

## **The complaint**

Mr V is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services(GB) Limited trading as BMW Financial Services (BMWFS) was not of a satisfactory quality.

Mr V is represented in this complaint by Miss V. For ease of reading I will refer only to Mr V.

## **What happened**

In August 2019, Mr V was supplied with a used car through a hire purchase agreement with BMWFS. He paid an advance payment of £15,176, and the agreement was for £28,978 over 48 months; with 47 repayments of £397.90 and an optional final payment of £20,401.82. At the time of supply the car was one year old, and had done 5,726 miles.

In September 2020 Mr V took the car to the supplying dealer because of engine cooling problems. He said the dealer told him that the car couldn't be repaired under the warranty because it had been "remapped". He was unhappy because he had not been told this had been done to the car.

In April 2021, Mr V settled the agreement early and took ownership of the car.

In 2022 Mr V complained to the Motor Ombudsman that the dealer had mis-sold the car to him as he had not been made aware it had been remapped. The Motor Ombudsman didn't uphold his complaint as it said the supplying dealer had provided information to demonstrate that they had done sufficient checks. The Ombudsman also said there was insufficient evidence to say the car was supplied with a retuned engine.

In March 2023 he took the car to a main dealer who confirmed the engine and/or gearbox had been modified contrary to the terms of the warranty supplied with the car. They also confirmed the "manipulation" had taken place in June 2019 and July 2019.

In April 2023 he complained to BMWFS. He said that the dealer had told him repairs to the car would cost £2,000.

BMWFS said they had received the report confirming the modification to the car they had supplied. They didn't uphold Mr V's complaint because he hadn't provided any evidence that he'd paid for repairs to resolve the issue.

Mr V was unhappy with this response, so he referred his complaint to our service for investigation. He said he was now unable to use the car as the engine turns itself off.

Our investigator said there was a fault with the car when it was supplied and that BMWFS had supplied Mr V with a car that was not of satisfactory quality. She said that Mr V should be allowed to reject the car, and that BMWFS could retain the amount of the monthly payments paid, and the equivalent for the period from when the agreement was settled to the date of the refund.

BMWFS didn't agree with the investigator. They said that in September 2020 Mr V accepted the car had been modified and that the warranty would be honoured. They said he had made an informed decision in April 2021 to settle the agreement meaning he was accepting of the circumstances.

They also said that Mr V asked to reject the car in September 2022, and then raised this with the Motor Ombudsman, who didn't uphold Mr V's complaint.

BMWFS also said there was no confirmed evidence that the turbo fault was caused by the modification.

Our investigator replied, explaining that a lack of knowledge or awareness at the time of sale didn't prevent goods being later found to be not of satisfactory quality. She also explained why she was satisfied that the fault with the turbos was more likely than not to be related to the re-mapping.

Our investigator further explained that she was aware of the Motor Ombudsman's decision but she had received and considered information that had been obtained after that decision. She also clarified that BMWFS could retain a sum equivalent to the monthly payments from the date the agreement was settled until the refund is issued to the consumer – that is, when this matter is settled.

This matter has been passed to me to make a final decision because BMWFS didn't agree with the investigator's opinion and didn't respond to our investigator's reply to their initial response.

I issued a provisional decision on 15 July 2024, where I explained my intention to uphold the complaint. In that decision I said:

#### *Dismissal*

*The types of complaint we can look into are set out in our rules which can be found in the Financial Conduct Authority's handbook under DISP. DISP 3.3.4 says that:*

*"The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that ... the subject matter of the complaint has been dealt with, or is being dealt with, by a comparable ADR entity."*

*Mr V complained to The Motor Ombudsman (TMO) in 2022. TMO is a comparable ADR entity so I'm able to dismiss this complaint if I consider the subject matter of this complaint is the same as TMO considered. I don't – I'll explain why.*

*I've seen TMO's decision from September 2022. It states that:*

*"There is insufficient evidence submitted which supports -the vehicle was supplied with a retuned engine".*

