

The complaint

Mr M complains that a car he acquired through a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS") wasn't of satisfactory quality. He wants to end the agreement and reject the car.

What happened

In June 2019 Mr M entered into a 4-year hire purchase agreement for a used car with BMWFS. The car was around 18 months old and had a mileage of just under 20,000. Mr M said that he carried out a HPI check on the car which didn't show up any insurance related repairs.

Shortly after acquiring the car, Mr M noticed that when driving at speed the car suffered from excessive vibration around the near-side rear of the vehicle. He called the dealership, who suggested there may be an issue with the car's wheel balancing and so Mr M arranged to have this tested at another garage.

The garage balanced one of the car's wheels, but Mr M says it also pointed out to him that the car appeared to have been re-sprayed and may have been involved in an accident at some point. Mr M contacted the dealership who asked him to bring the car back in so it could investigate.

Mr M decided to arrange for the car to be independently inspected first. The independent engineer took the car on a 13-mile road test and also drove it at speeds over 60mph. The independent engineer reported that when driven at 60 mph or over, the car vibrated excessively in the rear which in turn meant the child seat fixed to a rear seat shook to an unacceptable level. They also reported that the near-side front and rear doors were misaligned and had been removed and refitted at some point. They said that in their opinion extensive bodywork repairs had been undertaken and the car had been re-sprayed. The independent engineer said the vibrations could be due to an issue with the near-side rear suspension or stub axle. They concluded that the car was not fit for purpose.

Mr M took the car back to the dealership and said that he wished to exercise his short-term right to reject the car as it had been in his possession for less than 30 days and wasn't of satisfactory quality. He also said that he had been misled as he hadn't been told about the car being involved in accident and, if he had, he wouldn't have bought it. He also complained to BMWFS.

The dealership said it took the car to another garage that diagnosed the vibration as being caused by the wheels requiring to be re-balanced and that once this had been undertaken the car no longer vibrated.

BMWFS didn't uphold Mr M's complaint about the car. It said that as this was a used car the dealership wasn't obliged to tell him if the car had been involved in accident. It also said that as the issue had been with the wheels needing to be re-balanced which had been addressed there were no grounds to reject the car as there wasn't a mechanical fault.

Mr M was unhappy at BMWFS's response and complained to this service. Our investigator recommended that his complaint should be upheld. She said based on the evidence from both parties it seemed likely that the car had a fault at the point of sale.

Mr M had arranged for the car to be independently inspected and a report together with photos of the car had been prepared. The photos showed misaligned doors, the removal/refitting of parts and different paint depths suggesting a re-spray on the near-side rear of the car. Mr M had also provided more recent photos showing that the front bumper panel "*pops out*" and is misaligned. Our investigator said she didn't think the repairs had been of satisfactory standard.

Our investigator said Mr M had arranged to have one of the wheels re-balanced and BMWFS had suggested that this work may have exacerbated the vibration issue, but she wasn't persuaded by this view. She said Mr M had provided an independent report that said the car wasn't fit for purpose within a short time of acquiring the car.

BMWFS had disagreed with the contents of that report as it was relying on the wheel balancing report from a third-party garage used by the dealership. However, no report had been provided to this service to corroborate the only issue that was the need to have wheels re-balanced. Our investigator said she thought there was sufficient evidence to say that the earlier repairs on the car hadn't been of a satisfactory quality and that the car was faulty at the point of sale. Mr M had wanted to exercise his right to reject the car and it was fair for to do so.

Our investigator recommended that the car should be rejected and the agreement cancelled; the deposit repaid together with the cost of a hire car that had been rented while the car was at the dealership; that the monthly instalments under the agreement should be repaid for July, August and September 2019 while the car was at the dealership; that the cost of the independent inspection should be repaid and finally that compensation of £250 be paid for the distress and inconvenience caused to Mr M having to deal with the faulty car.

Mr M agreed with our investigator's view but BMWFS disagreed. It said that although the car had some previous paint-work repairs these were to an acceptable standard and it couldn't be said that the car wasn't of a satisfactory standard just because it had undergone repairs.

BMWFS also said that the independent engineer's report wasn't fit for purpose because their assumptions as to the cause of the vibration was wrong. Mr M had had the car's wheel re-balanced by another garage prior to the independent inspection and the car being returned to the dealership for further investigation. It was entirely reasonable to suggest that the standard of work carried out by the first garage was not to a reasonable standard and may have exacerbated the issue further.

It said that the independent engineer hadn't carried out an adequate inspection as he hadn't carried out any tests to substantiate what he said which was that the structure of the car had been compromised. The conclusion of the report received by the dealership regarding the findings of the garage that it had asked to examine the car was that the vibration was caused by the wheel balancing being out. Re-spraying to an acceptable standard and experiencing an imbalance of a wheel did not make the car unfit for purpose.

As the parties couldn't agree the complaint was passed to me.

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.

Looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mr M is a regulated consumer credit agreement this service is able to consider complaints relating to it. BMWFS is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied "*the quality of the goods is satisfactory*". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 can be aspects of the quality of the goods.

