

The complaint

Mr J complains about a new car he acquired using a hire purchase agreement with BMW Financial Services (GB) Limited (BMWFS). Mr J is unhappy about the quality of the car, considers it to be dangerous and would like BMWFS to accept his rejection of the car.

What happened

In October 2022 Mr J acquired a new car. The cash price of the car was in excess of £81,000 and Mr J made an advance payment of around £17,600. The remainder of the amount was met through a hire purchase agreement with BMWFS.

Mr J says that immediately after acquiring the car he experienced some issues and the car had to be returned to the dealership. Mr J refers to experiencing additional issues and had to again return to the dealership, where work was carried out. Mr J has said the car has on a couple of occasions braked suddenly but as this was at low speed it was not too disconcerting.

Mr J complains that while the car was being driven on the motorway at approximately 60-70 mph, the car experienced a sudden deceleration and Mr J says his wife, who was driving the car with his son as a passenger, came close to being in a serious accident. The car was recovered back to the dealership, where it has remained since.

Mr J was understandably concerned and unhappy with the way the car has performed. He believes there is a serious issue with the car and has sought to reject the car and end his agreement with BMWFS. After complaining to BMWFS it explained, briefly, why it did not uphold his complaint. Mr J remained unhappy and referred his complaint to our service, where it was considered by one of our investigators. They set out why they considered the car was not of satisfactory quality and what BMWFS should do to put things right.

BMWFS did not accept the investigator's conclusions and as the complaint could not be resolved informally, it has been referred to the last stage in our process so a final decision can be issued.

BMWFS has recently arranged a further vehicle inspection and referred to no fault being found with the vehicle. The investigator explained that the inspection report has not changed their previous findings, so the complaint has been passed to me to review.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored

it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

BMWFS supplied the car to Mr J under a regulated hire purchase agreement. Because of that, our service is able to consider complaints about the hire purchase agreement and the goods, i.e. the car, supplied under the hire purchase agreement.

As the supplier of the car, BMWFS has an obligation to ensure the car supplied was of satisfactory quality – as set out in the Consumer Rights Act 2015. Exactly what satisfactory quality is will depend on the specific circumstances of any given case, but in this instance I need to decide if the car BMWFS supplied to Mr J was of satisfactory quality.

When considering whether the car was of satisfactory quality there are some key factors that are in my view relevant considerations. The price and age of the car when supplied, along with the age of the car when the faults arose are significant factors in my view. In this instance, Mr J acquired a new car that cost in excess of £81,000. With a car like this it is not unreasonable for Mr J to have high expectations about the quality of the car. It would be reasonable in my view to expect the car to work or perform correctly for a reasonable period of time and before any issues started to arise.

Mr J has referred to experiencing some issues immediately after acquiring the car and these issues appear to have been resolved when the car was returned to the dealership. I will refer to these in more detail later as the more significant issue appears to relate to the autonomous braking system. Mr J has referred to the car braking suddenly at low speed and it was when this occurred at a high speed on the motorway that Mr J was understandably more concerned.

Modern cars like the one BMWFS supplied to Mr J have significant amounts of technology and safety features and it appears the issue with the unexpected braking is linked to the collision warning system. This is a feature of the vehicle that will in certain circumstances brake automatically to avoid a collision. This is I'm sure a great safety feature of the car, providing it is working correctly. But where not working correctly and if the car brakes when it isn't expected or needed, it can be very concerning and potentially very dangerous. I have first considered whether or not there is sufficient evidence to persuade me that the collision avoidance feature of the car was working as it should have, or if it was in some way defective.

BMWFS has said that it has been unable to replicate the issues Mr J has referred to but from what Mr J has described, it believes it is likely to be the front collision system being triggered.

BMWFS refers to the front collision system being able to be turned off. But I'm not persuaded that simply deactivating one of the car's safety features is a reasonable expectation or solution if the system is defective or not working correctly.

BMWFS has shared some of the discussions with the technical team which state, *"The vehicle on inspection did not have any faults relating to this incident but I have carried out a software update to rule out any underlying issues, we have road tested the vehicle multiple times without fault."*

"We have a small number of related cases albeit with slightly differing descriptions of events. After discussing the case with the factory, I can confirm that the software improvements to

the system were implemented...”

As I understand a software update has taken place, it is possible that any problem or defect with the system has now been rectified. No details have been shared however to refer to the potential improvements/corrections the software update provided. And Mr J remains unaware of any improvements/corrections that would, or could potentially, reassure him that the issues he says he experienced have been resolved and will not occur again.

