

complaint

Mr B complains that the car he acquired through a hire purchase agreement (HPA) with BMW Financial Services(GB) Limited (the business) was not of satisfactory quality.

background

Mr B entered into a HPA with the business in September 2015 to acquire a used car. At the time of acquisition the car was around four years old and had been driven around 20,000 miles.

Mr B says that the car was not of satisfactory quality. He says that there was an issue with oil consumption and he had to refill the oil every 900 miles. He also told the business about issues with the roof and a rattling noise. Because of the issues he says that car was in for a repair on a number of occasions. There were then issues with the car's engine.

Mr B wanted to reject the car but this was refused. The offer of part exchanging the car was made. He said he felt he had no choice but to accept this. However he says he now has a negative equity loan of £1,500.

The business says that Mr B's request to reject the car was refused as the car was looked at and no fault found with the oil consumption. It says that further issues were then noted and the option of part exchange was put to Mr B and he accepted this. It says that Mr B acquired a higher specification car.

The business says that it refunded a total of three months rentals and paid for an extended 12 month warranty. It also contributed £3,000 towards Mr B's new car. It says it has done enough to settle this complaint.

The investigator upheld this complaint. She said that although Mr B had been provided with a courtesy car and had monthly repayments refunded for the time his car was in the garage, he should also be paid £200 for the upset and inconvenience the issues with his car had caused.

The investigator said that the business accepted liability for the failed engine and it appeared it had accepted the engine was faulty. She said that because of this Mr B should have been allowed to reject the car after the engine failed. She recommended that Mr B should only be required to pay for the difference between his new car and a car equivalent to his original car. She said that the finance agreement should be amended to reflect this.

The business did not accept the investigator's view. It said that when Mr B first brought the car to the dealer he had driven 4,000 miles and it was outside of the 30 day right to reject period. However it said Mr B's request to reject the car was refused as no fault was found. It said that Mr B was then able to drive 15,000 miles in 11 months which suggest the car was fit for purpose.

The business said that Mr B was provided a courtesy car while his car was in for repair and that it refunded him a total of three month's rentals. It considered this sufficient compensation. It said that the dealer confirmed that a new engine was required on Mr B's car and the option of another car was discussed. Mr B did not have to accept this offer but he did. It said that Mr B chose a more expensive car and that the price was discounted and it contributed £3,000 to assist Mr B. It said it shouldn't be required to do anything further.

Mr B said that the business had not provided a courtesy car instead it was the dealer. He said that the new car he had chosen was not in the pro performance range as suggested by the business. He said that he didn't receive the refund of the third monthly rental and thinks instead he did not make the payment because the finance agreement had been wound up at that time.

Mr B said that the dealer offered him a £1,000 discount on the new car as he was a good customer. There was £5,500 of negative equity on his previous finance agreement and a negative equity loan for £1,500 was set up which he is still repaying. He said he felt he had no choice but to accept the part exchange offer and that he made it clear he was not accepting in full and final settlement.

Mr B also said that the £200 compensation recommended by the investigator was not sufficient.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr B entered into a HPA to acquire a used car. Under the regulations, the business is liable if the car was not of satisfactory quality at the point of sale. The assessment of satisfactory quality takes into account the age and mileage of the car.

Mr B says that he experienced a number of issues with the car. The key issue was the oil consumption. I can see from the evidence provided that Mr B took the car in for oil refills in January, February and March 2016. I note that this issue was looked into but no fault was found. Because of this Mr B's request to reject the car was refused. I do not find this unreasonable.

I understand that following the oil consumption issue further problems were identified with the engine.

Mr B raised the issues with his car with the business around a year after he had acquired it. At this point it would be reasonable to expect evidence to be provided to show that the issues were the result of faults that were present at the point of sale. In this case an independent inspection has not been carried out. Mr B has however provided evidence of the oil consumption issue from within the first six months of having the car.

On balance, it appears that the business accepted that there was a fault with Mr B's car and it attempted to put things right. In many situations, repair would have been an appropriate remedy and I note that Mr B's car was still under warranty. However I understand that given the nature of the repairs this was not considered a viable option. Given the car was not going to be repaired I find it reasonable that at that point Mr B should have been allowed to reject the car.

Had Mr B rejected the car at that point, he would have exited the HPA with nothing further owing and been refunded his deposit plus interest. I would not have expected the payments he had made under the agreement to have been refunded as he had already received refunds for times when he was without his car and he was provided with a courtesy car.

However, I do find that a payment for the inconvenience Mr B had been caused by the issues would be reasonable.

Instead of the car being rejected, it was part exchanged. I can see the details of the car Mr B chose and this was a newer car and had a higher purchase price than had been the case for his original car. The business says it contributed £3,000 towards the car and the dealer discounted the car.

Having looked at the documents provided in regard to the second car, these show the purchase price as £25,000. They then record a part exchange amount for the first car of £11,525.24 and a settlement amount on the first agreement as £16,525.24. This left a shortfall of £5,000. There is then a part payment recorded of £3,500 which I believe to be a £500 discount plus the £3,000 provided by the business. However after these payments there is still a negative equity amount of £1,500 which has been recorded as a settlement loan.

The second finance agreement is for £25,000 plus the cost of credit. This is the cost of the second car. No advance payment is recorded.

Mr B has noted the comments made by the investigator in their view that he should only be expected to pay the difference in value between an equivalent car and the one with the higher specification that he acquired and his finance agreement should be amended to reflect this. I have agreed with the investigator's approach to this case in regard to the assessment that Mr B should have been allowed to reject this car when the repairs were found to be unviable. I have set out below how I consider this should be dealt with in terms of further actions.

In regard to redress, the business has taken action to try to resolve the issues with Mr B's car but I find that this has not been enough. I find that the fair solution is to put Mr B back in the position he would have been had he rejected the first car when the repairs were required and then entered into the new agreement for the second car.

In this case there should be no negative equity from the first agreement as this would have been waived when the agreement was terminated. Mr B would also have received his £850 deposit back. Based on this I find that the business should cancel the negative equity loan and refund any payments made under it. It should also refund him his deposit from the first HPA of £850.

Mr B then entered into the second agreement. This was Mr B's choice and I find that the agreement reflects the cost of the car he acquired. I do not find that any changes are needed to the second finance agreement as I find the resolution required is in regard to the unwinding of the first agreement.

Mr B says that £200 compensation is not enough. However I find that putting Mr B back in the position he would have been had rejection been allowed and paying him £200 for the trouble and upset caused, is sufficient.

my final decision

My final decision is that I uphold this complaint. BMW Financial Services(GB) Limited should:

1. cancel the loan arranged to cover Mr B's negative equity arising from his first agreement with nothing further owing and refund any payments made under this loan arrangement;
2. refund Mr B the £850 deposit paid under the first agreement;
3. pay Mr B £200 compensation for the trouble and upset this issue has caused; and
4. remove any adverse information that might have been recorded on Mr B's credit file in regard to this issue.

Items 1 and 2 are subject to 8% simple interest from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 May 2017.

Jane Archer
ombudsman