

The complaint

Mr A is unhappy BMW Financial Services (GB) Limited (BMWFS) has supplied him with a car which he believes wasn't of satisfactory quality. He also complains he was mis-led about the car's fuel consumption.

What happened

In May 2019, Mr A acquired a brand-new car which he financed through a 48 month hire purchase agreement with BMWFS. The cash price of the car was over £39,200 and it was first registered in May 2019.

Within a few weeks, Mr A said he complained about a number of issues and he's returned the car to the dealership on several different occasions since then. In summary, he reported the issues as follows:

1. Radar wasn't working;
2. Entertainment system wasn't working;
3. The car only provides approximately 30 miles per gallon (MPG);
4. Creaking noises coming from the front and back seats;
5. Rattling sound from the engine;
6. Whistling sound when the heater is on high;
7. The auto boot opening function isn't working;
8. The sun roof isn't working;
9. He had to pay an extra £1,000 towards the deposit when taking out the finance;
10. The registration on the finance agreement was wrong;
11. The guaranteed asset protection (GAP) and tyre insurance weren't set up;
12. His complaint had been handled poorly by BMWFS.

In November 2019, the car was returned to the dealership and email correspondence between Mr A and BMWFS suggest repairs were carried out to fix a rattle from the rear of the car and the creaks from the leather seats. The dealership also said Mr A complained about a noise when driving which they heard during a road test but weren't able to reproduce it again. Mr A said the car was at the dealership for approximately four weeks and he wasn't provided with a courtesy car.

Despite these repairs, within a short time thereafter, Mr A said the issues with the creaking noises from the seats and engine remained and the car still wasn't delivering the correct MPG. The manufacturer offered to refund one month repayment as compensation but Mr A wasn't happy with this and declined the offer.

An independent inspection report was carried out at the start of February 2020 and the car was taken on a 200 plus mile road test over a period of three days. At that point, it had covered over 5,400 miles. The report concluded there was a loud creaking noise from the back seats when driving on uneven road surfaces and further investigation was required to identify the cause. The inspection also determined the car returned around 48 MPG.

Mr A again returned the car to the dealership and they found the noises from the back seat originated from the boot lid and adjustments were made. The rattling from the engine was found to be from insecure cables which they then secured. In relation to the whistling noises, the heater was reset to the automatic settings and clips were replaced to stop the driver's door panel from rattling. These repairs were covered by the warranty. However Mr A complained issues remained thereafter. Unhappy with the repairs, he requested to reject the car. This didn't happen but further repairs were carried out to fix the boot lid, noises from the engine and a pillar seal in February 2020.

Mr A complained to BMWFS and referred the complaint to our service. The investigator partially upheld the complaint. They said a diagnostic test was needed to identify the source of the noises from the seats. They also acknowledged there were times Mr A was left without a courtesy car and recommended that he should be reimbursed one month's contractual payment. BMWFS said road tests had been carried out and the independent inspection report concluded the MPG was expected for the make and model of the car. In relation to the noises from the seats, they said it had been addressed and Mr A was provided with a courtesy car while the repairs were carried out. In relation to the further reported issues, BMWFS said these couldn't be reproduced.

Upon further review, the investigator reached a second opinion and determined BMWFS had one chance to repair the faults and this had failed. They said based on the numerous issues, they didn't believe the car was of satisfactory quality and BMWFS should allow Mr A to reject it and be refunded two monthly repayments for loss of use of the car while it was being repaired. BMWFS didn't provide a further response.

Since then, Mr A has provided evidence that in August 2020, the car was subject to a manufacturer recall and the car's track rods were replaced. Also in October 2020, a window panel was replaced and the battery was reprogrammed. These were covered by the car's warranty. Most recently in December 2020, he returned the car to the dealership for a number of issues including the creaking seats and a burning smell when the heater is on. Based on the number of returns to the dealership for repairs to be carried out, Mr A said he has been without his car for around two months and he was only provided with a courtesy car for approximately one week.

In January 2021, I issued my provisional decision and said:

"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 intend to uphold Mr A's complaint and I'll explain why.

Mr A acquired a car under a regulated hire purchase agreement. BMWFS is the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of supply and the car's history.

In this case, Mr A was supplied with a brand new car so it would be reasonable to expect the quality of it to be higher than a more well used one and it would be free from defects and for a significant amount of time.

