

The complaint

Mr O is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited ('BMWFS') was of an unsatisfactory quality.

Mr O has been represented during the claim and complaint process by Miss O. For ease of reference, I will refer to any comments made, or any action taken, by either Mr O or Miss O as "Mr O" throughout the decision.

What happened

Mr O had been supplied with a car through BMWFS in December 2023. He was unhappy with this car, and he says it was over-revving. He complained to BMWFS about this. The supplying dealership offered to allow Mr O to replace the car for a newer one, albeit at an additional cost of £7,500. Mr O agreed to this.

In March 2024, Mr O was supplied with a new car through a hire purchase agreement with BMWFS. The agreement was for £68,549.44 over 48 months; with 47 monthly payments of £931 and a final payment of £34,784.63.

Mr O complained to BMWFS in June 2024, explaining the car was over-revving and asking for this to be replaced. After the car had been inspected by a manufacturer's technician, BMWFS said the over-revving was a characteristic of the gearbox when cornering and there were no mechanical faults with the car. So, they didn't uphold the complaint.

Mr O wasn't happy with what'd happened, and he brought his complaint to the Financial Ombudsman Service for investigation. He also obtained a report from an independent garage, which said that there may be an intermittent fault with the ECU or GPS AI gearbox. This report said that the over-revving wasn't causing any damage to the engine or gearbox and suggested remapping the ECU, noting that doing so would invalidate the warranty.

Our investigator considered both reports, as well as the manufacturer's comments that this is how the gearbox is programmed and designed, and that this is a characteristic of the gearbox and not a fault. Given all this the investigator thought that the car supplied to Mr O wasn't faulty, so BMWFS didn't need to do anything more.

Mr O didn't agree with the investigator's opinion. While he provided a large amount of comments, all of which were addressed by the investigator, he remained unhappy because he felt the car was faulty, and that this fault only started once the car had done 2,000 miles. He also felt that the 2025 model of the car having a remapped accelerator shows that there were faults with earlier models.

Mr O also made extensive comments surrounding the car he was provided with in 2023 and subsequently returned, and about the supplying dealership. The investigator advised him that, if he considered the car had been misrepresented to him, then he would need to raise this issue with BMWFS first – we are unable to consider a complaint unless the financial business has had the opportunity to consider that complaint first.

Because Mr O didn't agree, this matter has been passed to me to make a final decision. While this matter was awaiting allocation to myself, Mr O advised us that the car had broken down. However, the supplying dealership were unable to find any fault.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr O was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMWFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMWFS can show otherwise. So, if I thought the car was faulty when Mr O took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMWFS to put this right.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here. Mr O was supplied with two cars with BMWFS – one in 2023 and one in 2024. The complaint that is being considered relates to the 2024 car. As such, and despite Mr O saying there were similar issues with the 2023 car, my decision will not consider the 2023 car.

I've seen a copy of the manufacturer's technician's report dated 13 June 2024. This said that the over-revving Mr O was experiencing was *"the vehicle/transmission ... just entering cornering mode when it won't make a shift unless forced to by the paddles. There is no issue with the vehicle or transmission and there are no repair measures that would change this. There is no way to deactivate this mode."* The report goes on to say that *"just to be clear, this vehicle is operating in the exact same manner as the customer's previous vehicle and known good comparison vehicles."*

While I appreciate Mr O has obtained a report from an independent garage, they have only concluded there may be an issue with the ECU or the gearbox. They haven't conclusively said that there is definitely a fault with the car. What's more, I've noted that the independent garage doesn't appear to be a manufacturer's specialist.

However, the manufacturer's technician has confirmed this is a characteristic of the gearbox, as has the manufacturer themselves, who say *"the [model of car] responds in a more spontaneous way to the driver's acceleration with the [gearbox]. This is part of the reason the vehicle is behaving as noticed. With this much potential torque being applied to the rear axle a change of gear could result in the rear wheels becoming accelerated and braking traction during the turn. By holding the gear and increasing the revs the turn can be controlled much easier by the driver with less risk of the vehicle breaking away into an oversteer situation."*

The effect the customer has spoken about is not going to damage the vehicle in any way. The feature can be found on any of the [specified] range, so it comes as no surprise that all the other vehicles tested behave in the same fashion."

As I explained above, where the evidence is contradictory, I need to consider what is most likely to have happened given the available evidence and wider circumstances. On one hand I have the report Mr O provided which indicated there may be an issue with either the ECU or gearbox. On the other hand, I have reports and comments from manufacturer's specialists who explain, in some depth, why this is a characteristic of the car. And this is supported by the fact that Mr O experienced similar issues in the 2023 car.

So, based on what I've seen, and while I appreciate this will come as a disappointment to Mr O, I think it's more likely than not that the issue Mr O is experiencing is as a result of a characteristic of the car, and not because of any fault. As such, I'm satisfied the car was of a satisfactory quality when it was supplied to Mr O, and I won't be asking BMWFS to do anything more.

My final decision

For the reasons explained, I don't uphold Mr O's complaint about BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 June 2025.

Andrew Burford
Ombudsman