

The complaint

Mrs M complains about a used car she acquired through a hire purchase agreement with BMW Financial Services (GB) Limited (BMWFS). She has complained about the quality of the car, that it has a number of faults and is unhappy that BMWFS has not accepted her request to reject the car.

What happened

In November 2023 Mrs M acquired a used car that cost almost £30,000. At the time it was almost six years old and had travelled 22,341 miles. Immediately after receiving the car Mrs M complained about a number of issues with it, both to the dealership and BMWFS. The dealership said it was unable to find fault with the car and BMWFS rejected Mrs M's complaint on this basis.

Mrs M remained unhappy and contacted our service, where her complaint was considered by one of our investigators. They set out why they considered the complaint should be upheld and ultimately that the car was not of satisfactory quality when it was supplied to Mrs M. The investigator recommended BMWFS now end Mrs M's agreement, take back the car and compensate her for the monetary amounts Mrs M has lost. BMWFS should also make an additional payment to compensate Mrs M for the distress and inconvenience she had been caused.

Mrs M accepted the investigator's findings. BMWFS did not initially respond, so the complaint has been passed to me so a final decision can be issued. BMWFS did then respond, some considerable time after the investigator sent their view of the complaint, proposing and independent inspection is carried out.

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 and 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 Mrs M 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. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the Consumer Rights Act 2015 refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods, (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It is reasonable in my view to note the car here was not new and had already travelled some miles at the time of supply. So, it would be unreasonable to expect a used car like this to be in the same 'as new' showroom condition which it would have been when first supplied. But just because the car was used with some mileage, doesn't mean that BMWFS has no requirements in relation to satisfactory quality.

Mrs M says she noticed problems with the car straight away and this included a banging from the suspension, a problem with the car locking, a burning smell from the bonnet area and the stop start function was not operating. All of these issues were I understand raised immediately after Mrs M taking possession of the car. BMWFS has relied upon what it has been told by the dealership and that when the car was inspected, no faults could be found.

When asked for supporting evidence of the car being faulty, Mrs M has provided several photos of the car's dashboard showing different warning lights and descriptions. She has also provided an independent diagnostic report that shows several faults/fault codes recorded on the car. While I have noted what BMWFS has said about no faults being found by the dealership, having considered all that both parties have said and provided I am satisfied there are faults with the car and considering how quickly these were raised, these were likely present when the car was supplied to Mrs M.

BMWFS has recently suggested an independent report is commissioned but as referred to here already, Mrs M has supplied supporting evidence showing the car has a number of issues. I do not therefore consider a report is necessary, especially some considerable months after Mrs M initially complained and the investigator sent their view.

Having considered the age and mileage of the car when supplied to Mrs M, and noting the cost of the car was almost £30,000 at that time, along with the requirements of the Consumer Rights Act 2015, I am satisfied the car was not of satisfactory quality at the time it was supplied to Mrs M. It is clear there are some significant issues with the car, as evidenced by the warnings and diagnostics, and I would not expect to see these types of issues occur so quickly after the car was supplied on a car of this age, mileage and price.

Putting things right

Mrs M contacted the dealership and BMWFS within the first 30 days of taking possession of the car and in the circumstances here I am satisfied that Mrs M should have been allowed to reject the car at that time. This is a remedy set out within the Consumer Rights Act 2015 and something Mrs M was entitled to under the Act. I'm also satisfied it would have been fair and reasonable in the circumstances here for Mrs M to have been allowed to reject the car.

BMWFS should now cancel Mrs M's hire purchase agreement with nothing further owed. The deposit payment of £9,511 should be refunded, with interest. The car should be collected from Mrs M, with Mrs M not being liable for any associated costs of the collection.

If BMWFS has recorded any adverse information on Mrs M's credit file, this should be

removed.

Mrs M has referred to paying £489 for a GAP policy and I agree that she has had no benefit from the policy so it would be reasonable for Mrs M to receive a refund of this amount in full. This is assuming the GAP cost was not included in the amount financed through the hire purchase agreement.

Mrs M has also paid £99 for a diagnostics report and £35 for a wheel alignment report that she should not have needed to have paid. These amounts should also be refunded to her, again with interest.

Interest should be added to the refunded sums and calculated at 8% simple per year, from the date of each payment until the date of settlement.

Finally, I'm satisfied that Mrs M has been caused some distress and inconvenience having been supplied with a car that was not of satisfactory quality. She was required to get further reports and work done to the car and I'm sure the issues have also affected her enjoyment of driving the car. BMWFS should pay Mrs M an additional £400 in recognition of this.

If the complaint is not settled within 28 days of Mrs M accepting this decision, BMWFS should also add interest, at the same rate as above, to the £400 payment from the date of this decision until the date of settlement.

My final decision

My final decision is that I uphold Mrs M's complaint and direct BMW Financial Services (GB) Limited to settle the complaint in line with what I have set out above in the putting things right section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 November 2024.

Mark Hollands
Ombudsman