

The complaint

Mr M complains that the car supplied by BMW Financial Services(GB) Limited trading as Alphera Financial Services wasn't of satisfactory quality when supplied. Mr M wants to reject the car, terminate the credit agreement and be reimbursed for the diagnostic report he paid for.

Mr M is represented in his complaint. For ease of reading, any reference to "Mr M" refers to the testimony of both Mr M and his representative.

What happened

Mr M entered into a hire purchase agreement in December 2023 to acquire a used car. The total amount of credit provided was £29,489, and this was to be paid through the credit agreement which was set up over a 42-month term. His monthly payments were £549.46, with an optional final payment of £16,652 if he wished to keep the car, meaning the total repayable under the agreement would be £39,729.32. At the time of acquisition, the car had been driven nearly 20,000 miles.

Mr M told us:

- The car has had issues with water ingress which has caused damage, and resulted in the sound system to stop working, and although the supplying dealership said it had completed repairs, the sound system is still faulty;
- in May 2024, the sound system failed and was making a constant thudding sound, even with the engine turned off and the key removed;
- on checking the amplifier to locate the mains to switch it off, he discovered it was *"swimming in a puddle of water"*;
- he contacted the supplying dealership the following day and was advised that rejecting the car was not an option; the supplying dealership was exercising its right to a repair, and it would collect the car with a recovery truck so that additional miles were not incurred which he'd have to pay for at the end of the agreement;
- the car was collected on 5 June 2024 *without* a recovery vehicle, and a courtesy car was left for him to use. After repairs had been completed, the car was returned on 17 June – again without the use of a recovery vehicle – and the courtesy car was collected;
- on 19 June, he drove the car and noticed that the sound system was not working correctly – the repairs had been unsuccessful – one of the speakers had no sound;
- he took a look at the amplifier and noticed it wasn't secure, and that there was a part missing. And although he contacted the supplying dealership, he was simply ignored;
- he contacted BMW and was told he was allowed to reject the car and end the finance as the repair had been unsuccessful, but BMW asked him to have diagnostics undertaken and said it would reimburse him the £120 cost of the inspection and report – but he's not been re-imbursed;
- the diagnostic report said:
 - *"The car previously had work carried out due to the amp obtaining water damage which had affected sound output in the vehicle;"*

- *identified the amp fitted to the car is a non-genuine BMW amp, and is no longer secure on the bracket;*
- *there was no evidence of the seals being replaced due to the previous water damage.*
- *The drain plug which is situated underneath the amp, left side of the boot, is missing.*
- *After further inspection we have identified that the vehicle is installed with an aftermarket sound system, speakers, tweeters and amp”.*
- he’s had to pay for a diagnostic report and he continues to pay for a car that was not of satisfactory quality when supplied.

BMW rejected this complaint. It said it had *“relayed your concerns to the supplying dealership. Upon review, they have confirmed that the current faults with the vehicle were not present or developing at the point of sale and were caused by the drains becoming clogged post sale...this vehicle will require regular maintenance to clear them and as such we are unable to support rejection at this time”.*

Unhappy with BMW’s position, Mr M brought his complaint to his Service. And he said that, *“the vehicle still has the same issues / faults after the 'right to repair' was unsuccessful. These faults are: Loose, unsecured AMP, No Sound/Bass on Passenger Door Speakers, Bung Missing from underneath the AMP, Not water tight in AMP area, Still Damp with Water finding its way in. Also, the identified faults following the BMW diagnostics report”.*

BMW provided this Service with details of its communications with the supplying dealership, and although it had stated that it was clear the repairs had failed and that Mr M should be allowed to reject the car, the supplying dealership was adamant that this was not the approach that should be taken. It told BMW that the issues that have arisen are the result of Mr M failing to maintain the car, so they couldn’t have been present at the point of sale. And it was prepared to undertake further repairs to plug the drain and re-fit the amp.

Our investigator looked at this complaint and said that he thought it should be upheld. He said there were clearly things that were wrong with the car, and he didn’t think that BMW had acted fairly in the circumstances. He explained the relevance of the Consumer Rights Act 2015 in this particular case and said he hadn’t seen any evidence that the issues were not present or developing at the point of supply. He went on to conclude that no reasonable person would expect to have to consider where they parked their car in case falling leaves or debris blocked the car’s drainage capabilities resulting in damage to the sound system.

He explained that because faults and issues remained after the supplying dealership’s attempt at repair, it would be safe to conclude that the repairs had not been effective, and because of this Mr M should be permitted to reject the car and end the finance agreement. And he asked BMW to pay some compensation to Mr M in recognition of the distress and inconvenience he’d experienced.

