

The complaint

Mr O has complained that a car he acquired, using finance from BMW Financial Services(GB) Limited ('BMWFS'), wasn't of satisfactory quality at the point of supply. He's also said the agreement was misrepresented to him.

What happened

Mr O entered into a finance agreement with BMWFS for a used car. However, he feels it wasn't of satisfactory quality, because of issues with the bodywork, headlights and wheels. He also said that the agreement was misrepresented to him, because he was promised two free services by the dealership, but wasn't sent the vouchers.

One of our investigators looked into what had happened. He noted that the car was around three years old when it was supplied, and had around 11,000 miles on the clock. So, it would be reasonably expected that parts of the car might have already suffered some wear and tear. He could see from the photos Mr O provided, that there were issues with the bodywork, headlamps and wheels. But, he explained that this doesn't necessarily mean that the car wasn't of satisfactory quality when it was supplied. He felt that Mr O had the opportunity to inspect the car when he collected it, and accepted the condition it was in. The bodywork and headlamp problems are cosmetic issues, which could reasonably have been picked up at that point.

However, he could see that the issues with the wheel paint weren't apparent at the time of supply. Mr O has provided photos of the car from around that time, which show none of the paint had peeled away from the wheels. He thought it likely the alloy wasn't properly prepared before the paint was applied, so the paint is now peeling away prematurely from all four wheels. So, he thought it would be fair for BMWFS to cover the cost of putting this right.

As regards the services, our investigator didn't think that any promise made by the dealership would have been sufficient to induce Mr O to enter into the finance agreement. This would be required for there to be a misrepresentation that BMWFS can be held responsible for.

As Mr O disagreed, his complaint was passed to me. I was minded to agree with the outcome reached by our investigator. However, I intended to award a different remedy to the one he proposed. So, I issued a provisional decision, explaining why and giving both parties the opportunity to respond. In my provisional decision, I said as follows.

I'm minded to agree with our investigator's findings, and for the same reasons he gave. I'm satisfied that the issues with the bodywork and headlights would have been reasonably clear when Mr O collected the car. I'm aware he said the light was poor, but I'm also mindful that he didn't bring these issues up for quite some time – so would have had sufficient time to see them in broad daylight. So, I don't think these need to be put right.

However, I agree that the issues with the alloys wouldn't have been clear at the point of supply, and are likely down to poor durability. So, I agree these should be put right. BMWFS should arrange this at no cost to Mr O. I also consider that having this issue would have

impacted Mr O's enjoyment of the car. This means I think he should be refunded 5% of his monthly repayments, from the date he complained about this issue, to the date it is resolved.

Finally, I've considered the issue regarding the free services. Mr O has explained that when he first went to collect the car, it wasn't ready, so he had to go back. As I understand it, it was for this reason that the dealership made the offer – as a form of apology. But, Mr O says he never received free service vouchers. For there to be a misrepresentation, there must be a false statement of fact, that induced the consumer to enter into the contract. Here, I'm not satisfied these criteria are met. It's clear that Mr O had already decided to enter into the agreement for the car, because it was when he went to collect it that the service issue was first mentioned. So, it cannot reasonably amount to an inducement to enter into the contract. As an aside, it's also not clear that the dealership has refused to honour any promise it may have made. But, as this has no bearing on my decision, I won't comment on this further.

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.

As both BMWFS and Mr O agreed with my provisional decision, I am not departing from it. That decision now forms my final decision.

Putting things right

To put things right, BMW Financial Services(GB) Limited must:

- carry out repairs to the alloy wheels at no cost to Mr O; and
- refund him 5% of his monthly repayments, from the date he complained about this issue, to the date it is resolved, adding 8% simple interest a year, from the date he raised the matter, to the date of settlement.

My final decision

It's my final decision that BMW Financial Services(GB) Limited must take the actions set out above, in the section entitled 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 August 2024.

Elsbeth Wood
Ombudsman