

## **complaint**

Mr W complains that cars that were supplied to him under hire purchase agreements with BMW Financial Services (GB) Limited weren't of satisfactory quality, that the agreements were mis-sold to him and about other issues relating to the cars and the agreements.

## **background**

A used car was supplied to Mr W under a hire purchase agreement with BMW Financial Services that he signed in December 2017. The car was about seven years old, had been driven for nearly 54,000 miles and had a cash price of £10,500. Mr W complained to the dealer about some issues with the car and it agreed that he could return the car.

Another used car was then supplied to him under a hire purchase agreement with BMW Financial Services that he signed in February 2018. That car was more than six years old, had been driven for over 86,000 miles and had a cash price of £12,419.51. Mr W also entered into a fixed sum loan agreement with BMW Financial Services that month for £3,586.01 which was the amount required to settle the first agreement.

Mr W has had issues with the second car so he returned it to the dealer for repairs but it's since been subject to a safety recall and has failed its MOT. Mr W says that the car isn't of satisfactory quality and he should be able to reject it. He complained to BMW Financial Services but wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. She went through in detail each of the issues that Mr W had raised – and she said that she wouldn't be asking BMW Financial Services to allow him to reject the second car as she hadn't been able to find that it wasn't fit for purpose or of satisfactory quality at the time of sale. So she concluded that she wouldn't be asking BMW Financial Services to pay any compensation or take any further action as she hadn't found any fault with the service that he received.

Mr W has asked for his complaint to be considered by an ombudsman. He has responded in detail and has provided a statement from his mother in support of his complaint. He says, in summary and amongst other things, that:

- neither he nor his mother was allowed to test drive the cars;
- the dealer wasn't honest with him about the new battery and wheels and the repair to the breather pipe on the second car;
- he's started court proceedings against the dealer for mis-selling and misrepresenting the cars to him;
- he has significant debts and this situation is making his personal difficulties worse;
- the second car's faulty, failed its MOT test and needs repairs costing £3,391 so isn't worth repairing; and
- the dealer's provided him with a hire car but is now saying that he's going to be charged for it.

## **my findings**

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

The first car was supplied to Mr W under the December 2017 hire purchase agreement. Mr W signed that agreement and agreed to be bound by the terms that it contained.

BMW Financial Services, as the supplier of the cars, was responsible for ensuring that the cars were of satisfactory quality. That will depend on a number of factors, including the age, and mileage of the cars and the price that was paid for them. Satisfactory quality also covers durability which means that the components within the cars must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

The first car that was supplied to Mr W was about seven years old, had been driven for nearly 54,000 miles and had a cash price of £10,500. He says that neither he nor his mother was allowed to test drive the car. But it was his decision for the car to be supplied to him in the condition in which he saw it and to enter into the agreement. He had some issues with the car between then and February 2018 which were investigated by the dealer and it says that any faults that were found were repaired.

I'm not persuaded that there's enough evidence to show that the car wasn't of satisfactory quality when it was supplied to Mr W because of those issues. The dealer has provided evidence to show that it did some work on the car before it was supplied to Mr W - including replacing tyres, servicing brakes, disks and pads, and replacing some other parts and the car passed an MOT test.

BMW Financial Services agreed that Mr W could return the car and that another car would be supplied to him. The sales invoice for the second car shows that the part-exchange value of the first car was £9,943.36 and that the amount required to settle the December 2017 agreement was £13,779.37 - so Mr W owed it £3,836.01. He made a payment of £250 which left £3,586.01 owed by him.

So he entered into a fixed sum loan agreement with BMW Financial Services under which it lent that amount to him, repayable over 49 months by monthly payments of £86.63. The agreement shows that the charge for credit was £658.86 and that the interest rate was 8.7%. Mr W signed the loan agreement and agreed to be bound by its terms. So I consider that he knew, or ought reasonably to have known, that he was paying interest on the loan, that the £250 that he'd paid had been used to reduce the amount that he owed and that the first car had been used as a part-exchange for the second car.

The second car was supplied to Mr W under the February 2018 hire purchase agreement. Mr W signed that agreement and agreed to be bound by the terms that it contained. It was clearly stated in that agreement that the duration was 49 months, that he was required to make 48 monthly payments of £246.97 and that there was an optional final payment of £4,151.33. So I consider that Mr W knew, or ought reasonably to have known, that the agreement would also be for 49 months.

The second car that was supplied to him was more than six years old, had been driven for over 86,000 miles and had a cash price of £12,419.51. He again says that neither he nor his mother was allowed to test drive the car. But it was his decision for the car to be supplied to him in the condition in which he saw it and to enter into the agreement.

