

The complaint

Miss V complains about the quality of a car she has been financing through an agreement with BMW Financial Services (GB) Limited (BMWFS).

What happened

Miss V took receipt of a brand-new car in December 2019. She financed the deal through an agreement with BMWFS.

In October 2023 after Miss V had been able to cover about 28,000 miles in the car, it broke down. BMWFS refused to take responsibility for the repair as they said they were only responsible for the quality of the car when it was supplied and as the fault occurred about four years after the car was supplied, and Miss V had been able to complete 28,000 miles, they thought the fault had developed subsequently.

Miss V referred her complaint to this Service and our investigator provided an opinion. He didn't think the car had been of satisfactory quality. He noted that Miss V had now settled her agreement and that she'd paid to have the car repaired. He thought to settle the complaint it would be fair for BMWFS to refund the repair costs.

BMWFS didn't respond to the investigator's opinion, so the complaint has been referred to me, an ombudsman, for 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.

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 V acquired her car under a hire purchase agreement. This is 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. The relevant legislation explains that when we consider whether goods have been of satisfactory quality, we should consider whether they have been durable.

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 V. This was a brand-new car so I don't think a reasonable person would expect anything to be wrong with it.

Miss V has provided a copy of the invoice she paid to have the car fixed. That explains that it was necessary to replace the engine and the turbo at a cost of £7,056. I think a reasonable person would expect a brand-new car's engine to cover many more miles than 28,000 before it failed and I don't, therefore, think this car could be considered to have been durable.

In those circumstances, the relevant legislation would allow the business one opportunity to repair the car. But here as Miss V has been kept waiting for a resolution to the problem, she has had the car repaired already. I think BMWFS should, therefore, refund the cost of that repair and the £655.63 Miss V also had to pay to the dealership for their earlier diagnosis.

I think Miss V has experienced some distress and inconvenience here. She's had to escalate her complaint to this Service when I think it could have been resolved earlier. In the circumstances, I think BMWFS should pay her £100 in compensation.

My final decision

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

- Refund the £7,056 Miss V paid to have the car repaired. They should add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund the cost of the diagnostic Miss V has evidenced that she paid (£655.63) adding 8% simple interest* per year from the date of payment to the date of settlement.
- Pay Miss V £100 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Miss V's credit file in relation to this issue.

*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 V to accept or reject my decision before 30 October 2024.

Phillip McMahon
Ombudsman