

The complaint

Mr W complains about the quality of a new motorcycle that was supplied through a hire purchase agreement with BMW Financial Services (GB) Limited (BMW).

What happened

In March 2021 Mr W acquired a new motorcycle through a hire purchase agreement with BMW. The cash price of the motorcycle was £18,939.43. An advanced payment of £4,027.47 was made which meant that the total amount financed on this agreement was £14,911.96 payable over 36 months.

Mr W explained that due to the national lockdown restrictions that were in place because of the Covid-19 pandemic, he didn't use the motorcycle much before September 2021, which is when Mr W said he noticed the engine management light (EML) had come on.

Mr W said he brought the motorcycle to a mechanic where the fault was described as relating to an exhaust valve. Mr W says the fault was reset by the mechanic however the EML returned soon after he started using the motorcycle again.

Mr W said he arranged a home visit from a manufacturer engineer who diagnosed the same issue as the mechanic and required the motorcycle to be taken into the dealer for repair. Mr W said it was around two weeks before the dealer could look at the motorcycle, so he used it during that period where the issue with the EML remained intermittent.

Mr W explained that he'd lost confidence in his motorcycle and in BMW, so asked that he be able to reject it. Mr W said the dealer offered him the market value of the motorcycle, which they advised was £16,000 at the time. Mr W said when he received the motorcycle back from the dealer, he arranged with another franchised dealer to part exchange it so he could get himself out of the agreement.

Mr W says the motorcycle wasn't fit for purpose and believes it was unacceptable that he paid £3,948.50 in total for the short time he had it.

BMW's system notes show that Mr W complained to them on 1 October 2021. The notes also say that Mr W requested a rejection of the motorcycle as he didn't think it was fit for purpose due to an issue that the dealer wasn't able to rectify.

BMW sent us a copy of a discharge letter dated 15 November 2021 confirming the agreement had been settled. BMW also sent us a copy of their final response to Mr W's complaint, dated 30 November 2021.

BMW's initial findings were that the agreement was settled by the dealer, so they considered the complaint closed, however after clarification from Mr W that he'd sold it on to a different franchised dealer, BMW advised that they couldn't take Mr W's complaint any further as he was no longer the owner of the motorcycle. They said they wouldn't be able to gather any diagnostics or inspections to consider whether it was of satisfactory quality.

Unhappy with their decision Mr W brought his complaint to this service for investigation. Our investigator gave their view that BMW hadn't acted unfairly as Mr W had sold the motorcycle before they could investigate the complaint further, and so didn't ask them to do anything.

Unhappy with the investigator's view, Mr W asked that his complaint be referred to an ombudsman for 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

Mr W complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr W's complaint about BMW. BMW is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances.

So, it seems likely that in a case involving a vehicle, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that BMW supplied Mr W with a brand-new motorcycle with a cash price of nearly £19,000. With this in mind, I think it's fair to say that a reasonable person would expect there to be no issues with its quality; and would expect it could be used free from any issues for a considerable period of time.

From the information provided I think it's likely there was a fault with the motorcycle. I recognise there are no diagnostics or engineer's reports to confirm what the issue was, however BMW confirmed in their system notes that the dealer had contacted them to advise that they'd ordered an exhaust valve cable which they believed would repair an 'EGR' fault. I'm also persuaded by what Mr W has explained which is consistent with what BMW have recorded in their system notes. Having considered it's likely the motorcycle had a fault, I've considered whether it was of satisfactory quality at the time of supply.

Mr W's description of events detailed that he'd noticed the EML had illuminated intermittently whilst he was using the motorcycle, which I acknowledge had made him concerned about the condition of the motorcycle and for his safety while using it. However, Mr W said he first noticed the issue around six months after being supplied the motorcycle. I acknowledge Mr W says he didn't have much use of the motorcycle due to the covid-19 national lockdown, however I've seen no evidence of the mileage in September 2021 to show the level of usage from Mr W at that point.

Mr W gave no indication that the mechanical performance of the motorcycle was impaired or affected, which I recognise in certain circumstances could suggest the nature or severity of a fault. And I've seen nothing to say that the EML determined when the issue started. In addition Mr W nor BMW have provided evidence from the mechanic or dealer, for example in the form of a report, diagnostics, a job card or email confirming the exact nature of the fault or when the fault was likely to have started.

Having considered that I don't have enough evidence to say when a fault occurred, or specifically what the issue was; and as the motorcycle is no longer in Mr W's possession or available for any expert inspection or diagnostic, I'm not persuaded that it wasn't of satisfactory quality when it was supplied to Mr W. So, I won't be asking BMW to do anything in relation to this.

Mr W also complained about the poor service he received from BMW. Mr W said he was shown very little interest in resolving the matter and that he felt forced into the decision that the motorcycle had to be moved on. I acknowledge Mr W is disappointed with the experience he had whilst using the motorcycle. However, besides what Mr W has said, I've seen no evidence that BMW treated Mr W unfairly during the sales process or at any other time, so I'm not persuaded that they acted unreasonably towards Mr W and so I won't be asking them to do anything in relation to this.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances my final decision is that I don't uphold Mr W's complaint against BMW Financial Services(GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 September 2022.

Benjamin John
Ombudsman