

The complaint

Mr B is unhappy with the car supplied to him using a regulated hire purchase agreement with BMW Financial Services(GB) Limited trading as BMW Financial Services.

What happened

On 26 January 2021 Mr B entered into a regulated hire purchase agreement with BMW for a used car. The car was almost four years old and had been driven 20,831 miles. The cash price was £18,052.

Mr B has provided evidence that he arranged for services to be carried out on the car with non-dealership garages in January 2022 and 2023.

In March 2023 he received a letter saying that his car needed to be recalled because there could be an issue with the EGR cooler. The car was inspected in June 2023. Shortly after, Mr B said the car began to drive itself at high speed and the revolution counter went extremely high.

In December 2023 the car was taken back to the garage and a fault with the EGR cooler was found and a repair took place.

Mr B then began to experience issues with the car driving at high speeds again. He arranged for the car to be recovered to a BMW garage and it was discovered that there were problems with the engine. He then paid for it to be transported to another garage for further testing and repairs. At this point, the car had been driven 59,508 miles.

BMW investigated but felt that the issues with the engine weren't related to the quality of the car at the point of sale, or the replacement EGR cooler. They said that as the problems presented over a year after Mr B acquired the car, the onus was on him to show the engine issues meant the car was of unsatisfactory quality.

Unhappy with their response, Mr B brought the complaint to our service. As part of our investigations, he also provided a report from a garage which suggests that the problems he experienced with his car could be because of the faulty EGR cooler. He also decided to pay for the car engine repairs in October 2024 so he could continue to use it.

After considering everything, one of our investigators issued their view. They were persuaded by the garage report Mr B supplied and thought it was most likely that the car wasn't of satisfactory quality when it was supplied.

They asked BMW to refund Mr B's deposit and any finance payments from when Mr B hadn't been able to use the car. They also asked them to repay the cost of repairs and the money Mr B paid for the garage's report. She said they should pay 8% simple interest on these amounts. In addition, she said BMW should pay Mr B £200 for the distress and inconvenience he experienced. We also asked BMW to pay Mr B for the £80 recovery fee.

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.

Mr B acquired the car using a hire purchase agreement and so The Consumer Rights Act 2015 (CRA) is the relevant legislation for this complaint. The Act sets out expectations and requirements around the quality of goods supplied. In summary, goods should be of satisfactory quality. Satisfactory quality is essentially based upon what a reasonable person would consider to be satisfactory. In instances like this when considering the quality of a car, the age, mileage and price are some of the things that I think would be considered to be reasonable to take into account.

The CRA gives consumers 30 days to reject the goods if they are deemed to be faulty when supplied. If the purchased goods are found to be defective after 30 days but within six months, then the supplier must be given one opportunity to repair or replace the goods.

The engine on Mr B's car became faulty almost three years after he acquired it. It had been driven 38,677 miles since he acquired it which I don't think is an unreasonable amount. The car was around seven years old when the issues with the engine began. I've also noted that the car had been serviced every year since it was registered, both by its previous owners, and by Mr B. While I appreciate that Mr B didn't use the dealership for services when he had the car, I don't think this means that it wasn't maintained as required.

I've thought about all of this alongside the contents of the garage report that Mr B supplied. It states that all the issues with the engine could have been caused by a faulty EGR cooler. And it isn't in dispute that there was a faulty EGR cooler as it was replaced as part of the recall in December 2023. I've also seen the recall letter sent by BMW and it mentions that a faulty EGR cooler could cause damage to the engine.

Taking all this into account, there is enough evidence to suggest that the car wasn't of satisfactory quality at the point of supply. I say this because I don't think a reasonable person would expect a car of this age, mileage and service history to have such extensive engine issues. I also can't ignore the garage report explains all of the issues found with the engine could have been as a result of a faulty EGR cooler.

So, I'm persuaded that the faulty EGR cooler most likely caused issues with the engine, and that this issue was present or developing at the point of supply.

Mr B has already paid for the car to be repaired, and so I think it is appropriate that BMW cover this cost as a remedy under the CRA. They should also refund him the cost of the diagnostic report, which Mr B has provided evidence of. I think it's fair for all of these costs to be refunded by BMW as a consequential loss of the car not being of satisfactory quality.

BMW should also refund any finance payments made from when the car was unable to be driven from January 2024 to when repairs were completed in October 2024. This is because Mr B didn't have use of his car during this time.

BMW should also pay 8% simple interest on these amounts from the date Mr B paid them to the settlement of this complaint. This is because Mr B has been without use of these funds.

Mr B has sent evidence that he paid £80 for his car to be recovered between garages. I think this is a consequential loss which should be refunded. As the payment was made from his wife's account, I can't be sure Mr B lost out on use of the funds, so I don't think BMW need to pay 8% interest on this amount.

I also think BMW should pay Mr B £200 for the distress and inconvenience he has experienced as a result of the faulty car. I say this because Mr B has had the inconvenience of having to take his car for numerous repairs. He also had the trouble of arranging for a report to be carried out on the car and then had to arrange the repairs. I can understand why Mr B would've found all that has happened frustrating, and I think £200 acknowledges the distress and inconvenience he would've experienced.

Putting things right

My final decision is that I uphold this complaint and ask BMW Financial Services(GB) Limited trading as BMW Financial Services to:

1. Refund Mr B £8,887.68 for the repairs he arranged in August 2024;
2. Refund Mr B the £957 he paid for the garage report;
3. Refund Mr B any finance payments made from January to October 2024;
4. Add interest at a rate of 8% a year simple to parts one to three of this settlement from the dates they were paid, to the date of settlement of this complaint;*
5. Refund Mr B the £80 he paid to transport his car between garages; and
6. Pay him £200 for the distress and inconvenience he has experienced;

*BMW must pay these amounts within 28 days of the date on which we tell them Mr B accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If BMW deducts tax from any interest they pay to Mr B, they should provide Mr B with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 April 2025..

Ami Bains

Ombudsman