

Complaint

Mr W has complained about the quality of a car that BMW Financial Services (GB) Limited (trading as “BMW FS” Financial Services) supplied to him through a hire-purchase agreement.

Background

In December 2022, BMW FS provided Mr W with finance for a used car. The car was just over four years old and it is my understanding that it had completed 34,535 miles at the time of sale. The cash price of the vehicle was £22,950.00. Mr W paid a deposit of £5,000.00 and applied for finance to cover the remaining £17,950.00 required to complete the purchase. BMW FS accepted Mr W’s application and entered into a 36-month hire-purchase agreement with him.

The loan had an APR of 10.9%, interest, fees and total charges of £4,751.45 and the total amount to be repaid of £22,701.45 (not including Mr W’s deposit) was due to be repaid in 35 monthly instalments of £295.38 followed by an optional final payment of £12,363.15 which Mr W only had to pay if he wanted to keep the vehicle at the end of the agreement.

Mr W experienced issues with the amplifier within three months of taking delivery. However, he agreed to a repair at this stage. As I understand it, this repair failed shortly afterwards and the amplifier was replaced for a second time. This and further replacements did not result in the matter being resolved either and by April 2024 the amplifier was replaced for a sixth time.

Mr W complained to BMW FS in February 2024. BMW FS did not issue its final response to Mr W’s complaint within its allotted eight weeks. As a result, it let Mr W know that he had the right to refer his complaint to our service at this point and Mr W did so.

Mr W’s complaint was subsequently reviewed by one of our investigators. He thought that BMW FS supplied Mr W with a vehicle that was not of satisfactory quality. So he upheld Mr W’s complaint and thought that Mr W should be able to reject the vehicle.

Despite being given more than one extension to the period of time to do so, BMW FS didn’t respond to our investigator’s view. As this is the case, the complaint was passed forward to an ombudsman as per the next stage of our dispute resolution process.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

BMW FS’ total lack of engagement with Mr W’s complaint means it is difficult for me to know what its position on this matter is. The correspondence between it and the supplying dealer appears to indicate an acceptance that Mr W was supplied with a vehicle that wasn’t of satisfactory quality. But BMW FS and the supplying dealer are in dispute over who should be responsible for resolving matters.

I think that this is disappointing considering that Mr W is a customer of both firms and they not only both played their own part in Mr W ending up in the position he's now in, but they both have their own individual responsibilities and obligations in order to put matters right. Simply passing the buck to the other firm is wholly unacceptable.

In any event, given the lack of clarity of BMW FS' position, I'm satisfied that what I firstly need to decide is whether the car that BMW FS supplied to Mr W was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for BMW FS to do put things right.

Having carefully considered matters, I'm satisfied that the vehicle BMW FS supplied to Mr W was not of satisfactory quality and I'm therefore upholding Mr W's complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, BMW FS purchased the vehicle from the dealership Mr W visited. Mr W then hired the vehicle from BMW FS and paid a monthly amount to it in return. BMW FS remained the legal owner of the vehicle under the agreement until Mr W's loan was repaid.

This arrangement resulted in BMW FS being the supplier of Mr W's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Mr W's agreement with BMW FS. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

Is there a fault with the vehicle?

Having considered everything provided, I'm satisfied that there is a fault currently present on the vehicle. There are a number of reports all pointing to the fact that the amplifier has been replaced on the vehicle on numerous occasions. Furthermore, I've also seen an email from the supplying dealer to BMW FS explaining that, by May 2024, Mr W had spent more time out of the car than in it as a result of the problem. So I'm satisfied that there is a fault with the vehicle.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, meant that the car wasn't of satisfactory quality at the point of supply.

Why I don't think that Mr W was supplied with a vehicle of satisfactory quality

Mr W acquired a car that was used – it was just over four years old when it was sold and had completed just under 35,000 miles. I accept that there would be different expectations regarding its quality when compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors.

In this case, Mr W began having difficulties with the vehicle within three months of taking possession. This resulted in the vehicle having no sound at all and as a result a warranty repair was carried out. The CRA does permit a repair as a remedy to a fault – such as that with the amplifier in this case - as long as the repair is carried out within a reasonable time and without significant inconvenience to the consumer.

Given Mr W was left without the vehicle for three months, there is an argument for saying that this in itself means that the repair was not within a reasonable time and without significant inconvenience to him. That said, irrespective of whether the repair was carried out within a reasonable time and without significant inconvenience to Mr W, as the amplifier has had to be replaced a further five times, I'm satisfied that, in any event, there is clear evidence to show that this repair was not successful.

Indeed, while I accept that I am not a mechanic or an engineer, it does appear fairly clear to me that there has been a recurring theme of issues manifesting themselves in the amplifier failing. It also seems apparent, from the sheer number of replacements, that the authorised repairer has simply repaired the symptom, rather than attained an understanding of what is at the root cause of these issues.

I say this because all of the job sheets that I have seen suggest that the amplifier was simply replaced on each occasion. I've not been provided with anything to demonstrate that there has been any investigation into what was causing the failures and why so many amplifiers required being replaced in this way. This is notwithstanding the fact that it is in itself somewhat out of the ordinary for the same repair and part replacement to take place on a vehicle on so many occasions over such a period.

