

The complaint

Miss P complains about a car she acquired with credit provided by BMW Financial Services (GB) Limited ("BMWFS").

What happened

In January 2023, Miss P entered into a regulated hire purchase agreement with BMWFS in relation to a used car. The car was five years old, its mileage was 41,151 miles, and its cash price was £21,290.

Only two days later, Miss P noticed some faults with the car. The steering wheel was pulling to the left, and the whole car was shaking when she drove it on the motorway. The car was investigated by the dealership in February 2023, but the dealership refused to repair it under warranty, on the ground that Miss P had damaged one of the wheels slightly (by kerbing it, buckling it). There were a number of repair attempts at Miss P's expense, but they were unsuccessful.

In April 2023, Miss P complained to BMWFS, but it did not uphold her complaint, because it said the car had finally been repaired and there were no longer any problems. Being dissatisfied with how long it had taken, Miss P brought this complaint to our service in September 2023. She wanted to reject the car for a full refund.

Our investigator upheld this complaint, because the evidence did not support BMWFS's contention that the car had been fully repaired. The latest job card (dated 15 March 2023) stated that the shaking had improved but had not been completely removed, and it was unlikely to be improved further. The investigator thought that as Miss P had not had the car for very long when this issue arose, the problem must have been present at the point of sale, and therefore BMWFS was liable for it. Due to all of the failed repair attempts, it was fair to now allow Miss P to reject the car, with nothing further to pay, and to be refunded her deposit and ten percent of her monthly payments (to reflect her use of the car), and £300 for her inconvenience.

Miss P accepted the investigator's decision. BMWFS did not reply to it, despite being chased. So the case was referred for an ombudsman's decision. I wrote a provisional decision, which read as follows.

What I've provisionally 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.

Under the Consumer Rights Act 2015, BMWFS was required to give Miss P a car of satisfactory quality. If the car was not of satisfactory quality at the point of sale (having regard to the fact that it was not a new car, but an old one, so some wear and tear has to be expected), then BMWFS is liable for that. It is entitled to one attempt at repairing any faults, but if that is not successful, then Miss P has the right to reject the car.

However, if the car was of satisfactory quality at the point of sale, then BMWFS is not liable for any problems which occur afterwards. So this case turns on what caused the problems with the car, and when. The burden of proof is on BMWFS to show that it is not responsible for the fault – that is, to show that the fault was not present at the point of sale (see section 19(14) and (15) of the Act).

The job card dated 21 February 2023 says that the nearside rear wheel has been heavily damaged. It says this is what caused the misalignment of the steering, and adversely affected the wheel balance, leading to the issues which Miss P experienced.

BMWFS won't be responsible for any of this if the wheel was damaged by Miss P while she was driving (assuming that this is the cause of the other issues). It has to be something that was already present when she got the car.

It is not in dispute that the wheel was buckled at some time after Miss P started driving the car – Miss P said as much in one of her complaint emails. But she says that it didn't happen until after she had already taken the car to the dealership to be repaired a couple of times. If that is true, then the damaged wheel can't have been the cause of the misaligned steering and wheel balance.

However, I don't think that can be true, because the damaged wheel is mentioned in the earliest job card, the one dated 21 February 2023. And Miss P mentioned in another complaint letter (the one with the timeline) that she was told about it on 21 February.

So on the balance of probabilities, I am satisfied that the evidence shows that at some point after acquiring the car, Miss P kerbed it, causing damage to a wheel, which in turn resulted in the steering becoming misaligned and impairing the wheel balance. That means that BMWFS is not liable for the damage.

Responses to my provisional decision

Miss P denied that she had damaged the car before the problems started. She said although she did kerb the wheel, that hadn't happened in the first two days that she had the car but later on, during the month that she'd had to wait for the car to be seen in the garage. She said the car had never been safe to drive since she'd first had it.

She also said that the wheel was not buckled, and the damage was just a few light scratches. And the steering pulls to the right as well as to the left. The matter has caused her a lot of anxiety.

BMWFS did not respond.

My findings

I do not accept that the wheel was not heavily damaged, because the February job card says that it was. It says:

“NSR wheel heavily damaged. Suspected wheel alignment issue due to damage on wheel.”

I don't think there is enough evidence to show that the steering problem was caused by something else, or to show that the damage to the wheel was minor. So I remain of the view that, on the balance of probabilities, this is most likely to have been the cause of the problem.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 27 August 2024.

Richard Wood
Ombudsman