Faults with the car

Mr A reported a number of issues from the outset such as the entertainment system and radar not working along with creaking noises from the seats. We haven't been provided with all the evidence such as job cards from the repair in November 2019, but what we do know is there have been a number of ongoing issues such as the rattling noise from the engine and new issues including the auto boot function not working, amongst other things.

I've already set out what a reasonable person would expect from a new car and that includes it being free from defects and for a considerable amount of time. In this case, I wouldn't expect a brand new car which had travelled such few miles to experience such issues.

I've considered the information provided by Mr A, job cards, notes from the dealership and the findings of the independent inspection, specifically the reference to the creaking noises of the seats. Taking everything into account, I'm not satisfied the car was of satisfactory quality when it was supplied meaning there was a breach of contract.

There have been a number of repairs carried out and on different parts of the car but despite this, Mr A maintains there are still issues including the rattling from the engine and creaking noises from the seats. Based on the videos, pictures and further job cards, I'm not persuaded the repairs have resolved all the faults. On balance, I believe there are still issues with the car meaning it isn't conforming to the contract. Considering all that has happened with the numerous repairs, I think it's now fair to allow Mr A to reject the car.

Miles per gallon (MPG)

Mr A said he was mis-led about the car's fuel consumption. A misrepresentation is a false statement of fact which induces a consumer to enter a contract.

At this point, I must stress that a car's MPG can be affected by different variables such as driving style, car maintenance and weather conditions. Generally speaking, tests are carried out in laboratory conditions and it is used for illustrative purposes so comparisons can be made from one manufacturer to another. As it's a guide, it is reasonable to expect there will be some difference between the advertised figures and what it produces in normal driving conditions.

There is conflicting evidence about how much MPG the car is actually producing. Mr A has provided video evidence showing it's producing around 30 MPG. However the manufacturer said there is nothing wrong, the independent inspection determined the car delivered 47 MPG and it didn't mention there was an issue that made it less economical than it should be.

Taking everything into account, I don't believe the discrepancy is significant enough to say a misrepresentation has occurred, nor am I persuaded the advertised MPG induced Mr A to acquiring the car.

How to put things right

As I don't believe the car was of satisfactory quality when it was supplied, Mr A should be allowed to reject the car. To put things right, the finance agreement should be ended, the deposit amount refunded plus 8% simple interest per year added from the payment date up to the date of settlement.

There is no evidence to suggest Mr A was kept mobile while the car was being repaired in November 2019 and based on his correspondence it would appear he was left without a car for around four weeks. Since then, the car has returned to the dealership on numerous occasions meaning Mr A hasn't had use of his car. Therefore I believe he should be refunded two months repayment as compensation.

While I appreciate there were faults and the car didn't perform as expected there isn't enough evidence to suggest the car wasn't driveable and it's off the road. The most recent job card in December 2020 indicates the car is still be driven. As I'm satisfied Mr A was still able to drive the car, it's fair that he should pay to reflect this. With the exception of the refund of two month's payment, I won't be asking BMWFS to provide a full refund for the other contractual payments. I believe it is reasonable for them to refund 10% of the monthly payments paid from August 2019 (when the issues were first reported) onwards to reflect the impaired use of the car and ongoing nature of the faults.

I accept at times Mr A's calls and correspondence went unanswered which led to frustration and based on the evidence I believe it would've been fair to allow him to reject the car at a much earlier stage following the failed repairs. Having taken into account the impact on Mr A including the numerous returns to the dealership, I think BMWFS should pay £250 for the trouble and upset caused.

I'm sorry to hear Mr A experienced several issues with the car and it didn't perform as expected. This was a brand new car and there is no doubt there were issues which I don't believe a reasonable person would expect to occur".

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.

Mr A and BMWFS were invited to respond to my decision and both parties accepted my findings. Therefore I've reached the same decision and for the same reasons.

My final decision

For the reasons set out above, I've decided to uphold Mr A's complaint and ask BMW Financial Services(GB) Limited to:

- End the agreement;
- Arrange collection of the car at no cost to Mr A;
- Refund the deposit amount plus pay 8% simple interest* per year from the date it was paid up to the date of settlement;
- Refund two month's payment for the loss of use;
- Refund 10% of the monthly repayments for the impaired use of the car from August 2019 up to the date of settlement;
- Remove adverse information about this hire agreement from Mr A's credit file;
- Pay £250 compensation for the trouble and upset caused to Mr A.

*If BMW Financial Services (GB) Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 February 2021.

Simona Charles
Ombudsman