

The complaint

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

What happened

In March 2022, Mr P entered into a hire purchase agreement with BMWFS to acquire a used car first registered in March 2019. At the time of supply the car had travelled approximately 26,132 miles. The total cash price of the car was approximately £34,485. The total amount payable under the finance agreement was approximately £42,105. The first payment on the agreement was around £388 followed by 47 monthly payments of £388 each. There was one optional final repayment of around £12,973.

Mr P said that on the 22 July 2022 the car was taken in for a service and that is when he was advised that the rear tyres were illegal as they had uneven wear across the tyre. The tyres were replaced at the dealership's expense. At that time the car had travelled a total of around 31,786 miles.

Mr P said that in March 2023 the car went in for the MOT which it passed, but at that time Mr P was advised that the rear tyres had been badly and unevenly worn which he said he was alarmed about, as the car had only covered approximately 8,000 miles in that time (a total of around 39,986 miles). So, in March 2023, Mr P emailed the tyre manufacturer of his car's tyres who told him that, based on his *'current tread depth reading, the tyres' tread seems to be wearing unevenly. There is nothing in the tyres' design which would make them wear unevenly. The uneven wear can also be contributing to the tyres rapid wear concerns you have raised. We would therefore recommend you have the cars vehicle alignment geometry setting checked'*. So, Mr P said, he would like the car checked and this issue corrected. He would also like a new set of tyres. And he would like a copy of the pre-sale's checklist for the car. Failing all of this, he would like to exercise his right to reject the car. So, Mr P complained to BMWFS.

In April 2023, BMWFS wrote to Mr P and explained to Mr P that the tyres are a fair wear and tear item, which is customer's liability to maintain.

Mr P was unhappy with this, so he brought his complaint to this service.

Our investigator didn't think it was fair to ask BMWFS to do anything further regarding Mr P's complaint. The investigator believed the car was of satisfactory quality when it was supplied. And that the car problems Mr P experienced were due to wear and tear.

Mr P disagreed with the investigator. So, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 23 November 2023. In the provisional decision I said:

"What I've provisionally 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Mr P 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 the goods under this type of agreement and is responsible for dealing with complaints about their quality. The Consumer Rights Act 2015 (CRA) covers agreements, such as the one Mr P 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 are not limited to, the age and mileage of the car, and the cash price. The CRA says 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.

In Mr P's case the car was used, with a cash price of around £34,485. It had covered around 26,132 miles and was approximately three years old when he acquired it. So, it's reasonable to expect presence of some wear to it, as a result of its age, and I'd have different expectations of it compared to a brand-new car. As with any car, there's an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time and it's reasonable to expect that these may need to be replaced. And in second-hand cars, it's more likely that parts will need to be replaced sooner or be worn faster than in brand-new cars. So BMWFS would not be responsible for anything that was due to normal wear and tear whilst in Mr P's possession. But given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after it was acquired.

First, I considered if there was a fault with the car. I've seen the invoices provided by Mr P which indicate that the geometry/alignment needed adjusting, so I think that the car did have a fault that needed attention but this was in Jun 2023 when the car had travelled a total of around 41,810 miles. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr P.

After our investigator's view, Mr P said that the presales' checklist had identified the car had only 1mm tread on the rear tyres which was illegal, so he said that the tyres had been replaced before he acquired the car. But he said that, again, the tyres had to be replaced within 6,000 miles, so he thinks there must have been something wrong with the geometry/alignment of the car at the point of supply. And, he also told us that, when in March 2023 the car went in for the MOT, even though it passed at that time, he said he was advised that the rear tyres had been badly and unevenly worn. He said that this has alarmed him as the car had only covered approximately 8,000 miles since the tyres were replaced. Mr P also provided a job sheet, from June 2023, which shows that the geometry/alignment of the car needed adjustment. At the time the job sheet indicated that the car had travelled a total of around 41,810 miles.

Our investigator shared some of this information with BMWFS who in turn said that during the pre-sale of the car in January 2022 (as per the invoice they provided to our service), the wheels were swapped from another car at the dealership. They explained that this must have happened instead of replacing the two back tyres which only had 1mm of thread on them. BMWFS explained that it is a common place for a retailer to have numerous 'spare' sets of used wheels for this purpose.

Also, BMWFS told us that, when the tyres were replaced at the dealership's cost, in July 2022 when the car had travelled a total of around 31,786 miles, there was no reason to undertake a geometry check when changing these tyres because the wear was indicative of over inflation, rather than a tracking issue. From their submission, I understand and assume that, most likely, they are saying that the thread being much lower in the middle is a cause of overinflation. To support this, they highlighted the inner, middle and outer thread of the tyres that were replaced – these numbers were, respectively:

| | Inner | Middle | Outer |
|----------------|-------|--------|-------|
| Offside tyre: | 3.7 | 1.0 | 2.3 |
| Nearside tyre: | 4.0 | 2.0 | 3.5 |

So, I've taken all the things both sides have provided to our service when deciding if the car was of satisfactory quality at the time of supply. To uphold this complaint, I would need to be persuaded, on balance of probabilities, that the fault of the geometry/alignment was present or developing at the point of supply.