*Mr V's complaint was that the car had been mis-represented or mis-sold to him. The complaint I am considering is whether or not the modifications (remapping) made the car to be of unsatisfactory quality, and whether or not that has caused the faults with the car. I'm satisfied that the subject matter of this complaint sufficiently differs from the complaint TMO considered. So this complaint is one I'm able to consider under the rules.*

#### *Satisfactory quality*

*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 V was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.*

*The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr V entered into. Under this 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, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*So, if I thought the car was faulty when Mr V 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 BMWFS to put this right.*

#### *The Modification*

*BMWFS have accepted the evidence provided by Mr V that the car was modified prior to them supplying the car to him. I'm also persuaded that is the case. So I'm satisfied that BMWFS provided Mr V with a car that was not of a satisfactory quality.*

*The car was less than five years old and travelled 37,685 miles when inspected by a main dealer in April 2023. At this point the turbos had failed. I don't think it's reasonable to expect both turbos to fail at this time. So I'm satisfied they were not sufficiently durable and this also means the car was not of satisfactory quality.*

*The report (as shown on the invoice) states that the turbos were leaking and needed to be replaced. It goes on to say that "these faults could be caused by the engine being remapped".*

*I'm persuaded by the report, and satisfied that the failure of the turbos is more likely than not to have been caused by the modifications done before the car was supplied to Mr V by BMWFS.*

#### *Putting things right*

*Mr V wants to reject the car. 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.*

*I don't think a repair is reasonable in these circumstances. The report from the dealer indicates that the remapping may have already caused further wear and tear issues. And it may be difficult to return the car to its original settings.*

*So in this case I think it is reasonable to allow Mr V to reject the car.*

*Due to the issues with the car, Mr V has registered it as off road (SORN) since July 2023. I'm also aware that Mr V settled the agreement in April 2021. Both of these issues affect the*

*redress that I believe should be awarded.*

*In the approximately three and a half years he had the car, it appears that he was able to drive the car around 9,000 miles per year. This is more than the annual mileage of 8,000 a year agreed in the original agreement. So I think it is fair that he pays for this usage. So I won't be asking BMWFS to refund any of the payments he's made.*

*The car was off the road since July 2023, and for the reasons already stated, this was because of the issues that made it not of a satisfactory quality when supplied.*

*I think a fair settlement would be for BMWFS to:*

- Refund Mr V's deposit of £15,176*
- Refund Mr V's settlement payment totalling £26,233.06*

*But I think it's reasonable that BMWFS retain a sum equivalent to the monthly payments that would have been due under the finance agreement from the point when the agreement was settled to July 2023 when the car was off road. That fairly reflects Mr V's usage and the impact that usage would have had on the value of the car. It's similar to the approach I would have taken had Mr V not settled the agreement early.*

*It's clear that Mr V has been inconvenienced by having a car that was suffering from power loss problems, and to arrange for the car to be inspected in April 2023. This would not have been necessary if BMWFS had supplied him with a car that was of a satisfactory quality. So, I think BMWFS should pay him £100 in compensation to reflect the distress and inconvenience caused.*

*Therefore, I intend to say that BMWFS should;*

- collect the car at no cost to Mr V;*
- remove any adverse entries relating to this agreement from Mr V's credit file;*
- refund the £15,176 deposit Mr V paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMWFS is entitled to retain that proportion of the deposit);*
- refund the £26,233.06 settlement payment Mr V paid;*
- BMWFS is entitled to retain an amount equal to the sum of monthly payments that would have been due for the period April 2021 to July 2023;*
- apply 8% simple yearly interest on the refunds, calculated from the date Mr V made the payment to the date of the refund; and*
- pay Mr V an additional £100 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

## **Responses**

Mr V said that BMWFS should not be allowed to keep any of the payments as they "violated" the contract. He also felt that my award of £100 for distress and inconvenience didn't reflect the stress that BMWFS had caused by supplying him with a car that had been modified and claiming that he had done the modification. He said his blood pressure had increased requiring medication. He said he wanted compensation for his physical and mental health.