Here the car wasn't brand new so wouldn't be judged by the same standard as a new one. I think a reasonable person would expect some issues to arise after a reasonable period of time and that the car would have undergone some wear and tear.

I've seen that Mr M believed the car had been misrepresented to him by the dealership as it hadn't informed him about any previous body repairs. However, I think as a used car, it would be expected that it may have required some bodyshop work at some point so I don't think that the dealership misled Mr M over this.

I've seen that the independent expert engaged by Mr M to inspect the car considered that the car had undergone extensive repairs. The report they prepared also includes photos. I think these show quite clearly that the car's doors on the near-side are misaligned.

Mr M has also provided photos of the front bumper popping out which I think also supports the view of the independent engineer that the repairs weren't carried out to a good standard. This is because I think it's more likely than not that the issue with the bumper is linked to the accident damage and the subsequent repairs.

I've seen that Mr M raised his concerns about the car within a very short time of acquiring it. At the suggestion of the dealership, he took the car to a garage for the wheels to be re-balanced. I've seen from the invoice that this was only carried out on one wheel. Mr M then arranged for the car to be independently inspected. The independent engineer corroborated what Mr M had said about the car vibrating excessively when driven at speeds over 60mph. I don't think I have any evidence that the vibration had become worse following the wheel being re-balanced and I disagree that it is reasonable to say that the first garage did anything to aggravate the problem. I'm satisfied that the excessive vibration had been present from the point of sale of the car to Mr M.

BMWFS says that the independent engineer's report can't be relied upon because

another garage subsequently found that the vibration was due to the wheels being imbalanced and that this was then fixed. However, I've seen that the independent engineer's opinion was that the vibration *might* be due to a suspension or sub axle issue looking at the quality of the repairs to the car and misaligned doors. I think there was sufficient evidence that the car had extensive repairs, and these weren't undertaken to reasonable standard so I can't say the independent engineer's opinion was unreasonable in the circumstances and limits of their inspection.

I don't know what the garage said to the dealership about the only issue being the wheels requiring a re-balance as no report has been provided despite it being requested by this service. However, Mr M says that although the vibrations were reduced after the car had had all of its wheels rebalanced and was returned to him by the dealership, they were still present when driving at speeds over 60mph. So, I don't think I can say this subsequent repair fixed the issue or that the independent engineer's opinion has been proven to be incorrect. It seems likely an issue still exists that is causing the car to vibrate.

So, on looking at the evidence I am satisfied that it is more likely than not that the car had a fault at the point of sale and wasn't of satisfactory quality. The car doors were misaligned and the excessive vibrations, when driving at speed, were unacceptable. On the evidence I've seen I don't think this was a simple matter of the wheels needing to be re-balanced.

I've seen that Mr M requested to use his right to reject the car and did so in the first 30 days of taking the car. This means he wasn't required to allow the retailer an opportunity to repair and I think Mr M was entitled to make that request and to hand the car back, cancelling the agreement and receiving his deposit back. I'm upholding his complaint.

Putting things right

For the reasons given above I'm upholding Mr M's complaint. I'm asking BMWFS to do the following:

- Collect the car at no cost to Mr M.
- Cancel the agreement with nothing further to pay.
- Reimburse Mr M his deposit of £1,500 together with interest at the yearly rate of 8% from the date of payment until the date of settlement.
- Reimburse Mr M the £240 cost of the independent inspection together with interest at the yearly rate of 8% from the date of payment until the date of settlement.
- Reimburse Mr M £197.10 for having to hire a car for one week in June/July 2019 while his car was being investigated together with interest at the yearly rate of 8% from the date of payment until the date of settlement.
- Reimburse Mr M the monthly payments made under the agreement for June, July and September 2019 when the car was being further investigated by the dealership together with interest at the yearly rate of 8% from the date of payment until the date of settlement.
- Pay Mr M £250 compensation for the distress and inconvenience of having to deal with the faulty car.
- Remove any adverse information about this agreement from Mr M's credit file.

My final decision

For the reasons set out above I'm upholding Mr M's complaint. I'm asking BMW Financial Services (GB) Limited to do the following:

- Collect the car at no cost to Mr M.
- Cancel the agreement with nothing further to pay.
- Reimburse Mr M his deposit of £1,500 together with interest at the yearly rate of 8% from the date of payment until the date of settlement.
- Reimburse Mr M the £240 cost of the independent inspection together with interest at the yearly rate of 8% from the date of payment until the date of settlement.
- Reimburse Mr M £197.10 for having to hire a car for one week in June/July 2019 while his car was being investigated together with interest at the yearly rate of 8% from the date of payment until the date of settlement.
- Reimburse Mr M the monthly payments made under the agreement for June, July and September 2019 when the car was being further investigated by the dealership together with interest at the yearly rate of 8% from the date of payment until the date of settlement.
- Pay Mr M £250 compensation for the distress and inconvenience of having to deal with the faulty car.
- Remove any adverse information about this agreement from Mr M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 November 2020.

Jocelyn Griffith
Ombudsman