

The complaint

Mrs A has complained that she is unhappy with the quality of a car she acquired in March 2023, using a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS").

What happened

Mrs A acquired a used BMW at the end of March 2023, using a hire-purchase agreement with BMWFS. The cost of the car was £49,500, and Mrs A borrowed £29,700 over a term of 36 months, with a monthly repayment of £270.33. A final repayment of £28,487.69 is due at the end of the term if Mrs A wants to keep the car at that point. The car was a year old at the point of supply, with a mileage of 9,616 stated on the invoice.

Mrs A told us that she took the car for a test drive before acquiring the car, and noticed there was noise on turning. Mrs A says she was told this was tyre noise. She asked that this be investigated, but was told there was no fault with the steering. She has also said that the noise has worsened since she collected the car, and there is noise on braking. And she said the driving range was less than stated, even on full charge.

Mrs A was also unhappy about scratches on the car and a crack in the windscreen. Some remedial work was done before Mrs A collected the car, and further work done shortly afterwards, but Mrs A was not satisfied with the outcome.

On 16 April 2023 Mrs A contacted BMW to make a complaint about all this, saying that she wanted to reject the car.

BMWFS raised these issues with the dealership, and the car was taken back there on 28 April so that it could be checked. The dealership told BMWFS that it had inspected the car and that no faults were found. It said that the brake noise is a characteristic of the car, and the range is within the expected parameters. It also confirmed that it conducted a road test, with Mrs A's partner present, in both Mrs A's car and another vehicle. The latter had the same noise and a very similar range.

On 17 May 2023 BMWFS issued its final response to Mrs A, saying it didn't uphold her complaint because no fault was found. BMWFS also noted that the dealership had arranged for the crack in the windscreen and the scratches to be remedied as far as possible. Mrs A then brought her complaint to this service. Our investigator looked into it, but didn't think the complaint should be upheld. Mrs A disagreed with this and asked that the complaint be reviewed by an ombudsman.

I should also say here that Mrs A has said that other issues have since arisen, but as they were not the subject of this complaint and BMWFS has not had the opportunity to consider them, I cannot comment further on them in this decision.

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 decided not to uphold Mrs A's complaint I'll explain why.

Because BMWFS supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

The CRA also set outs some specific examples of things that would not make the quality of goods unsatisfactory, including:

- anything which is specifically drawn to the consumer's attention before the contract is made,
- anything, where the consumer examined the goods before the contract was made, that examination ought to have revealed.

In this case the car was a year old, with a mileage of 9,616 when Mrs A acquired it. So whilst I think the reasonable person would expect it to be of a high standard, it's also reasonable to expect that parts of the car would have suffered a degree of wear and tear over the course of a year.

BMWFS has provided copies of the hire-purchase agreement, complaint correspondence, and various emails between it and Mrs A, and it and the dealership. Mrs A has also provided copies of email exchanges with the dealership, and also photos of the scratches and a video to demonstrate the noise issue. I've considered all this very carefully.

Looking first at the noise issue, Mrs A has mentioned a noise when turning the steering wheel and a brake noise. From the emails that have been provided, the former was picked up when Mrs A test drove the car before she acquired it. The steering was checked before the point of supply, and the dealership confirmed to Mrs A that no fault had been found.

Because Mrs A was able to inspect the car *before* she acquired it, and it's clear from the emails that the noise was raised with the dealership at that point, so she was clearly aware of it, I cannot say that it makes the quality of the car unsatisfactory – I have to take account of the CRA provisions that I've set out above. So I can't fairly say that Mrs A is entitled to reject the car because of the noise when turning.

With regard to the brake noise, it's not clear whether this was also noted during the test drive. However, I can see from emails between the dealership and BMWFS that the former later conducted a road test, with Mrs A's partner present, in both Mrs A's car and another vehicle. The latter had the same brake noise, which was stated to be a characteristic of the car. From a more recent email to this service, I can see that Mrs A accepts this, so on that basis I'm satisfied this doesn't affect the quality of the car.

Mrs A also mentioned a crack in the windscreen and scratches on the car.

The first scratch - to the inner sill – was noted when Mrs A test drove the car. I've seen an email from the dealership, dated 28 March 2023, confirming that its valet team would buff the scratch, which would improve it but not remove it completely. A further email a few days later confirmed the scratch had been reduced and looked a lot better.

On 31 March, when collecting the car, Mrs A noticed a small crack in the windscreen and some marks on the bonnet. There were other scratches noted on the door frame and a small rip in the boot cover. The car was returned to the dealership for remedial work to be done, and a home visit was carried out for the windscreen work. The chip was repaired but could not be completely removed - BMWFS said that Mrs A was advised of that at the time.

Mrs A has said that she is unhappy that the scratches and the crack in the windscreen are still there.

From the various emails I have, I don't think the dealership offered any guarantee that it could remove the scratches or the chip completely – rather it said that the appearance would improve. The chip in the windscreen was small, and not, in itself, liable to cause an MOT failure, so I think it was reasonable for the dealership to carry out remedial work rather than replace the windscreen completely.

I think it's fair to say that, as the car was a year old, some wear and tear to the bodywork is to be expected. So I don't consider that the scratches and the chip in the windscreen made the car of unsatisfactory quality.

The final aspect of Mrs A's complaint was the driving range – she said that even on full charge it was much less than the advertised range of 280/282.

BMWFS told us that the dealership looked at Mrs A's car, against an equivalent demonstrator vehicle, following the complaint. It said both vehicles were charged by the dealership using the same charging station, and both showed a range of circa 230 miles when fully charged. Technicians conducted road tests back-to-back, using the same route, terrain/topography, drivers and in the same weather conditions, and the reduction in range in both vehicles were very similar levels. It concluded from this that the range was in line with what would be expected.

I've also kept in mind that the advertised range is the result of testing in specific laboratory conditions under the Worldwide Harmonised Light Vehicle Test Procedure (WLTP), which can be used to compare vehicles. But a number of factors will affect the range achieved in day-to-day driving, such as traffic conditions, driving style and the type of journeys undertaken, and it seems that the range achieved by electric vehicles in everyday driving is generally lower than the WLTP figures. I've no information about whether this was discussed with Mrs A, but I can see from the BMW website, for example, that this is explained. So I've no evidence of misrepresentation. And I think the tests carried out at the dealership were reasonable in determining that the performance was within expected parameters, so there is no evidence that there was a fault.

I understand that Mrs A feels strongly about this. But, in summary, I don't have enough evidence to say that the car wasn't of satisfactory quality at the point of supply, or that it was misrepresented in terms of the range. So I can't fairly say that Mrs A is entitled to reject the car, and therefore I don't uphold this complaint.

My final decision

For the reasons given above, I have decided not to uphold Mrs A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 1 April 2024.

Jan Ferrari
Ombudsman