

complaint

Mr T complains about BMW Financial Services (GB) Limited's (BMW) refusal to pay for repairs of a car provided to him under a hire purchase agreement. He believes the faults he paid to repair were present at the point of sale, and therefore he should be reimbursed.

background

In July 2017 Mr T signed a hire purchase agreement with BMW and took possession of a second-hand Audi vehicle that had covered approximately 41,000 miles since its first registration in November 2014. Mr T says that right from the beginning he had to pay for replacement brake discs, despite having been assured that on taking possession of the car these would be replaced.

But by the end of September 2017, Mr T suffered a much more serious issue with the car. The flywheel, clutch and gearbox all required replacing. His car was initially recovered by a third party. And Mr T initially sought the help of the dealership but this was refused. He then also contacted BMW to notify it of the dealership's refusal, and Mr T's belief that at least some of the costs should be met. It was around this time that Mr T says he was assured by BMW that it would cover the cost of the repairs. Eventually Mr T took the car to a different Audi garage. The gearbox was replaced under warranty at no cost. But the clutch and flywheel were replaced at a total cost of £2,540.

Mr T asked BMW to cover the cost. He said the faults had appeared within two months of him taking possession of the car, and he felt it was more likely than not that these faults were present at the point of sale. BMW investigated Mr T's complaint, and obtained some information from the dealership. The dealership said that the garage Mr T had taken his car to had verbally confirmed that the issues with the flywheel and the clutch were due to Mr T's driving style, and weren't faults which were present at the point of sale. And it said that the clutch was thoroughly tested before the car was released to Mr T – and there were no problems with it. So BMW rejected Mr T's complaint, and declined to cover the repair costs.

Mr T therefore brought his complaint to this service. As part of his complaint, Mr T also said that it was unfair that BMW had initially indicated it would cover the cost of the repairs, but then decided not to once he had incurred the cost. One of our investigators considered the complaint. He asked BMW to provide him with evidence that it was Mr T's driving style that had caused the issues with the clutch and the flywheel. He also asked for call recordings between Mr T and BMW, so that he could listen to the calls to determine whether Mr T's recollections of his conversations with BMW were accurate.

Despite numerous attempts at trying to obtain this information, BMW didn't provide it – though it did offer, in an attempt to mediate, to cover half of the repair costs Mr T had incurred. Mr T rejected the offer.

Eventually the investigator considered that Mr T's complaint should be upheld. He considered that BMW had provided insufficient evidence to show that the faults Mr T experienced in September 2017 were caused by his driving style. And he took into account the fact that BMW had the opportunity to pay for an inspection of the vehicle before Mr T had it repaired in order to determine what the likely cause of the issues was.

In the circumstances, the investigator thought that given how quickly the issues had appeared, it was more likely than not that the faults which Mr T experienced in September

2017 were either present or developing at the point of sale. He therefore thought it was fair and reasonable for BMW to cover the costs of the repairs and pay 8% interest on the outstanding sum. He also considered that Mr T was probably told that BMW would cover the cost of the repairs initially, only for it to later withdraw this commitment. And so he thought this caused Mr T some understandable trouble and upset, for which he should receive compensation.

I issued some provisional findings in June 2018. I said I agreed with the investigator's overall conclusions. But I thought BMW needed to do more to put things right for Mr T. I thought it wasn't fair that Mr T had continued to pay for the car for around 5 weeks, when he was unable to use it. So I thought that BMW should also refund one monthly payment, plus a further week pro rata, to account for the period when Mr T wasn't able to drive the car.

Mr T agreed but BMW didn't reply.

my findings

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

I've taken into account the mileage Mr T covered with the car between July 2017 and September 2017 – about 3,500 miles. But I've also taken into account the overall age, value and mileage of the car at the point of sale. I think for this type of car, Mr T reasonably expected major components like the flywheel and clutch to last more than a few months or 3,500 miles. I don't think it's reasonable that these components not only required repairs, but in fact required replacement entirely.

And so I agree that, on balance, it's more likely than not that the faults which Mr T experienced in September 2017 were present or developing when he took possession of the car two months earlier. I think this means the car wasn't of satisfactory quality. BMW has provided a checklist which it says demonstrates these faults weren't present. But I don't agree this is conclusive. I don't see how this checklist would've verified the integrity of the clutch, other than to confirm that it was working. In my view, the fact the clutch did fail completely just two months later is persuasive evidence that it wasn't reasonably durable at the time it was sold.

I haven't seen sufficient evidence from BMW to persuade me that Mr T caused or contributed to these faults. I appreciate it says the Audi garage 'verbally' confirmed this was the case to the dealership, and BMW has therefore relied on that. But I'm not persuaded by that evidence – particularly given that there's no explanation of how Mr T's driving style caused or contributed to the faults.

Ultimately, BMW ought to have taken charge of Mr T's complaint at the time.

This means at the very least asking for a detailed report from the Audi garage that fixed Mr T's car, explaining why it thought the driving style had caused the damage. Alternatively, it could also have obtained an independent report from another garage to establish exactly what was wrong with it. But it didn't take either of these options.

In such circumstances, where the evidence is incomplete, I'm required to decide matters on the balance of probabilities. And on balance, I'm satisfied that it's more likely than not that

the car wasn't of satisfactory quality at the point Mr T took possession of it. So I think it's fair and reasonable that BMW cover the costs Mr T has incurred in repairing the faults.

In relation to Mr T's second point of complaint – that he was given the impression initially that BMW would cover the costs – I've not had the benefit of the call recordings. So I've decided the matter based on what I think is more likely given the evidence. I've seen one of the emails BMW sent to the garage shortly after one of Mr T's calls, in which the case handler said:

'Under the consumer credit act, the vehicle must be repaired once and am I right in saying the cost of the repair must be covered by the supplying dealer/at no cost to the consumer...if this is the case, please could you discuss the matter with the supplying retailer and ensure that they will be covering the cost – three major faults have occurred with the vehicle all within the first 3 months of purchase for the customer, which would clearly indicate that the vehicle was not of satisfactory quality at the point of sale.'

I think this shows it's likely Mr T was given the impression initially that it would cover the repairs. He has said that he explained clearly at the time that he couldn't afford the repairs and he would have to reject the car if BMW weren't going to agree. So I can imagine that when he was then told that BMW wouldn't in fact cover the costs, this came as a shock – and I agree that £100 is fair and reasonable compensation for that.

my final decision

My final decision is that I uphold Mr T's complaint. BMW Financial Services (GB) Limited must:

- Pay Mr T £2,540 plus interest at 8% simple a year¹, from the date he incurred the costs until the date of settlement.
- Pay Mr T £100 for the trouble and upset it caused him.
- Pay Mr T one month of his monthly payment (which I understand amounts to £306), plus a further week pro rata, for the period he was unable to use the car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 August 2018.

Alessandro Pulzone
ombudsman

¹ If BMW Financial Services (GB) Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.