

The complaint

Mrs M complains about a car she acquired with credit provided by BMW Financial Services (GB) Limited (“BMWFS”).

What happened

In July 2021 Mrs M entered into a regulated hire purchase agreement with BMWFS to fund her purchase of a used car. The car was about six years old and its cash price was £31,745. It had passed its MOT test in February 2021 with a mileage of 43,007 miles and no advisories. Mrs M paid a deposit of £4,500. The agreement was for a term of four years.

Mrs M noticed on the way home that the engine management light (“EML”) came on and the car was shaking. She continued to drive all the way home, a four hour journey, and so she did not take the car back to the dealership. Instead she says the dealership told her she could take the car to an independent garage, which she did. That garage gave her a printout of the fault codes, which she passed on to the dealership, but the garage did not assist further and she did not hear back from the dealership. After that, the EML went off and the fault seemed to have gone away. She says she only drove it occasionally. (The mileage at the next MOT test in February 2022 was 47,680.)

Meanwhile, in August of that year, another garage found that the engine had been modified with aftermarket parts, including the entire exhaust system, and this had intermittently been causing a misfire and causing the EML to come on. Mrs M says that she found the dealership to be uninterested and uncooperative. She continued to drive the car, but she says that if she had known about the modifications at the point of sale then she would not have bought the car.

In January 2022 Mrs M had the sparkplugs replaced, but this did not solve the problem. And in January 2023 she found the problem seemed to be getting worse. She describes the car as having a “severe” misfire and a loud knocking sound. In February 2023 she stopped driving it.

In March 2023 (when the mileage was over 52,000 miles) Mrs M complained to BMWFS and asked to reject the car.

BMWFS accepted that the misfire was caused by the aftermarket parts, but it said there was no evidence to show whether those parts had been added before or after the point of sale. It therefore did not agree to let Mrs M reject the car. Mrs M then brought this complaint to our service.

Our investigator upheld this complaint in May 2024. Since the misfire had become apparent right away, and since the modifications had been discovered only a month after the point of sale, he concluded that the modifications had been present before Mrs M acquired the car. He accepted that the modifications were causing the misfire, and that accordingly the car had not been of satisfactory quality at the point of sale; it had therefore been mis-sold.

The investigator thought that Mrs M had taken reasonable steps to mitigate her loss by paying for the August 2021 inspection, paying for a second inspection in October 2021 (which had corroborated the first one), and paying for new spark plugs in 2022. In view of the dealership's lack of assistance, the investigator thought this was enough, and that Mrs M should now be allowed to reject the car, and compensated for the fact that she had been unable to drive it since February 2023. He recommended that the agreement be unwound and the car collected. He also said that BMWFS should refund Mrs M's deposit and her monthly payments since she'd stopped driving the car, plus two more monthly payments for some additional time when she hadn't had the car, with interest on the refunds at 8% a year, and also pay her £500 for her inconvenience.

Mrs M accepted that decision. BMWFS did not substantively respond to it until today. So meanwhile the investigator had to refer this case for an ombudsman to consider. That was in June 2024, so I would like to take this opportunity to apologise to both parties for how long it has taken to assign this case to someone (yesterday, 13 November).

BMWFS responded this afternoon to say that it accepted the investigator's opinion. Since by that time I had already finished reviewing all of the evidence in this case and had begun writing this decision, I have decided to finish it.

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 agree with the investigator's findings. The report by an independent garage in the month following Mrs M's acquisition of the car strongly indicates that the car already had the modifications before she collected it. And I also accept her testimony that the EML came on and the car was shaking and misfiring while she was driving it home.

The investigator's proposed redress is in line with our service's standard approach in cases such as this one, and I endorse it.

My final decision

My decision is that I uphold this complaint. I order BMW Financial Services (GB) Limited to put things right in the way that our investigator recommended, which I've summarised above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 12 December 2024.

Richard Wood

Ombudsman