

The complaint

Mr C complains about a used car he acquired through a hire purchase agreement with BMW Financial Services (GB) Limited (BMWFS). He is unhappy that the car broke down and needed significant repairs. And that BMWFS did not accept his request to reject the car.

What happened

In November 2022 Mr C acquired a used car, which cost £24,786. The car was a little over three years old and had travelled just under 30,000 miles when supplied. The car suffered an issue with one of the seats towards the end of January 2023 and around the end of March 2023 there was an issue with the outside temperature sensor. Both issues were I understand repaired without cost to Mr C and with relatively little inconvenience.

Around the end of July 2023, by which time the car had travelled approaching 43,000 miles, the car broke down and had to be recovered. An issue was diagnosed with the fuel system of the car and according to the garage notes responsible for repairs, *'Requires entire fuel system replacing including tank...may also require further work once high pressure pump removed...'*

The repairs were completed, again without cost to Mr C, but he was without use of the car or courtesy car and incurred costs hiring a car to use. Mr C complained to BMWFS about the quality of the car, the issues he had experienced and that he wanted to reject the car. BMWFS responded to his complaint and although it did make an offer to settle the complaint with Mr C, he remained unhappy and referred his complaint to our service.

It was considered by one of our investigators and they explained why they considered the complaint should be upheld. Amongst other things, they recommended BMWFS end the agreement and take back the car, refund Mr C's deposit payment and hire car costs and pay £300 for the distress and inconvenience caused.

Mr C then informed the investigator that he had now sold the car to a garage and settled the finance as he needed a car that he could trust. The investigator revised their proposed redress and recommended BMWFS now refund the deposit payment and the £1,295 Mr C had to pay to settle the agreement, refund the hire car costs and pay Mr C £300 for the distress and inconvenience.

Mr C accepted the investigator's recommendations. BMWFS did not. It initially indicated that it was willing to refund Mr C the hire car costs, pay him £300 and remove any adverse information from his credit file. It later said, in summary, the garage Mr C sold the car to confirmed the car was now free from any defects. The vehicle valuation would have been higher if Mr C had completed an overdue service prior to selling the car. The mileage on the vehicle indicated that Mr C had driven the car more than the contractual mileage agreed under the agreement.

As BMWFS did not accept the investigators conclusions and the complaint has not been resolved informally, it has been referred to me so that a final decision can be issued.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this and this simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

BMWFS supplied the car to Mr C under a regulated hire purchase agreement. Because of that, our service is able to consider complaints about the hire purchase agreement and the goods, i.e. the car, supplied under the hire purchase agreement. As the supplier of the car, BMWFS has an obligation to ensure the car supplied was of satisfactory quality – as set out in the Consumer Rights Act 2015.

Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car. Section 9 of the Consumer Rights Act 2015 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.

It is reasonable in my view to note the car here was not new and had already travelled some miles at the time of supply. So, it would be unreasonable to expect a used car like this to be in the same 'as new' showroom condition which it would have been when first supplied. But just because the car was used with some mileage, doesn't mean that BMWFS has no requirements in relation to satisfactory quality, or more specifically durability.

Mr C had some initial issues with the car's seat and outside temperature gauge. I have seen nothing to indicate either of these issues were affected by Mr C's use of the car and neither items are what would be considered to be serviceable items that are expected to wear and require replacing at certain intervals. While both issues might arguably be relatively insignificant, I'm satisfied that a reasonable person would not expect to experience defects like this with a car of this age, mileage and price.

The issue with the fuel system was more significant and it is clear from the job card notes that this was a much bigger issue that required the entire fuel system and petrol tank replacing. A new high pressure fuel pump and fuel accumulator was required, along with six new injectors. Substantial work was required to rebuild the car and the engine and from the evidence provided this did appear to resolve the issue.

As is evident from the job sheets, a significant amount of work was required to diagnose and repair the fault with the fuel system. Like the other two issues Mr C experienced, there is nothing to indicate Mr C caused or contributed towards the fuel problem. And while I note the fuel system may require some servicing, such as replacing the fuel filters at certain times,

there is nothing to indicate the problems were as a result of lack of servicing on Mr C's part.

