

## The complaint

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

## What happened

On 18 November 2022, Mr L was supplied with a used car through a hire purchase agreement with BMW. He paid an advance payment of £11,002 and the agreement was for £13,313 over 48 months, with monthly payments of £340.15. At the time of supply, the car was around four and a half years old and had done 16,403 miles.

Mr L started having problems with the car within a week of it being supplied to him – he said there were performance issues, and the fuel consumption was substantially higher than it should be. The car was inspected by the supplying dealership on 13 January 2023, but they couldn't find any faults. At the time of this inspection the car had done 18,806 miles – 2,403 miles since it was supplied to Mr L. An inspection that took place on 1 March 2023 also failed to replicate any faults.

Mr L had the car independently inspected on 9 March 2023, at the cost of £134.40. At the time of inspection the car had done 21,405 miles – 5,002 miles since being supplied to Mr L. This inspection found fault codes and suspected problems with the fuel injectors and battery.

Mr L complained to BMW, and they responded on 21 June 2023. BMW didn't think there were any problems with the car, and they didn't initially uphold the complaint. Mr L didn't accept this outcome and BMW re-opened the complaint. He also raised the matter with the Financial Ombudsman Service for investigation. Following this, they agreed to repair the car, and this repair took place in August 2023, with the fuel injectors being replaced.

Mr L wasn't happy with the repair, and he didn't think it fixed the faults with the car. However, our investigator said there was no evidence of a failed repair. So, he recommended that BMW refund Mr L 25% of the payments he'd made between November 2022 and the car being repaired, due to having to drive a faulty car; refund the £134.40 diagnostic costs Mr L had incurred; and pay Mr L an additional £400 compensation for the distress and inconvenience he'd suffered.

Mr L wasn't happy with the investigator's opinion. He said that a fuel injector was replaced on 21 July 2023, and, on 8 August 2023, he was advised of a manufacturer's recall for an EGR valve issue. As such, he thought he should still be able to reject the car. Mr L provided evidence the supplying dealership had attempted a repair, by replacing a fuel injector, on 21 July 2023, and he also confirmed that he was offered the option to reject the car before the August 2023 repair but chose to have the car repaired instead.

Mr L had the car inspected again on 16 November 2023 and confirmed that the diagnostic report "*did not show any errors or irregularities.*" However, Mr L said that the issues he was experiencing were sporadic, so this diagnostic doesn't mean they're not present. As such, he thought being allowed to reject the car, with a refund of his deposit and 30% of all payments he'd made, along with fair compensation, would be a reasonable resolution to his complaint.

Because Mr L 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 L 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 L to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr L 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.

It's not disputed there was a problem with the fuel injectors, nor that two repairs have taken place. 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 conform to contract.*" This is known as the single chance of repair. The CRA is clear that, if the single chance at repair fails, then Mr L has the right of rejection. However, this doesn't mean that Mr L is required to reject the car, and can agree an alternative remedy i.e., further repairs to the car.

An attempted repair took place on 21 July 2023 which wasn't successful. Mr L has confirmed that, after this failed repair, he was offered the opportunity to reject the car. However, he instead agreed to a second repair, which took place in August 2023. In agreeing to this, Mr L now only has the right to reject if it can be shown that the second repair failed.

Mr L has said there is still an intermittent fault with the car. He's also provided evidence of various fault codes and issues he's still having, and he doesn't believe the repairs in August 2023 were carried out correctly. Having reviewed this, I've noted that what these diagnostic reports don't show is whether the August 2023 repairs to the car were carried out correctly,

whether these repairs have failed, and/or whether there are any current faults with the car that were present or developing at the point of supply.

I've also noted that the investigator has advised Mr L, on a number of different occasions, that evidence of a failed repair or ongoing issues with the car that were present at the point of supply will be needed for us to consider rejection. This evidence is usually provided by way of an independent engineer's report, of which the investigator also advised Mr L. However, no such report has been provided.

As such, and while I appreciate this will come as a disappointment to Mr L, I'm not satisfied that the issues he's currently experiencing are as a result of (a) the repairs in August 2023 having failed, (b) an issue with the car that was present or developing at the point of supply, and/or (c) an issue resulting from the car not being sufficiently durable at the point of supply. Given this, while I agree that BMW should do something to put things right, I won't be directing them to allow rejection of the car.

### **Putting things right**

Mr L has been able to use the car while it was in his possession. And, while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage.

However, given the issues with the car, especially the excessive fuel consumption, I'm also satisfied that Mr L's usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that BMW refund some of the payments Mr L made. BMW have already agreed to a 25% refund of all the payments made between the car being supplied to Mr L and it being repaired in August 2023, And I think this fairly reflects the impaired use caused by the car not being of a satisfactory quality.

As stated above, while I am aware of the ongoing intermittent issues Mr L is having with the car, for the same reasons I'm not recommending rejection I'm also not recommending any full or partial refunds of the payments made since the repairs to the car were completed in August 2023.

Mr L has also provided evidence of the diagnostic cost he'd incurred in March 2023. Given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that BMW also reimburse this cost.

Finally, it's clear that Mr L has been inconvenienced by what's happened, and by having to arrange for the car to be repaired twice – in July and August 2023. So, I think BMW should compensate him for this. The investigator had recommended BMW pay him £400, which BMW have accepted. However, I won't be asking BMW to increase this payment as Mr L hasn't satisfied me the current issues with the car relate to a failed repair or an unrepaired issue that was present or developing when the car was supplied to him.

Therefore, BMW should:

- Reimburse Mr L for the £134.40 diagnostic costs he paid on 9 March 2023;
- refund 25% of the payments Mr L made between being supplied with the car, and it being returned to him after the August 2023 repairs
- apply 8% simple yearly interest on the refunds, calculated from the date Mr L made the payments to the date of the refund<sup>†</sup>; and
- pay Mr L an additional £400 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 L 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 L'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 L to accept or reject my decision before 13 May 2024.

Andrew Burford  
**Ombudsman**