

The complaint

Mr B complains that a car that was supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited wasn't of satisfactory quality.

What happened

A used car was supplied to Mr B under a hire purchase agreement with BMW Financial Services that he electronically signed in March 2021. He complained to the dealer about noise from the car's brakes and it chamfered the brake discs but the brakes were still noisy. Mr B complained to BMW Financial Services but it said that it was a high performance car so the brakes are meant to be used under high pressure and that noises can be heard when they're not being used to that affect. It said that the noise that the brakes were making is considered to be a characteristic of the car and, as there was no fault with it, Mr B was unable to reject the car. Mr B wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. She said that the noise was excessive and falls outside of what would reasonably be expected as a characteristic so she didn't think that the car was of satisfactory quality when it was supplied to Mr B. She recommended that BMW Financial Services should: end the agreement and collect the car; refund Mr B's part-exchange contribution of £4,000 and 10% of his monthly payments to cover the impaired use of the car (all with interest); pay him £150 for any trouble and upset caused; and remove any adverse information from Mr B's credit file.

Mr B has accepted those recommendations but BMW Financial Services has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- there's no confirmed fault with the car;
- the manufacturer's website and manuals state that the brake systems are recognized as being among the best in the world and are designed with a bias to providing superior stopping power over consideration for comfort related aspects and that brake noises are inherent to, and a characteristic of, high performance braking systems;
- the owner's handbook says; *"The vehicle has a high performance brake system with ventilated compound brake discs. Depending on design requirements, function noises may occur when braking. However, this has no effect on the performance, operational safety and stability of the brakes"*;
- the car was of satisfactory quality and the manufacturer has advised all of its customers that the brake noise is a characteristic;
- the manufacturer agrees that the noise from Mr B's car is a characteristic of it and all like for like cars do the same; and
- the dealer offered to chamfer the brakes as a gesture of goodwill to appease Mr B and would have informed him that it might not change things.

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 outcome recommended by our investigator for these reasons:

- BMW Financial Services, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr B - whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it;
- the car that was supplied to Mr B was about three years old, had been driven for 18,016 miles and had a price of £44,175;
- satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;
- Mr B complained to the dealer about the noise from the car's brakes within a month of the car being supplied to him and the car was inspected but the brake pads and discs were all above specification and no fault was found – the dealer says that Mr B was told that brake noises on the performance braking system fitted to the car were normal and not considered a fault;
- the dealer did chamfer the brakes to try to make the noise slightly better, but it says that it told Mr B that it couldn't guarantee that it would eliminate the noise – which isn't a fault with the car;
- Mr B has provided a video of him driving the car in a residential area at relatively low speeds and the brakes make, what I consider to be, an unacceptable noise;
- some occasional brake noise under special conditions may be acceptable but I don't consider it to be acceptable for the brakes to regularly make a loud and unpleasant noise during normal use as Mr B is experiencing;
- BMW Financial Services says that the brake noises are inherent to, and a characteristic of, the car's high performance braking systems, and that the manufacturer's website and manuals make customers aware of that;
- but I've seen no evidence to show that Mr B was made aware before he entered into the hire purchase agreement that he should expect that level of noise from the car's brakes and I've seen no evidence to show that the dealer, which was a manufacturer's specialist dealer, or BMW Financial Services told Mr B about the brake noise before the car was supplied to him;
- BMW Financial Services also says that the owner's handbook says that "*noises may occur when braking*" but I consider it to be more likely than not that Mr B wouldn't have seen the owner's handbook until after the car had been supplied to him;
- I'm not persuaded that the brake noise from the car would reasonably be considered to be a characteristic of the car and I consider that the brake noise that Mr B is experiencing is enough to constitute a fault with the car which causes it not to have been of satisfactory quality when it was supplied to him; and
- I find that it would be fair and reasonable in these circumstances for BMW Financial Services to allow Mr B to reject the car and to take the actions described below.

Putting things right

I find that BMW Financial Services should end the hire purchase agreement and arrange for the car to be collected from Mr B – both at no cost to him. I find that it should also remove any information about the hire purchase agreement that it's recorded on his credit file.

The hire purchase agreement shows that Mr B made an advance payment of £4,000 for the car and the dealer's invoice shows that he made a part payment of £99 and that £3,901 was due from him. I find that it would also be fair and reasonable for BMW Financial Services to refund to Mr B the advance payment that he made for the car, with interest.

Mr B has described the impact on his use of the car that these issues have caused and our investigator recommended that BMW Financial Services should refund 10% of the monthly payments that he's made under the agreement as compensation for his impaired use of the car and that it should pay interest of those amounts. I consider that to be fair and reasonable in these circumstances.

These events have clearly caused distress and inconvenience for Mr B. I find that it would also be fair and reasonable for BMW Financial Services to pay him £150 to compensate him for that distress and inconvenience.

Mr B says that he would like this service to require BMW Financial Services to make customers aware of the noise issue in its advertising of cars – but our investigator has explained why we can't do that and I'm not persuaded that it would be fair or reasonable for me to require it to take any other action in response to Mr B's complaint.

My final decision

My decision is that I uphold Mr B's complaint and I order BMW Financial Services (GB) Limited to:

1. End the hire purchase agreement and arrange for the car to be collected from Mr B – both at no cost to him.
2. Refund to Mr B the advance payment that he made for the car.
3. Refund to Mr B 10% of the monthly payments that he's made under the agreement as compensation for his impaired use of the car.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Remove any adverse information about the hire purchase agreement that it's recorded on Mr B's credit file.
6. Pay £150 to Mr B to compensate him for the distress and inconvenience that he's been caused.

HM Revenue & Customs requires BMW Financial Services to deduct tax from the interest payment referred to at 4 above. BMW Financial Services must give Mr B a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 October 2022.

Jarrold Hastings
Ombudsman