

The complaint

Miss A complains about the quality of a car supplied to her by BMW Financial Services (GB) Limited ("BMWFS").

What happened

Miss A's journey with regards to this car has been extremely difficult and as such, I will summarise the details here but then focus on the new problems from mid-2024 that she's shown have occurred and the new complaint.

Miss A was supplied with a used car through a hire purchase agreement with BMWFS in October 2022. The car was around five years old, had covered almost 45,000 miles, and had an equivalent cash price of £33,000. The agreement was due to last for four years.

In May 2023 the engine failed, and Miss A complained to BMWFS. They rejected her complaint, but when she brought it to our service, an investigator here recommended she should be able to reject the car as the car wasn't of satisfactory quality. BMWFS responded and confirmed that since they issued their final response letter (FRL) rejecting her complaint, they had re-looked at the complaint and now were discussing with Miss A that she could have the car repaired.

Miss A said she still wanted to reject the car, but an investigator here said that as she'd had repairs by that time, this wasn't fair and changed their view to say BMWFS should cover all costs of the repairs.

In October 2023, BMWFS said that they now believed the failure of the engine was a result of negligence by Miss A and poor maintenance. However, in January 2024, an Ombudsman issued a final decision here to say they didn't agree with this argument, the failure of the engine was because of it not being sufficiently durable and compensated Miss A accordingly. This complaint is closed.

Moving on to later in 2024, Miss A has begun to suffer further problems with the car. This is the complaint we are considering now. She's demonstrated that she raised a complaint about the fault codes present on the car in May 2024, but BMWFS don't appear to have ever issued an FRL about this. We highlighted to BMWFS in August 2024 that we would be considering this as a new complaint, explaining it was separate to the previous complaint and issues.

In September 2024, BMWFS requested job cards for the work that had been completed. After further delays, in January 2025 BMWFS reached out to the garage which had repaired the car previously. They explained that there was an EGR fault (exhaust gas recirculation) before their repairs done previously, they had cleaned the EGR valve at the time, but the fault appeared to have returned. They said it wasn't related to the repair work they had done previously, and it wouldn't be what had caused the previous engine to fail.

In February 2025 BMWFS explained that the current EGR fault didn't relate to the failure of the engine previously. The investigator here confirmed that while they agreed with this, the

fault was present before the previous repairs and was present again now. They explained that as the EGR valves expected lifespan was around ten years or 100,000 miles, it's most likely that the previous failure of the engine had impacted the EGR system and valve and now caused it to fail prematurely.

A debate seems to have broken out about whether this fault related to the previous engine repairs/replacement or was a new fault. Eventually in April 2025 BMWFS came back to our service saying that as this was a secondary issue and not related, they wanted time to investigate it as a new complaint.

The investigator explained that Miss A had raised the issue with BMWFS in June 2024, but they hadn't responded to her and pointed out that BMWFS had already used their single chance for repair relating to this car on the previous engine replacement, so they were likely to be upholding this complaint now.

The investigator proceeded to uphold the complaint, saying that Miss A should now be able to reject the car. As she had been able to continue to use the car after warranty repairs were carried out, they only recommended the refund of her deposit and ending of the agreement.

BMWFS responded, resending evidence from the original complaint, and laying out what they felt, which was that they hadn't had chance to investigate this second complaint, they said they didn't think this issue was a failed repair, and some points about the mileage covered being high when Miss A had only been contracted to do 6000 miles a year.

The case has come to me for a final decision.

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. Miss A 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. But, where a fault is identified after the first six months, the CRA implies that it's for Miss A to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss A 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.

Firstly, I empathise with Miss A for the problems she's had here. Her journey with this car has been a catalogue of problems, and I can understand her desire to reject it. In the original complaint, when it was at our service, she wanted to reject the car, but as BMWFS had rejected her complaint and then the car had needed repairing, it was felt it was fairer for BMWFS to refund her the repair costs she had committed to at this point, so she couldn't reject the car.

An argument has ensued here about two key points. Firstly, BMWFS feel they haven't had chance to investigate this new issue/complaint. Despite it being raised with them in June 2024 by the customer, and by us to them in August 2024 and since then in this case communication over the last year. I don't accept this argument, they are well outside of timescales in dealing with this.

The second argument has been about whether this EGR fault is a failed repair from the first case, or an entirely new complaint issue. I assume this is because BMWFS had not arranged the first repairs on the first complaint, meaning perhaps they feel they aren't liable for a failed repair. However, they seem to be arguing that this new complaint should be treated as a separate issue and want it considered as such.

I want to be clear here. Whether it's a failed repair from the previous complaint, or a separate and new issue, either gives Miss A the right to reject the car now. The car was found to have not been durable in the previous complaint, which meant BMWFS used their single right to repair under the CRA. And then very quickly after that complaint concluded, she has suffered these further problems where I'm satisfied that it's been proven the car is not of satisfactory quality again.

The CRA gives her the right to reject the car in either scenario, whether repairs have failed or whether a new fault impacting on the satisfactory quality has ensued. It isn't relevant that BMWFS didn't arrange the repairs themselves. The investigator pointed out that the EGR valve which had failed has an expected lifespan of 10 years or 100,000 miles, which I agree with. As it has failed well before these expected lifespans, I am satisfied it's not been of satisfactory quality, and the car has again not been durable.

I don't need to get any further into the detail than that. BMWFS have had over a year to investigate this and haven't done so to any significant extent. Miss A has been asking to reject the car all along. She didn't receive a response to this complaint until our service had issued an opinion eleven months after she raised it with BMWFS. On this basis, she allowed warranty repairs to be carried out so she could mitigate her losses and continue to use the car, whilst still wanting to reject it. I think this is a fair and pragmatic response to difficult circumstances.

BMWFS have raised concerns about the mileage of the car and the usage she's had. It was supplied in October 2022 at around 45,000 miles, and the MOT records show that in October 2024, so after two years, and by which time the car should have been rejected, the mileage was 52,569 miles. Well under her contracted mileage for the two years. I suspect some confusion may have arisen here based on some figures being noted down in kilometres rather than miles, but I am satisfied that at the point BMWFS should have processed this as

a rejection, she had not covered excessive miles.

The final point BMWFS have made is that the service record isn't showing online for the car. I suspect this is just an online issue, but I don't consider this to have an impact here on this complaint. If she hasn't serviced the car at the prescribed intervals, BMWFS can decide whether to charge her for missed services when the car is returned, and that can be dealt with separately, but on the basis that this fault occurred so soon after the previous complaint and engine repairs, I'm satisfied servicing hasn't formed a part of this issue.

I also agree with the investigator that as she's been able to continue to use the car after warranty repairs were carried out, it's fair that Miss A isn't refunded any of her monthly payments since this latest fault. She simply wants to reject the car, end the agreement and get her deposit back, and I am satisfied that the car is not of satisfactory quality, BMWFS have had their one chance of repair, so she's now entitled to reject the car.

Putting things right

I instruct BMWFS to carry out the following to put things right:

- End the agreement with nothing further for Miss A to pay towards the agreement.
- Collect the car at no cost to Miss A.
- Refund her deposit paid/part exchange contribution which I believe was £13,000
- Pay 8% simple interest on the above refunded amounts from the date of payment to the date of settlement.

My final decision

I am upholding this complaint and direct BMWFS to carry out the above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 17 October 2025.

Paul Cronin
Ombudsman