr D's complaint and instruct BMW Financial Services (GB) Limited must follow my directions above to do the following:

- End the agreement with nothing further to pay.
- Remove any adverse information that may have been recorded with the credit reference agencies in respect of the agreement.
- Refund any payments made towards the agreement after the first monthly payment on 28 September 2023.
- Pay 8% simple yearly interest\* on the above, to be calculated from when Mr D made the payments to the date of the refund.
- Pay Mr D £200 for distress and inconvenience caused by these issues as outlined above.

\*HM Revenue & Customs requires BMWFS to deduct tax from the interest amount BMWFS should give Mr D a certificate showing how much tax it has deducted If he asks for one. Mr D can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 January 2025.

Jack Evans

**Ombudsman**