I don't think that a reasonable person would expect Mr W to have had so many issues with the sound on the car which he'd paid close to £23,000.00 for, within such a short period. Furthermore, I'm mindful that the supplying dealer has also confirmed that Mr W has been without the vehicle for a larger period of time than he has had use of it.

As this is the case, I'm satisfied that the fault that is currently present on the vehicle, which has had at least six repairs to it, means that the car wasn't of satisfactory quality when BMW FS supplied it to him.

What BMW FS needs to do to put things right for Mr W

Mr W wants to be able to reject the vehicle. Indeed he advised BMW FS that this was the case and formally complained to BMW FS before the fifth and sixth repairs took place. Equally, as I've previously explained, amongst the correspondence between BMW FS and the supplying dealer there appears to be a degree of acceptance that Mr W should be able to reject the vehicle – albeit there is no clear agreement over how this will be done.

As there is no clear agreement between the parties, I've gone on to think about what BMW FS needs to do to put things right as a result of supplying him with a vehicle that was not of satisfactory quality.

In reaching my own conclusion on what an appropriate remedy would be here, I've briefly considered whether it would be fair and reasonable for a repair to take place. However, I'm mindful that the amplifier has already been replaced six times in fifteen months. In these circumstances, I'm not persuaded that there is a sound rationale for the supplying dealer to repair the vehicle.

In my view, the sheer number of repairs that have already taken place does not leave me confident that a further repair would even resolve the issue – particularly as, as I've already

explained, I'm not satisfied that there has been an attempt to identify the reason why the amplifier keeps failing. In my view, we're far past the point where a repair of the fault would be a fair and reasonable resolution.

I'd even go as far as to say that part of the reason things have taken so long here is because BMW FS and the supplying dealer have pushed Mr W down the repair route, (and Mr W was even persuaded to purchase an additional extended warranty), rather than accept the conclusion that the vehicle should be rejected, even though this has appeared inevitable for some time.

In these circumstances, I'm satisfied that the fair and reasonable resolution here would be for Mr W to reject the vehicle and for BMW FS to collect it from him, or any garage it should now be at. As Mr W will have rejected the vehicle, I'm satisfied that BMW FS should end its agreement with him and ensure that he has nothing further to pay on it. This will seek to place Mr W in the position he would be in had he not entered into the hire-purchase agreement in the first place, so I'm satisfied that BMW FS should refund Mr W the £5,000.00 deposit he paid as part of the agreement with interest at 8% per year simple.

Mr W appears to have had use of the car itself, or a replacement courtesy car, for most of the period he's made his payments. Although I've noted that there were periods of December 2023 where he had access to neither the car itself nor a replacement. In the circumstances, I'm satisfied that BMW FS should refund the December 2023 payment to Mr W, plus interest at 8% a year simple.

Mr W has also provided evidence to show that he has been paying £54 a month for an extended warranty from BMW FS (or an affiliated company within the group). I think that Mr W, quite reasonably, incurred this cost as an attempt to mitigate against the possibility that the amplifier would continue to fail after the warranty supplied with the vehicle expired.

I'm therefore satisfied that Mr W has incurred this cost as a result of BMW FS having supplied him with a car that was not of satisfactory quality. BMW FS should refund Mr W any payments he's made for the warranty and also ensure that either no further payments for the warranty are taken from him, or liaise with the relevant company to ensure that the policy is cancelled going forward and no further payments are taken, with interest at 8% a year simple on any refunded amounts.

I've also considered the distress and inconvenience that Mr W experienced and the impact of him being without the vehicle he was making monthly payments for, for a longer period of time than he actually had it. I appreciate that Mr W has had to take time to contact the supplying dealer and has consistently chased BMW FS in an attempt to rectify matters.

He has also had the stress of arranging and getting to and from garages, for six separate repairs to take place, to deal with, with no assistance from BMW FS. I don't think that the finance manager at the supplying dealer being busy is a reasonable explanation for the complete lack of assistance BMW FS provided to Mr W.

Having considered all of this, I'm persuaded that Mr W was caused a significant amount of distress and inconvenience as a result of BMW FS supplying him with a car that was not of satisfactory quality. So I think that BMW FS should pay Mr W £500 for the distress and inconvenience caused by its actions.

Fair compensation – what BMW FS needs to do to put things right for Mr W

Overall and having considered everything, I think it is fair and reasonable for BMW FS to put things right for Mr W by:

- collecting the car from Mr W at no cost to him;
- ending the hire-purchase agreement and ensuring that Mr W has nothing further to pay. BMW FS should also remove any adverse information it may have recorded against Mr W as a result of this agreement from his credit file;
- refunding his deposit and his December 2023 monthly payment;
- reimbursing him all the payments he's made on the extended warranty and ensuring that he has no further payments to make on this;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Mr W to the date the complaint is settled†;

† HM Revenue & Customs requires BMW FS to take off tax from this interest. BMW FS must give Mr W a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr W's complaint. BMW Financial Services (GB) Limited should put things right for Mr W in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 November 2024.

Jeshen Narayanan
Ombudsman