

The complaint

Mr E complains about the quality of a car he acquired under a hire purchase agreement with BMW Financial Services(GB) Limited trading as BMW Financial Services.

What happened

In March 2020 Mr E entered into a hire purchase agreement for a used car (with an attributable cash price of £25,918.52). The car was approximately one and half years old and had travelled approximately 3,500 miles. The car had previously been subject – from new – to a finance agreement with BMWFS in Mr E's brothers name.

Under the terms of the hire purchase agreement, everything else being equal, Mr E undertook to make an advance payment of 12p followed by 31 monthly payments of £288.12 and 1 monthly payment of £16,986.68 – making a total payable of £25,918.52 at an APR of 0%.

In February 2021 Mr E had a problem with the electric windows repaired under warranty.

In November 2022 Mr E made the last payment required under the hire purchase agreement of £16,986.68.

On 31 May 2023 Mr E paid one of the manufacturer's garages £120 to diagnose what he says was a problem with the car's gearbox. The garage confirmed works at an estimated cost of £6,971 were required.

In June 2023 Mr E complained to BMWFS that the gearbox had failed and would cost £6,971 to replace, with the manufacturer having agreed to pay £3,080 towards this cost.

In June 2023 BMWFS issued Mr E with a final response letter ("FRL"). Under cover of this FRL BMWFS said that without any evidence that the gearbox fault was present of developing at the point of sale it wasn't able to review Mr E's complaint any further.

In July 2023, and unhappy with BMWFS' FRL, Mr E complained to our service.

Mr E's complaint was considered by one of our investigators who came to the view that it should be upheld and that BMWFS should pay for a gearbox repair/replacement.

The investigator then advised both parties that to fairly and reasonably compensate Mr E she was of the view that BMWFS should, in addition to paying for the gearbox repair/replacement, pay Mr E £200 for distress and inconvenience he had been caused and refund him the £120 he had paid for the diagnostics on the car (and gearbox) together with interest.

Mr E accepted the investigators view, but BMWFS didn't. And because of the latter Mr E's complaint has been passed to me for review and 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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law, and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr E acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements.

BMWFS is the supplier of goods under this hire purchase agreement and is responsible for dealing with complaints about their quality. The Consumer Rights Act 2015 ("CRA") covers agreements such as the one Mr E entered into. Under the agreement, there is an implied term that the goods supplied will be of satisfactory quality.

The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but aren't limited to, the age and mileage of the car and its cash price. The CRA says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

There is no dispute that there is a fault with the car's gearbox and this needs repairing/replacing. But BMWFS says that without independent evidence confirming the gearbox fault was present or developing at the point of sale it shouldn't have to pay for a repair/replacement.

I accept at the time of the gearbox failure the car was over four years old. But I think that a reasonable person wouldn't expect for a car that had travelled less than 20,000 miles, 'cost' in the region of £26,000 in March 2020 and cost in the region of £34,000 in September 2018, to suffer such a major and expensive failure.

So, I don't think the car, including its gearbox, was sufficiently durable. For this reason, I don't think the car was of satisfactory quality when sold and that BMWFS should have the gearbox repaired/replaced at no cost to Mr E.

I also think that this whole matter has caused Mr E a degree of distress and inconvenience for which he should also be compensated for. And taking everything into account I think £200 in this respect represents an appropriate sum for BMWFS to have to pay. I also think that it's only fair that BMWFS refund Mr E the cost he incurred of £120 in getting the gearbox fault diagnosed.

My final decision

My final decision is that BMW Financial Services(GB) Limited trading as BMW Financial Services must:

- have the gearbox repaired/replaced at no cost to Mr E.
- pay Mr E £200 for the distress and inconvenience this whole matter has caused him.
- refund Mr E the cost he incurred in getting the gearbox fault diagnosed together with interest at 8% simple from the date of payment to the date of settlement.*

**If BMW Financial Services(GB) Limited trading as BMW Financial Services thinks tax should be deducted from this interest payment, then they should provide Mr E with a tax deduction certificate so he can reclaim it, if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 11 November 2023.

Peter Cook
Ombudsman