I have very carefully considered what Mr J has said about the car and the issues he's experienced. Mr J has been consistent throughout his submission to BMWFS and to our service. I appreciate he was not driving the car when the issue occurred on the motorway, but I see no reason to doubt what he has told us and how his wife had described the events.

I understand the car suffered a rapid deceleration and there were no other vehicles or objects close to the car that would have required the braking system to engage. I find it very unlikely that Mr J's wife was not driving normally at the time or that she was doing anything that would have required the car to have braked suddenly. Had Mr J's wife been driving and, for example, not noticed the traffic ahead had slowed and the car then applied the brakes to avoid an accident, I find it highly unlikely Mr J would then go on to complain about the car breaking automatically. It is more likely than not that he, and his wife, would have been grateful for the safety feature that had worked correctly.

I also see no reason why Mr J would simply invent the issue if it didn't actually occur as he has described. And I also note in the discussions with the technician that “...*a small number of related cases albeit with slightly differing descriptions of events...*” are referred to by the technician. This suggests to me that there are other known examples of customers experiencing the same or similar issues as Mr J. I appreciate this refers to “...*a small number...*” but this is still referring to other instances that have occurred.

Having carefully considered what both parties have said and provided I consider it more likely than not that the car did perform in the way that Mr J described when his wife was driving and that the car suffered an unexpected rapid deceleration while driving at speed on the motorway. I have not seen sufficient evidence to persuade me that the rapid deceleration was a result of something Mr J's wife did or that the system was working as it should to avoid or reduce the impact of a collision. Based upon the specific circumstances of this case, I consider it more likely than not that the system was not working as it should and there was some form of defect with the system.

As referred to above, this was an expensive car costing in excess of £81,000 and was less than a year old at the time the problem occurred. A reasonable person would not expect a car of this price and age to experience a fault like this and when considering the requirements of the Consumer Rights Act 2015, I consider the car was not of satisfactory quality. Considering again that the problem occurred so soon after Mr J acquired the car, I am also satisfied the car was not of satisfactory quality at the time it was supplied to him by BMWFS.

Putting things right

Having determined the car was not of satisfactory quality when it was supplied to Mr J I have next considered what is required to put things right.

As referred to above, the car appears to have experienced some initial problems and the car had a warning referring to ‘*safety response system not active, refer to dealer*’. Mr J also refers to experiencing unexpected sudden braking at low speeds and an issue with the seat calibration and seatbelt. I understand these issues were addressed by the dealership.

From the evidence provided it appears that Mr J has experienced multiple issues with the car and these are in my view issues or problems that one should not expect on a brand new car costing in excess of £81,000. While some of these issues appear to have been resolved when the car was returned, it is not clear if the unexpected sudden braking issue was resolved when first raised by Mr J. The fact the car suffered an unexpected rapid deceleration on the motorway indicates to me that any earlier attempts at repair were unsuccessful.

The Consumer Rights Act 2015 does allow the supplier an initial right to repair in certain circumstances but as referred to here, there have been repairs or attempts at repair already before the problem occurred on the motorway. The fact that the issue cannot be replicated is not in my view reassuring and is actually more concerning if the problem cannot be identified. If the issue that caused the rapid deceleration on the motorway cannot be identified it will be difficult to determine any remedy. It is therefore difficult to reassure Mr J that the issue will not occur at some point in the future.

I have considered the specific circumstances of this complaint, in particular that the problem could not be replicated or therefore that the issue had been resolved, and what Mr J has said about the worry and upset that was caused when the car decelerated rapidly on the motorway. Mr J has sought to reject the car and end his agreement with BMWFS and in my view this is not an unreasonable request.

BMWFS should therefore now end Mr J's hire purchase agreement with nothing further owed. Mr J should also receive a refund of his original deposit, with interest. Mr J left the car at the supplying dealership and has not used the car since so it would be unreasonable to expect Mr J to pay for the use he has not had from the car. Any hire purchase repayments that Mr J has made after the car was left with the dealership should be refunded to Mr J, with interest.

Interest should be calculated at 8% simple per year on each of the refunded payments, from the date of payment until the date of settlement.

If BMWFS has applied any adverse information to Mr J's credit file, this should be removed.

Finally, reference has been made to Mr J's agreements possibly being voluntarily terminated. It is not entirely clear if the agreement has been voluntarily terminated or not. But for clarity, if the agreement was voluntarily terminated, it should be treated as set out above with the appropriate refunds that I have referred to.

My final decision

My final decision is that I uphold Mr J's complaint and direct BMW Financial Services (GB) Limited to settle the complaint in accordance with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 May 2024.

Mark Hollands
Ombudsman