

The complaint

Mr L complains that the car he acquired through BMW Financial Services(GB) Limited ("BMW") wasn't of satisfactory quality. He wants BMW to reimburse him for the repairs he's paid for and cover his other related costs.

What happened

Mr L entered into a hire purchase agreement in December 2021 to acquire a used car. The cash price of the car was £22,950, and after taking into account Mr L's advance payment of £5,000, the total repayable was £26,762.40, and was to be repaid through the credit agreement which was set up over a 55-month term with monthly payments of £395.68. At the time of acquisition, the car had already been driven nearly 46,000 miles and was more than three years old.

Mr L told us:

- He bought the car online in December 2021 without any opportunity to conduct mechanical checks;
- almost immediately he reported a fault to the supplying dealership, and it directed him to a manufacturer approved garage for diagnostics and repairs;
- the repairs were carried out in January 2022 under warranty, and he was told that the turbocharger and exhaust manifold had been replaced. The whistling noise he'd mentioned was not addressed – the garage said it was likely due to the type of brake calliper on the car, was normal, and would stop in due course;
- nearly 10 months later, there was a general service recall from the manufacturer for his car. He booked the car in for repairs immediately and these were completed under warranty;
- in January 2024, the car starter losing power intermittently, and could only be driven at a slow speed, so he booked the car in with a nationally recognised third-party;
- he was advised that the diagnostics indicated that the car had gone into *limp mode* due to a fault with the turbocharger, and that there were a number of other electrical and non-electrical faults;
- he contacted the supplying dealership and was advised to contact a local garage that was associated with the manufacturer. Following further diagnostics, Mr L says he was provided with an estimate for repairs totalling more than £3,000 – including the replacement of the turbocharger *again*;
- the supplying dealership said it would provide no financial assistance towards the repair costs as more than two years had now elapsed since the car was supplied to Mr L, and he'd been able to drive it more than 20,000 miles in that time;
- he complained to BMW, but it endorsed the position of the supplying dealership, and it rejected his complaint;
- BMW did say it would look again at the matter if he could provide evidence that the fault was present or developing within the first six months of supply. Mr L says that although he sent it the appropriate evidence, it did not uphold his complaint;

- he wants BMW to reimburse him for his costs; the repairs he's paid for and the taxis he's taken when he's not been able to use the car, or alternatively, BMW should permit him to reject the car and refund to him his monthly rentals.

BMW rejected this complaint. It set out its understanding of the Consumer Rights Act 2015 and said that the evidence Mr L had provided did not confirm that the fault with the car would have been present or developing within the first six months of its supply. It did say that if he were able to provide new evidence that supported his position, it would be happy to review it and reconsider its position.

Our Investigator looked at this complaint and said he didn't think it should be upheld. He explained the relevance of the Consumer Rights Act 2015 ("CRA") in the circumstances of this case and said that although he was satisfied that there was a fault with Mr L's car, he'd not seen evidence that the current fault was present or developing at the point of supply. And he explained to Mr L that although there was no dispute there had been another fault with the car within a short time of Mr L acquiring it, this had been remedied at the time, in accordance with the CRA, with repairs carried out under warranty and at no cost to Mr L.

Our Investigator also explained that since the initial successful repair in January 2022, Mr L had driven the car more than 20,000 miles over the following two years, so it could not be concluded that the repairs to that initial fault had been unsuccessful.

Mr L disagrees, so the complaint comes to me to decide. He says the replacement turbocharger should've lasted longer than it has done, and that although he's bought used cars before, this is the first time he's faced a situation like this where the original turbocharger needed replacing within the first three weeks of purchase. He says this indicates that the car fell short of BMW's own used car standards.

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 agree with our investigator – I don't think this complaint should be upheld – and I'll explain why.

I hope that Mr L won't take it as a discourtesy that I've condensed his complaint in the way that I have. Ours is an *informal* dispute resolution service, and I've concentrated on what I consider to be the crux of this complaint. Our rules allow me to do that. Mr L should note, however, that although I may not address each individual point that he's raised, I have given careful consideration to all of his submissions before arriving at my decision.

When looking at this complaint I need to have regard to the relevant laws and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mr L is a regulated consumer credit agreement this Service is able to consider complaints relating to it. BMW is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 ("CRA") there is an implied term that when goods are supplied "the quality of the goods is satisfactory". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider to be satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods. So, what I need to consider in this case is whether the car supplied to Mr L was of satisfactory quality or not.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMW can show otherwise. But, if the fault is identified after the first six months, then it's for Mr L to show the fault was present when he first acquired the car. So, if I thought the car was faulty when Mr L took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMW to put this right.

I don't think there's any dispute that Mr L has experienced problems with the car. That has been well evidenced by both his testimony and the information he's sent us, along with copies of estimates and invoices relating to a previous repair.

The fault that materialised within the first three weeks, did raise questions about the satisfactory quality of the car at the point of supply. And no-one has argued that the fault wasn't present or developing when Mr L first acquired the car. So on the basis of these two facts; the agreed fault that arose, and the very short time within which it arose, I'm satisfied that the car was not of satisfactory quality when first supplied.

But it seems to me that the agreed remedy at this time was repair – and the fault was successfully repaired in January 2022, when the turbocharger and exhaust manifold were replaced. And those repairs were completed under warranty – so there was no cost to Mr L. I've said that this repair was successful, and I believe it was, because on the basis of what he's told us, Mr L reported no related issues for around two years, during which time the car was driven more than 20,000 miles.

Mr L says that he experienced problems again in January 2024, when the car went into *limp mode*. But this is more than two years after he acquired the car, and two years after the repairs that I've already concluded were successful, and that remedied the earlier fault.

So it seems to me that there's two possibilities here.

The new fault that Mr L describes relates to a component installed *after* he'd acquired the car. A component that he says may not have been as described. He's suggested that the turbocharger may not have been the *new* turbocharger that he was told had been installed. And it's also possible that there was an unknown fault with this *new* turbocharger.

But the *new* turbocharger was installed under a warranty, so any fault with it isn't something I can hold BMW responsible for. Our investigator had previously advised Mr L that in these circumstances, he'd need to complain to the garage about the turbocharger it had installed, and he could also consider a complaint to the provider of the warranty – it was under this warranty that the work was undertaken.

The second possibility is that there's another fault with the car, one that has not yet been identified or diagnosed. And this other fault is responsible for shortening the lifespan of the car's turbochargers. At this stage, although this is *possible*, and I have kept an open mind, I've simply seen no evidence to support this position.

So, on the basis that Mr L does not have full confidence in the repair, or he fears that there's an underlying fault which manifests itself in the early failure of the turbochargers, it would be for Mr L to instruct a recognised independent engineer to inspect the car.

In the event an independent engineer concluded that the repair had not been successful – it had not addressed the original fault, or alternatively, the engineer identified further faults that were likely present or developing at the point of supply, then Mr L could bring a new complaint directly to BMW. In these circumstances, most businesses would consider accepting rejection of the vehicle and reimbursing their customer for the cost of the independent inspection. But at the moment, there's simply no evidence from Mr L to support this position.

So, on the basis that the car has been successfully and fully repaired, and there's no evidence that the fault that materialised in January 2024 was present or developing at the point of supply – it couldn't be present as that turbocharger was fitted *after* the car was supplied, I don't think it would be right to direct BMW to accept rejection of it or to reimburse Mr L for the costs he's incurred.

I know Mr L will be disappointed with this decision, but I hope he understand why I've reached the conclusions that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 May 2025.

Andrew Macnamara
Ombudsman