From the evidence provided by BMWFS I can see that the tyres of the car were changed in January 2022, shortly before supply, but as they were not brand new and just swapped from another car, I don't know what thread was remaining on them at the time. But I'm satisfied it's likely they would have been used tyres. I've also taken into consideration that the middle was worn significantly more than the inner or outer layer of the tyres on both tyres which, as I understand, could indicate that potentially the wear was due to overinflation. And I think, if the car's manufacturing dealership, when they replaced the back tyres of the car in July 2022 thought that the geometry/alignment was affected they, most likely, would've checked it or indicated this at the time. So overall, I don't have enough evidence to say that most likely the geometry/alignment needed adjusting in July 2022. As such I don't think this was a fault that was present or developing at the point of supply.

Mr P told us that when the car went in for the MOT in March 2023, even though it passed it at the time, he said he was advised that the rear tyres had been badly and unevenly worn. He said that this was after the car had only covered approximately 8,000 miles since the tyres were replaced in July 2022. And he has given us a job sheet, which shows that the geometry/alignment of the car needed adjustment. But, as I already said above, I think that had the car's manufacturing dealership, when they replaced the tyres of the car in July 2022, thought that the geometry/alignment was affected, they most likely would've checked it or indicated this at the time. Also, I understand that the geometry/alignment of wheels on a car can be affected by many different reasons, among others including driving over potholes, speed bumps, hitting a kerb and certain car repairs, so I also must take into consideration how many miles the car had travelled before the geometry/alignment of the wheels needed adjusting. And this was more than 8,000 miles since the tyres were replaced and more than 14,000 miles since the supply. So overall, taking into consideration the number of miles the car had travelled, I can't say that, most likely, this was a fault that was present or developing at the point of supply.

While I sympathise with Mr P for the difficulties that he is experiencing, based on all the available evidence I don't think it would be fair or reasonable to ask BMWFS to do anything further regarding Mr P's complaint.

My provisional decision

For the reasons given above I intend not to uphold this complaint."

I asked both parties to provide me with any additional comments or information they would like me to consider by 7 December 2023.

BMWFS didn't respond.

Mr P responded and I will address his comments below.

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.

Following my provisional decision, Mr P has indicated that the car has undergone two service inspections and the recent findings indicate that the tyres are wearing more evenly following on from alignment checks and adjustments. And he said, he had to spend around £1,289 on 1 June 2023 to facilitate the alignment checks, which he said emphasises the seriousness of the issue.

He said that the wear and tear is expected in used cars, but the rapid wear witnessed within a short mileage range (8,000 miles) after tyre replacement is concerning, especially as he said that this was confirmed by the tyre manufacturer. So, he said that, despite the car's age and mileage at the time of acquisition, the proportionality of wear and the subsequent need for geometry/alignment adjustment within a relatively short period seem unusual and disproportionate.

Mr P also said that, considering the tyres initially were not new and swapped from another car, clarity on the tread remaining at the point of swap would provide crucial insight into their condition during acquisition. And, he said that, considering the points highlighted, such as the recent findings of more even tyre wear post-inspections and the significant expense incurred for tyre replacement/alignment checks, these developments challenge the initial assessment of the car's condition and highlight concerns that needed attention.

I've taken all of this again into consideration. And I think that the car did have a fault that needed attention, and the amount Mr P paid for geometry/alignment of the car does show the seriousness of the issue, but this was in June 2023 when the car had travelled a total of around 41,810 miles. I know that Mr P mentions that the tyre manufacturer confirmed that there must be an issue with geometry/alignment of the car. But they never examined that car itself and it wasn't until June 2023, that it was confirmed by the job sheet provided by Mr P that the geometry/alignment of the car needed adjustment. At the time the job sheet indicated that the car had travelled a total of around 41,810 miles. And to uphold this complaint, I would need to be persuaded, that most likely the fault of the geometry/alignment was present or developing at the point of supply.

I agree with Mr P that it would help if we knew the condition of the tyres that were swapped from another car in January 2022, shortly before supply. But as there is no such evidence and the fact that the tyres were, most likely, not brand new, we just don't know what thread was remaining on them at the time. Plus, the middle was worn significantly more than the inner or outer layer of the tyres on both tyres which, as I understand, could indicate that potentially the wear was due to overinflation. And I still think that, if the car's manufacturing dealership, when they replaced the back tyres of the car in July 2022, thought that the

geometry/alignment was affected I think, most likely, they would've checked it or indicated this at the time. So, I'm still of the opinion that I don't have enough evidence to say that most likely the geometry/alignment needed adjusting in July 2022. And that is why I don't think this was a fault that was present or developing at the point of supply.

As I mentioned in my provisional decision, the geometry/alignment of wheels on a car can be affected by many different reasons, so I take that into consideration, and I must take into consideration how many miles the car had travelled before the geometry/alignment of the wheels needed adjusting. As this was more than 8,000 miles since the tyres were replaced and more than 14,000 miles since the supply, overall, taking into consideration the number of miles the car had travelled, I can't say that, most likely, this was a fault that was present or developing at the point of supply.

Even though I sympathise with Mr P for the difficulties that he is experiencing, based on all the available evidence I don't think it would be fair or reasonable to ask BMWFS to do anything further regarding his complaint.

My final decision

For the reasons given above and in my provisional decision I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 January 2024.

Mike Kozbial
Ombudsman