

The complaint

Mrs R complains that a car supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS") was of an unsatisfactory quality.

What happened

In October 2022, Mrs R was supplied with a new car through a hire purchase agreement with BMWFS. The agreement was for £50,819.48 over 48 months, with monthly repayments of £760 and a final optional repayment of £23,773.20. Mrs R also paid a cash deposit of £1,797.34.

During the first year of the car's life it experienced a significant number of problems – Mrs R reports that it was taken into the garage for investigation or repair on 13 separate occasions. The problems included the replacement of the brake control arms, a whistling noise when driving from the sunroof area, unexpected seat belt alarms, failure to connect phones to the Bluetooth system, and a steering vibration when manoeuvring at low speeds.

Mrs R complained to BMWFS that the car was not of a satisfactory quality when it was supplied. BMWFS told Mrs R that it considered all the faults that had been identified had been successfully repaired by the car dealer. And it said that it didn't have sufficient evidence that any faults remained, so Mrs R wasn't entitled to reject the vehicle. Unhappy with that response Mrs R brought her complaint to us.

Mrs R's complaint was assessed by one of our investigators. The investigator issued her first assessment of the complaint in December 2023. She said that she was satisfied, from the evidence provided by both parties, that appropriate repairs had been completed on Mrs R's car. So she didn't think Mrs R should be allowed to reject the vehicle. But she said the problems would have caused distress and inconvenience to Mrs R so she asked BMWFS to pay £300 in compensation. She asked both parties to provide a response to the assessment by 4 January 2024.

BMWFS didn't respond by that date. But Mrs R provided some further information to show that some of the faults remained unrepaired, such as the seat belt alarms and mobile phone connection problems. So our investigator issued a new assessment, at the end of January 2024, saying that she now thought the appropriate remedy would be to allow Mrs R to reject the vehicle. And she increased the compensation she was asking BMWFS to pay for Mrs R's inconvenience to £450.

BMWFS responded to say that it accepted the investigator's findings. It collected Mrs R's car on 9 April 2024. But it later said that its acceptance of the investigator's findings was in response to the initial assessment. It said that it hadn't agreed to Mrs R's rejection of the car but it paid Mrs R the £450 our investigator had recommended for her inconvenience.

It appears that BMWFS recovered Mrs R's car to the supplying dealer who has conducted further investigations and repairs on the car. It identified and repaired a further problem with the sunroof seal that was causing the whistling noise. But it was unable to reproduce the problems Mrs R reported with the steering shudder.

So, as BMWFS didn't agree with the investigator's latest assessment, and therefore the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mrs R accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs R and by BMWFS. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Mrs R was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of finance used to purchase the car, BMWFS is responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the fact the car was new when supplied, and that it was from a premium brand.

The CRA also implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. So here I will consider when the faults can reasonably be considered to have occurred. If that is within the first six months it would be for BMWFS to establish that any faults were not present at the time of sale.

I am entirely satisfied that Mrs R's car has faced a series of problems since it was supplied. Whilst I accept some of those problems have been first identified more than six months after the car was supplied I haven't seen anything to make me think that the problems have arisen as a result of mistreatment of the car, such as accident damage, or Mrs R's driving style. So at the very least, even if I considered the problems had not all been present or developing at the point of supply, I am satisfied they would indicate a lack of suitable durability of some components of the car. So I am persuaded that BMWFS should be responsible for putting things right.

Section 24(5) of the CRA says that a consumer who has the right to reject may only exercise this if after one repair or replacement, the goods do not conform to contract. This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs – in other words it's not a single chance of repair for the dealership AND a single chance of repair for BMWFS – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, as was the case here, then the customer has the right of rejection. However, this doesn't mean that the customer is required to reject the car, and they can agree an alternative remedy such as further repairs to the car. And that is what I am persuaded happened up until shortly after our investigator issued her first assessment. Mrs R had provided BMWFS with a number of opportunities to repair her car, and it seemed matters had been resolved.

But when further problems arose or, I think in this case, previous repairs had failed to correct the problems, it would be reasonable for Mrs R to reconsider her options and seek rejection of the car. I think those actions are entirely compatible with her rights under the CRA. Mrs R has told us that is what she now wishes to do, and I think that would be reasonable.

As I said earlier, BMWFS arranged for Mrs R's car to be collected on 9 April 2024. I think that would be a reasonable date for me to conclude the rejection of the car happened. So I will further direct that any payments Mrs R has made for the car after that date be refunded to her.

There is no doubt that these matters will have caused distress and inconvenience to Mrs R. She purchased a new premium vehicle and has suffered a large number of faults that would suggest it was not of a satisfactory quality when it was supplied. I think the £450 compensation the investigator recommended for that inconvenience, and that BMWFS has already paid, is appropriate. So I won't be making any further award of that nature.

Putting things right

I am satisfied, under the CRA, that it would be reasonable for Mrs R to reject the car. And given the car has already been collected by BMWFS I consider the date of collection should be deemed the date of rejection. So, to put things right, BMWFS should;

- Terminate Mrs R's hire purchase agreement with nothing further to pay.
- Refund any payments Mrs R has made under the agreement since 9 April 2024.
- Refund the deposit of £1,797.34 that Mrs R paid.
- Add interest of 8% simple a year on any refunded amounts from the date they were paid to the date of settlement. HM Revenue & Customs requires BMWFS to take off tax from this interest. BMWFS must give Mrs R a certificate showing how much tax it's taken off if she asks for one.
- Remove any adverse information relating to this agreement that it has added to Mrs R's credit file.

My final decision

My final decision is that I uphold Mrs R's complaint and direct BMW Financial Services (GB) Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 July 2024.

Paul Reilly
Ombudsman