He provided an invoice for a vehicle health check carried out by a main dealer in October 2022. He said he paid £100 for this inspection. The invoice shows that the inspection was to investigate the loss of power and identified the cause as the remap, as I explained in my provisional decision.

He also provided an invoice and bank statement showing that he had paid £1,955.58 for repairs to the car. The majority of the work was to replace the faulty coolant pipe. He said these were repairs required as a result of the modification.

I wrote to both parties informing them of my intention to say that BMWFS should refund the costs incurred by Mr V as they were related to the initial modification which I'd said made the car not of a satisfactory quality.

BMWFS responded indicating it accepted my provisional decision.

Mr V replied repeating his frustration that I had awarded just £100 for the distress and inconvenience caused to him. He said he hadn't expected to suffer from such "*unimaginable stress and complications*" when he paid nearly £50,000 for the car.

### **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.

I've carefully considered Mr V's response to my provisional decision. He is clearly upset by the whole process, particularly what he describes as BMWFS' role in this. He said they wronged him, and he feels they should pay him more than refund what he paid for the car.

He's queried what payments BMWFS can keep and why this is the case. I said in my provisional decision that BMWFS are entitled to keep all the monthly payments Mr V made under the agreement, and what he would have paid up to July 2023 if he hadn't settled the agreement early. I said that because, despite the modification, it appears from the mileage that Mr V was able to use the car as he had originally intended. There's no evidence that his usage of the car was significantly impaired by the modification prior to the breakdown. So, as I've already explained, I think it's reasonable that he pays for that usage.

I've also considered the impact on Mr V. My role is not to punish or fine BMWFS. It is to resolve this dispute in a fair and reasonable way. As such, I think my award of £100 for distress and inconvenience is reasonable. I don't doubt Mr V has found this issue stressful – but I can't say that BMWFS has deliberately or otherwise behaved unreasonably. Mr V complained to them in April 2023. They referred to an earlier complaint he had raised with the Motor Ombudsman – I don't think it was unreasonable for them to do so. Mr V then raised this complaint with this service.

Whilst he found the experience stressful, it wasn't clear until the inspection in October 2022 that the car had been modified prior to them supplying it. And he was able to drive it until April 2023. That is not something BMWFS would've been aware of. So, I'm not amending my award for distress and inconvenience.

Mr V has provided evidence of costs he incurred for repairs. I'm satisfied they are directly related to the modifications. He paid £100 for an inspection and that found the modification and confirmed it had been done prior to supply to Mr V. He said he paid cash for this invoice – I've no reason to doubt that was the case and I'm asking BMWFS to pay that cost.

He paid £1,995 for repairs. I can see from the invoice that the bulk of the cost was to replace the coolant pipe. The diagnostic report highlights the faulty coolant pipe and relates this to the modification. So, I think this should be refunded. I wrote to BMWFS to inform them this was my intention, and they did not object to this.

The comments from Mr V and BMWFS don't change my view about why I should uphold this

complaint. But I am persuaded that BMWFS should reimburse the repair costs to Mr V. With that addition, I am adopting my provisional view as my final decision.

### **Putting things right**

Therefore, BMWFS should:

- collect the car at no cost to Mr V;
- remove any adverse entries relating to this agreement from Mr V's credit file;
- refund the £15,176 deposit Mr V paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMWFS is entitled to retain that proportion of the deposit);
- refund the £26,233.06 settlement payment Mr V paid;
- BMWFS is entitled to retain an amount equal to the sum of monthly payments that would have been due for the period April 2021 to July 2023 (and in making the award they should explain to Mr V how this has been calculated);
- refund the £2,095.58 cost of repairs Mr V paid for;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr V made the payment to the date of the refund<sup>†</sup>; and
- pay Mr V an additional £100 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

<sup>†</sup>If BMWFS considers that tax should be deducted from the interest element of my award, they should provide Mr V with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 24 October 2024.

Gordon Ramsay  
**Ombudsman**