

The complaint

Mr S has complained that he is unhappy with the quality of a car he acquired in July 2023, using a hire purchase agreement with BMW Financial Services (GB) Limited (“BMWFS”).

What happened

Mr S acquired a used BMW in July 2023, using a hire purchase agreement with BMWFS. The car cost £32,903.50, of which Mr S borrowed £32,402.50 over 49 months, with monthly repayments of £594.91. A final payment of £13,912.97 would be payable at the end of the term if Mr S wanted to keep the car. The car was just over five years old at the point of supply and the mileage stated on the agreement was 58,475.

A fault occurred in mid-October 2023, when an engine management light (EML) showed on the dashboard, and the problem was found to be an exhaust gas recirculation (EGR) issue, and the EGR valve was replaced. Two weeks later, the car broke down again – Mr S said this was the same problem, with the EML light showing, a loss of power and a burning smell in the car. The BMW garage said that this second problem related to the engine mounts and the vacuum lines flooding. The car remained with the garage until April 2024 because a part was on order. Mr S was provided with a courtesy car although he was unhappy with this because he said it wasn’t appropriate for the journeys he needed to make.

Mr S complained to BMWFS at this point, saying he wanted to reject the car. BMWFS didn’t uphold his complaint, saying that the two faults were unrelated, so it retained the right to repair the car.

Mr S was unhappy with this, so he brought his complaint to this service. Our investigator looked into it, and thought it should be upheld. After the investigator issued her view, the outstanding repairs to the car were completed and BMWFS said it would refund the monthly payments from October 2023 to February 2024, although the March and April payments had not been made. BMWFS also said it would add interest to the refunded payments, and would also pay £300 in recognition of the distress and inconvenience caused by the problems with the car and the delayed repairs. Our investigator noted that Mr S had confirmed that the March and April payments had been made, so she thought these ought to be refunded also. But as Mr S had said he would accept this redress, our investigator thought the settlement was otherwise fair.

However, around a week after Mr S collected the car in April 2024, a further problem arose in that the car was driving erratically, pulling left and right. It was taken to a BMW garage where the control arms were replaced.

Mr S has set out details of further problems with the car in April, May June and July 2024, and the repairs carried out included the following:

- KDS (wheel) alignment (on more than one occasion)
- control arms reset
- all control units reset
- air mass sensor replaced

- air intake temperature sensor replaced
- Nox sensor replaced (after replacement in October 2023)
- input shaft seal replaced
- gearbox adaptations reset
- transmission oil replaced
- gearbox oil topped up

I also note that the front tyres were replaced, but as tyres need to be replaced from time to time I have treated that as a normal maintenance issue.

Mr S provided a number of diagnostic reports and job cards for the various issues with the car. He says that the car still has a strong smell of diesel/fumes present, and is still pulling left and right while driving.

Because of all this, Mr S wishes to reject the car. After considering the new evidence and information about the continuing problems with the car, our investigator issued a view saying that she thought Mr S's complaint should be upheld and that it would be fair for him to reject the car. BMWFS disagreed and so the complaint has come to me for review.

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've decided to uphold Mr S's complaint. I'll explain why.

Because BMWFS supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case, of course, the car was just over five years old at the point of supply, with a stated mileage of 58,475 when Mr S acquired it. So I've kept that in mind.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

BMWFS sent in copies of the finance agreement, its records of its contact with Mr S, and copies of the sales documents and various emails. Mr S sent in copies of email exchanges with the repairing garages and BMWFS, along with copies of diagnostic reports and job sheets. He has also provided a helpful and detailed timeline of events.

I have not referred to every document in this decision, but I have read and considered all of them in reaching my decision.

It's clear from the documents provided by both parties that there have been a number of faults arising since Mr S acquired the car. The main issue is therefore whether the car was of satisfactory quality at the point of supply. I don't think it was.

The first faults arose within three months of Mr S acquiring the car. I note from the sales documents that the EGR valve had been replaced under warranty at 41,000 miles (before Mr S acquired the car), and my online research suggest that the expected lifespan should have been much longer than it was – the valve was replaced again in October 2023.

The next repairs took a considerable amount of time because of parts on back order. Mr S said that on this occasion the EGR cooler was replaced (I note from the sales documents that this had previously been done under warranty at around 33,000 miles – and again I would have expected a longer lifespan). He also said that new engine mounts were fitted, the swirl flaps were replaced, and the engine manifold was repaired,

I accept that I don't have the benefit of an independent inspection by a third party. But taking account of the faults arising within three months of the point of supply, the replacement of EGR components after limited mileage (calling into question their durability) and the repeated breakdowns over a short period I think it's most likely that the car was not of satisfactory quality at the point of supply, and that the faults were present or developing at that point. And I've not seen anything to make me think that Mr S has caused or contributed to the faults occurring.

BMWFS has argued that the repairs are due to normal wear and tear. I've thought about this, but given the range of items repaired, and the need to repeat some repairs, I don't think this is the case.

As I noted above, the CRA provides for a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality. We look at the car as one item, rather than the individual components. So, the business has one chance to repair the car. From the information Mr S has provided, I'm satisfied that the initial repairs did not result in the car conforming to contract. So taking all this into account, I'm satisfied that it would be fair for Mr S to reject the car, and therefore I uphold this complaint.

I note that BMWFS has refunded some monthly payments. If it has not already done so, it should refund the payments for the period March 2024 to April 2024. I think it should also refund the monthly payments for any period after that where Mr S has not been provided with a courtesy car whilst being unable to use this car. I don't have an exact timeline for this but as the repairs have been carried out at BMW garages I would expect BMWFS to be able to determine the relevant period if Mr S is unable to confirm the exact dates.

BMWFS said it had paid Mr S £300 in recognition of the distress and inconvenience caused by the problems with the car. Because of the ongoing issues I think it fair for BMWFS to pay Mr S an additional £150.

Putting things right

BMWFS should:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to Mr S.
- Refund Mr S's deposit contribution of £501.
- Refund the monthly payments from March 2024 to April 2024, if this has not already been done
- Refund any monthly payments after this date, where Mr S was unable to use the car and no courtesy car was provided.

- Pay 8% simple yearly interest* on all refunded amounts from the date Mr S paid them to the date of settlement.
- Pay £150 to reflect the additional distress and inconvenience caused by the continuing problems with the car, in addition to the £300 already paid.
- Remove any adverse information from Mr S's credit file (if any has been added) in relation to this agreement.

*If BMWFS considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I have decided to uphold Mr S's complaint and to require BMW Financial Services (GB) Limited to compensate him as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 March 2025.

Jan Ferrari
Ombudsman