

The complaint

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

What happened

In June 2022, Mr O was supplied with a used car through a hire purchase agreement with BMW. He paid an advance payment of £3,300.06 and the agreement was for £46,889.94 over 49 months; with 48 monthly payments of £801.67 and a final payment of £22,019.94. At the time of supply, the car was almost three years old, and had done 23,411 miles.

On 12 September 2022, Mr O took the car back to the supplying dealership because it was juddering when accelerating and making a thudding noise when changing from park to reverse or drive. Mr O says he was told this fault was caused by water getting into the transfer box. The dealership changed the oil, which they say rectified the fault.

On 3 October 2022, the car was recovered to the dealership due to the oil pressure being too low to allow the car to continue to be driven. The oil filter was changed. On 27 October 2022, the car was again back with the dealership due to the oil pressure light illuminating. This time a new solenoid and oil pump were fitted.

In January 2023, the car was returned to the dealership because the central display system and the parking sensors weren't working. Repairs were again carried out. Finally, in July 2023, the car went back to the dealership due to it juddering on acceleration. The dealership diagnosed a failure of the transfer box.

Mr O initially complained to BMW in October 2022, about the water ingress into the transfer box. And he asked to reject the car. BMW responded, saying the dealership had repaired the car. They also said the dealership had offered to buy the car back, or compensate Mr O. So, they thought the dealership had acted fairly.

Mr O complained to BMW again in February 2023, saying the issues with the transfer box remained. And, in May 2023, he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said the car had suffered multiple faults which, due to the fact the car had travelled less than 30,000 miles, made it of an unsatisfactory quality. As such, the investigator said that Mr O should now be allowed to reject the car, receive a refund of the deposit he'd paid, and that BMW should pay him an additional £350 compensation for the distress and inconvenience he'd been caused.

Mr O didn't agree with the investigator. He said the offer made by the dealership to take back the car and give him £1,000 compensation wasn't acceptable as he'd paid a £3,300 deposit, so he wouldn't be put back in the position he was before he financed the car. He also said that the dealership failed to advise him the car had been owned and used in Spain (where it was in an accident and had been poorly repaired), or that when a service took

place it was 4,000 miles overdue. And he thinks this was the underlying cause of the faults with the car. He also didn't think the car should've been sold as an Approved Used vehicle.

Mr O said, *"I used the vehicle when it was faulty I had no choice" and "I was without use of the vehicle for long periods of time between September 2022 and still up to July 2023 and have no reasonable enjoyment or reliability out of the car in return for my monthly payments."* Because of this, he thought that most or all the payments he'd made should be refunded to him, and the *"£350 compensation does by no means adequately compensate me."*

Because Mr O didn't agree, this matter has been passed to me to make 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. 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, BMW 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 BMW can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr O to show it was present when the car was supplied.

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 BMW to put this right.

Based on the evidence I've seen I'm satisfied there was a fault with the car. The car was repaired three times during September and October 2022, and on each occasion these repairs were oil related. These faults occurred within six months of the car being supplied to Mr O, and I haven't seen anything to show me the faults weren't present or developing at the point of supply. What's more, given the car was around three years old, and had done around 26,000 miles at the time, I don't think any reasonable person would expect these faults to occur so soon. As such, I'm not satisfied the car was reasonably durable.

Given the above, I'm satisfied the car wasn't of a satisfactory quality when it was supplied. And the job sheet for 5 July 2023 shows the fault still exists. As such, BMW should do something to put things right.

Putting things right

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for BMW – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, as was the case here, then the Mr O has the right of rejection. And I'm satisfied he should now be given this right.

Mr O has said he was without use of the car for long periods between September 2022 and July 2023. However, he's also said that he had no choice to use the car while it was faulty.

From the evidence I've seen, the issues with the transfer box have been described by all parties as being intermittent. As such, by the nature of an intermittent fault, this is not something that would've affected the car continuously. And, while Mr O has said he wasn't able to use the car for long periods, he's not been able to evidence this i.e., by way of emails to the dealership or BMW explaining the car has broken down again etc. What's more, when there were problems with the car, and it was taken to the dealership for repair, the evidence shows that Mr O was provided with a courtesy car.

As such, on the balance of probabilities I'm satisfied that Mr O was able to use the car while it was in his possession (or it was available for him to use if he wished to do so), and he was kept mobile when the car wasn't in his possession. So, I think it's only fair that he pays for this usage.

Mr O has referred to the amount of payments he's paid to BMW, and how he thinks it's unfair he's not received any value for what he's paid. While the payments are high, this is based on the high value of the car and the relatively small deposit he paid. And, for the reasons already given, I'm satisfied it's fair that Mr O pays for the usage (or the availability of usage) he's had. As such, the amount Mr O has paid doesn't alter my view on this.

Mr O has also referred to the car being used in Spain, and having been involved in an accident, and the fact this wasn't disclosed to him. While I'm considering the actions of BMW, not the dealership, this isn't something I'd necessarily expect to be disclosed – the geographical location of where a car was used, especially when the car is of a UK spec, doesn't affect its suitability to be sold, nor does that fact it was involved in an accident, so long as the car wasn't classed as a Cat A or Cat B (and I've seen nothing to show me this was the case). I also haven't seen anything to show me that BMW were aware of the accident, or where the previous owner drove the car. As such, I'm satisfied this has no bearing on what I consider to be a fair and reasonable remedy.

Finally, Mr O has referred to a late service and that he doesn't think the car should've been classed as Approved Used. While I appreciate Mr O's concerns about the service, the car was serviced, albeit later than recommended by the manufacturer. I haven't seen anything that shows me it was the late service that caused the faults with the car but, even if this was the case, it doesn't alter my view that Mr O has the right of rejection.

With regards to the Approved Used status of the car, this isn't something BMW were involved in. So, this is a complaint Mr O would need to raise directly with the dealership.

However, regardless of the above, it's clear that Mr O has been inconvenienced by having to arrange for the car to be repaired, and by this repair being unsuccessful. And he was further inconvenienced by having to take the car back for further repair on multiple occasions. So, I think BMW should compensate him for this. The investigator had recommended BMW pay him £350. I appreciate that Mr O doesn't think this is enough, but it is in line with our service's approach and what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, BMW should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr O;
- remove any adverse entries relating to this agreement from Mr O's credit file;
- refund the £3,300.06 deposit Mr O paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMW is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest on the refunds, calculated from the date Mr O made the payment to the date of the refund[†]; and
- pay Mr O an additional £350 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires BMW to take off tax from this interest. BMW must give Mr O a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr O's complaint about BMW Financial Services (GB) Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 January 2024.

Andrew Burford
Ombudsman