BMW disagrees so the complaint comes to me to decide. It says Mr M failed to maintain the car and clear leaves and debris from it resulting in the water ingress. And it noted that Mr M had continued to drive the car knowing about the fault.

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.

Having considered all the evidence and testimony from both Mr M and BMW afresh, I've reached the same conclusion as our investigator and for broadly the same reasons. I'll explain why.

The hire purchase agreement entered into by Mr M is a regulated consumer credit agreement which means that this Service is able to consider complaints relating to it.

I note here that BMW has referred to the dealership as if it decides what happens in the resolution of this complaint. However, I remind BMW that it is the supplier of the goods under this type of agreement, and so it is responsible for a complaint about their quality. It follows that I have taken into account the comments of the dealership as if they were made on behalf of BMW in its role as the supplier.

The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory".

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods. So, what I need to consider in this case is whether the car *supplied* to Mr M was of satisfactory quality or not.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMW can show otherwise. But, if the fault is identified after the first six months, then it's for Mr M to show the fault was present when he first acquired the car. So, if I thought the car was faulty when Mr M took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMW to put this right.

I don't think there's any dispute about the problems that Mr M has experienced with the car. This has been well evidenced by his credible testimony and the photographs and the job sheet he's sent to us. And there's no indication that either BMW or indeed the supplying dealership dispute what he's said is wrong with the car – the supplying dealership agreed to the first attempt at repairs.

BMW says that Mr M didn't maintain the car, he needed to clear the leaves and debris from it. And it says it doesn't think he did this because of the very few miles he drove the car – so it presumes that the car was simply stationary accumulating leaves and debris. But it's provided no evidence to support this assertion. Moreover, under the CRA, the onus is on BMW to evidence that the faults with the sound system were neither present nor developing at the point of supply – evidence of which it has also failed to provide. The absence of any such evidence, taken alongside the findings of the diagnostic report, and the willingness of the supplying dealership to undertake repairs, leaves me to conclude that it's *more likely than not* that the car was not of satisfactory quality when first supplied.

Because the car was not of satisfactory quality, Mr M was entitled to a repair or replacement under the CRA and I note that repairs were undertaken by the supplying dealership. But that when the car was returned, there were still faults with the sound system.

However, it is important to note here that the CRA only allows one attempt at fixing goods of unsatisfactory quality (not individual faults) before the consumer is entitled to other remedies – including rejection. It follows, that as I am satisfied (after this initial repair) the car continued to suffer from further inherent faults or failed repairs, then it would be fair for Mr M to be able to reject it in accordance with his consumer rights as set out in the CRA.

I can see Mr M has been able to use the car, the fault did not prevent him from driving it – irrespective of whether he chose to do so or not. And our Investigator said he thought Mr M should fairly pay for this use. So, I agree it's fair that BMW retains the majority of his monthly payments to date. However, Mr M should get some money back to reflect that the use of the car has been impaired by the issues with the sound system.

It is not a science working out what an impaired use refund looks like. But the problems have been present for some time. Therefore, I think the investigator's recommendation of a refund of 5% of each monthly payment from inception to date of settlement is fair to reflect impaired use here.

It also appears that Mr M has been caused distress and inconvenience by the issue and trying to get the matter resolved. So, I think it also fair he gets £150 compensation in recognition of this.

Putting things right

I direct BMW Financial Services(GB) Limited trading as Alpheria Financial Services to put things right by doing the following:

- ending the agreement with nothing further to pay;
- collecting the car (if this has not been done already) at no further cost to Mr M;
- paying a 5% refund of each monthly payment for impaired use of the car because of the inherent quality issues;
- refunding Mr M the cost of the diagnostics report upon his production of a receipt;
- removing any adverse information (if any) from Mr M's credit file in relation to the agreement;
- paying 8% simple interest on the refunded and reimbursed amounts from the time these payments were made to the date of settlement*.
- paying a further amount of £150 for the distress or inconvenience that's been caused due to the faulty goods.

*HM Revenue & Customs requires BMW Financial Services(GB) Limited trading as Alpheria Financial Services to take off tax from this interest. BMW Financial Services(GB) Limited trading as Alpheria Financial Services must give Mr M a certificate showing how much tax has been taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint and require BMW Financial Services(GB) Limited trading as Alpheria Financial Services to settle this complaint as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 April 2025.

Andrew Macnamara
Ombudsman