Having again noted the age, mileage and price of the car at the time the car was supplied and when Mr C experienced the fuel problems, I'm satisfied that a reasonable person would not expect to experience this sort of problem with the car. Having considered all that the parties have said and provided, along with the requirements set out in the Consumer Rights Act 2015 around durability, I'm satisfied that the issues Mr C experienced demonstrate the car was not sufficiently durable when supplied to Mr C. And it is ultimately for this reason that I consider Mr C's complaint should be upheld.

Putting things right

Now that I have found the car was not sufficiently durable, or therefore of satisfactory quality when supplied to Mr C, I have considered what a fair and reasonable remedy would be in these circumstances.

Mr C has referred to having a young family and his regular responsibilities with his ex-partner, which involve Mr C having his children at certain agreed times. Not having the car while it was being repaired, plus experiencing the breakdown with his children, was distressing and caused considerable upset to Mr C and the wider family. Mr C has been clear about how he, quite reasonably in my view, expects to rely on a car and not keep having things go wrong or require the car to be repaired.

While I accept the issues were repaired, this was after significant work to the fuel system. I can appreciate why Mr C has essentially lost faith in the car and did not want to continue using it. I note that when complaining to BMWFS Mr C sought to reject the car, but this was not accepted at the time. Having carefully considered the circumstances of this complaint, including the significant repairs required to the fuel system and the impact these issues have had on Mr C, I consider it reasonable that Mr C should have been allowed to reject the car.

Mr C's request to reject the car was not granted and Mr C then sold the car to a manufacturer branded dealership when obtaining a replacement car. Having considered the broader circumstances here, and in particular that BMWFS did not accept Mr C's request to reject the car, I do not consider Mr C acted unreasonably when doing this.

I have noted what BMWFS has said about the value Mr C obtained when selling the car, including the car's service being overdue and the higher than anticipated mileage. But I have not seen anything to indicate the level of discussions that took place between Mr C and the dealership and therefore whether the factors BMWFS refers to did ultimately result in Mr C receiving a lower price. The book price BMWFS refers to is an indication of the likely value but is not however a guaranteed amount that every dealership will pay for an equivalent car.

So Mr C receiving a lower value for the car, which resulted in him having to pay £1,295 to settle the difference in the outstanding finance amount, does not demonstrate Mr C acted unreasonably or recklessly when selling the car. Had BMWFS accepted Mr C's earlier request to reject the car BMWFS would have been able to negotiate its own price with a dealership, assuming the car was to be sold back to a dealership instead of auction. It would be reasonable in my view for BMWFS to refund, with interest, the £1,295 Mr C had to pay to settle the outstanding finance agreement.

Mr C paid an initial deposit of £5,982 when acquiring the car and he has effectively lost this amount of money over the relatively short time he has had the car. Had BMWFS accepted Mr C's request to reject the car, this should have been refunded to him. It would be reasonable therefore for BMWFS to refund this sum to Mr C, again with interest.

BMWFS did agree to refund the hire car cost and £300 distress and inconvenience payment to Mr C, but it is not clear if this offer remains now Mr C has sold the car. For similar reasons to what the investigator set out, I am satisfied that Mr C should also be paid these as he would not have incurred the hire car costs if the car was of satisfactory quality. And Mr C has suffered some distress and inconvenience as a result of the unsatisfactory quality car being provided. An amount of £300 to reflect the distress and inconvenience caused is reasonable in my view.

It is unclear if BMWFS has reported any adverse entries on Mr C's credit file, but if it has, these should be removed.

My final decision

My final decision is that I uphold Mr C's complaint and direct BMW Financial Services (GB) Limited to pay Mr C:

- £1,295 for the cost of settling the finance agreement.
- The £5,982 deposit payment he paid.
- The hire car costs he incurred.
- £300 for the distress and inconvenience he was caused.

Interest at 8% simple should be added to the refunded amounts set out above. This should be calculated from the date of each payment until the date of settlement. If the final decision is not settled within 28 days of Mr C's acceptance, interest at the same rate should be added to the £300 payment from the date of this decision until the date of payment.

If any adverse information has been recorded on Mr C's credit file, this should be removed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 November 2024.

Mark Hollands
Ombudsman