Mr W also says that he asked to cancel his agreement within the first 14 days. He did have a right to withdraw from the hire purchase agreement within 14 days by notice to BMW Financial Services. BMW Financial Services' account notes have no record of Mr W asking to withdraw from the agreement and I've seen no other evidence to show that he took any action to withdraw from the agreement.

Mr W says that he shouldn't have been supplied with a car of this age and mileage under a hire purchase agreement. But I don't consider that there's any such limitation and that it's for the credit provider to decide whether or not it wants to provide credit for a car.

The dealer has provided evidence to show that it checked the second car in February 2018 before it was supplied to Mr W and that it replaced all four tyres, serviced the car and it passed an MOT test. Mr W returned the car to the dealer in September 2018 because of an issue with the coolant pipe – which was replaced. That was about seven months after the car had been supplied to Mr W and its mileage was recorded as 95,103 miles – so in that time the car had been driven for more than 8,600 miles.

Mr W returned the car to the dealer again in November 2018 because he said that there was a fault with some of the lights, it was feeling sluggish, its petrol consumption had increased and there was a burning smell. The dealer replaced some bulbs, topped up the oil, checked for leaks and carried out some other checks.

The dealer did find some masking tape on a breather pipe which it said could be the cause of the burning smell – and it said that the pipe needed to be replaced. It also said that the tape wouldn't have been on the pipe when the car was supplied to Mr W because it would've been noticed when work was done on the car. Mr W had been able to use the car for seven months and to drive more than 8,600 miles in it. And I'm not persuaded that there's enough evidence to show that there was masking tape on the pipe when the car was supplied to Mr W – and even if there had been, I'm not persuaded that the masking tape would be enough to cause the car to not have been of satisfactory quality at that time.

The dealer's checks also identified that the car's battery needed to be replaced and that there were issues with two of the car's wheels – one of which had buckled and one of which had cracked. And in January 2019 Mr W received a safety recall letter from the manufacturer asking him to contact a dealer because of issues with the exhaust gas recirculation system. The letter listed symptoms that could be experienced – including that the low engine coolant warning light could be displayed. The second car had had a coolant issue in September 2018 – but I'm not persuaded that coolant issues or the safety recall are enough to show that it wasn't of satisfactory quality when it was supplied to Mr W.

There have been further issues with the second car and it failed an MOT test in March 2019 because of a cracked wheel – which the dealer said would cost £500 plus VAT to replace. And the dealer says that the work that's required on the car (including the replacement wheel) will cost £3,391. And Mr W says that the second car's had punctures and that he's had to replace bulbs. But that doesn't mean that the car wasn't of satisfactory quality when it was supplied to Mr W. I sympathise with him for the issues that he's had with the car. But it was supplied to him in February 2018 and I've seen no evidence to show that there were any faults with it until seven months later – and in that time he was able to use the car to drive more than 8,600 miles. I'm not persuaded that he'd have been able to do so if the car hadn't been of satisfactory quality at that time – taking into account that the second car was then more than six years old and had been driven for over 86,000 miles.

The dealer has provided Mr W with hire car – but it asked him to return the hire car and said that it would be charging him for it. That's a matter between Mr W and the dealer – and isn't something for which BMW Financial Services is responsible. So I'm not persuaded that it would be fair or reasonable for me to require it to take any action concerning the hire car.

The dealer has written Mr W's name incorrectly on a vehicle registration document. I can understand why that has caused distress and inconvenience to Mr W. But that's something for which the dealer is responsible and I'm not persuaded that BMW Financial Services has any liability for it. So I find that it wouldn't be fair or reasonable for me to require it to take any action concerning the registration document. Mr W says that he's started court proceedings against the dealer for mis-selling the two cars to him. But that doesn't mean that the cars were mis-sold to him or that they weren't of satisfactory when they were supplied to him.

I sympathise with Mr W for the financial, medical and other issues that he's experiencing. But I'm not persuaded that there's enough evidence to show that either of the cars wasn't of satisfactory quality when it was supplied to Mr W. Nor am I persuaded that there's enough evidence to show that either of the hire purchase agreements or the fixed sum loan agreement was mis-sold to him. And I'm not persuaded that there's enough evidence to show that BMW Financial Services has acted incorrectly in its dealings with Mr W. So I find that it wouldn't be fair or reasonable in these circumstances for me to require it to allow Mr W to reject the second car, to pay him any compensation or to take any other action in response to his complaint.

Mr W says that he now has substantial debts. If he's unable to make the payments that are due for the second car, I suggest that he contacts BMW Financial Services to see if a reduced repayment arrangement can be agreed. And it's required to respond to any financial difficulties that Mr W is experiencing positively and sympathetically.

### **my final decision**

For these reasons, my decision is that I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 October 2019.

Jarrold Hastings  
**ombudsman**