DRN-5238418

The complaint

Mr W complains that a car acquired under a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS") wasn't of satisfactory quality when it was supplied to him.

What happened

The parties are familiar with the background of this complaint so I will only summarise what happened briefly here.

In May 2024, Mr W entered into an agreement to acquire a brand-new car from a dealership (V). He paid a deposit for the car, with the balance being provided under a hire purchase agreement with BMWFS. The agreement was for 48 months, with monthly repayments of £399.35 and an optional purchase payment due at the end of the agreement if Mr W wanted to keep the car. The cash price of the car was £31,122.85.

Mr W noticed that the yellow warning light was illuminated suggesting the collision sensors had been deactivated. He also noticed the lane assist software was pulling the car sideways, and the car would occasionally brake when not in a position of danger of a collision. He took the car back to V in mid-August 2024. They said they couldn't find any issues, but Mr W has said the light was illuminated again as soon as he took the car away.

He took it back to V a couple of weeks later, and V still said there weren't any faults with the car. Mr W complained to BMWFS as he said the car wasn't of satisfactory quality. BMWFS didn't uphold his complaint. They said V had provided two job cards that confirmed no fault had been found, so BMWFS couldn't conclude the car had a fault and that it had been present from the point of supply.

Mr W brought his complaint to our service. Our investigator upheld it and said that Mr W could reject the car. He said he was persuaded by Mr W's evidence that there was a fault with the collision sensors – they appeared to be deactivated all the time – and, because the car was brand-new when supplied, it was of unsatisfactory quality because of this defect. He said BMWFS should refund 5% of all Mr W's monthly payments made, as well as his deposit, and pay him £200 compensation for being supplied with a new car of unsatisfactory quality.

BMWFS didn't agree. They maintained the job cards confirmed there wasn't a fault with the car.

As BMWFS didn't accept, the complaint has been passed to me to decide.

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.

Both parties have provided a lot of information here. I'd like to reassure them that I've read and considered everything that's been sent, although I haven't commented on it all within this decision. I will be focussing on what I consider to be the key points of this complaint.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice.

I think it's worth starting by explaining that I'm only looking at BMWFS's responsibility here as the finance provider for the car. Mr W has voiced concerns about V and the service they've provided to him post-sale – but at that time they weren't acting as agents of BMWFS, and BMWFS can't be held responsible for anything V have or haven't said or done post-sale.

As the hire purchase agreement entered by Mr W is a regulated consumer credit agreement this service is able to consider complaints relating to it. BMWFS are also the supplier of the goods under this type of agreement and are responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr W entered. Because BMWFS supplied the car under a hire purchase agreement, there's an implied term that it is of a satisfactory quality at the point of supply. Cars are of a satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as, amongst other things, the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods.

But, on the other hand, satisfactory quality also covers durability. For cars, this means the components must last a reasonable amount of time. Of course, durability will depend on various factors. In Mr W's case, the car was brand-new, and it wouldn't be expected to have any quality or durability concerns.

Our investigator has explained that he thinks the car wasn't of satisfactory quality when it was supplied to Mr W. I agree in this case. I'm satisfied that there is no doubt the car has had a malfunction of some of its safety features – and continues to have them – and the evidence provided by Mr W in this case is very persuasive. From what I've seen from both parties, I'm persuaded that the car wasn't of satisfactory quality when it was supplied to him. I'll explain why.

The CRA explains that where goods are found not to have conformed to the contract within the first six months, it is presumed the goods didn't conform to the contract at the point of supply. Unless the supplier, BMWFS in this case, can prove otherwise. Mr W brought the problems with the collision sensors, lane assist and automatic braking system to BMWFS's attention in September 2024, four months after he'd been supplied with it. So, I need to consider if BMWFS have done what I'd expect them to have done once they were aware there were concerns with the car.

BMWFS have provided two job cards from V, both from August 2024 and both confirming that Mr W was experiencing problems with the collision sensors (the yellow warning light was illuminated on the dashboard), as well as the lane assist and the automatic braking system. BMWFS have said that no fault was identified by V on either occasion, even after the car had been road tested, and therefore there isn't anything to suggest the car wasn't of satisfactory quality. However, V have also confirmed to BMWFS that the driver assistance systems do have functional limitations that can temporarily deactivate them. But they don't consider that to be a fault.

Mr W has questioned the information V have given to BMWFS, as he has said the app that is aligned to the car confirmed the car hadn't moved and no mileage had been added to it while it had been with V. I don't have any evidence of this – but I do have Mr W's evidence that shows the driver assistance systems failing in all different conditions. He has provided photos and videos that show the warning lights illuminated in the following situations:

- When the road ahead is clear of any obstruction.
- When the car is approaching a roundabout.
- When the car is stationary.
- When the car is in 'Park' mode.

Based on the evidence provided by Mr W, I'm not persuaded the driver assistance systems are temporarily deactivating as suggested by BMWFS. The evidence shows the warning lights are on in different conditions and even when the car isn't being driven. I can't conclude the systems are temporarily deactivating if they appear to be showing a warning all the time – this suggests to me that the driver assistance systems are never active in the car. And, it follows that I'm persuaded that is a fault under the CRA as the car appears to have a defect. BMWFS may argue that it's a minor defect – but the conditions of the CRA don't allow for a minor defect when considering this was a brand-new car. The CRA also covers safety, and it's possible the issues being seen with the driver assistance systems call the safety of the car into question too.

The CRA allows for one attempt to repair. But the car has been back to V twice already, and the defect with the driver assistance systems is still present. As a repair attempt hasn't been successful, Mr W can now reject the car. BMWFS should end the agreement and stop collecting any monthly repayments from Mr W. They should also arrange to take the car back without charging Mr W for collection.

Mr W has had use of the car whilst it's been in his possession, although that use has been impaired because of the defect. The CRA says that a deduction can be made from any refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure. That said, I do think it's fair that Mr W pays for the use he's had from the car since being supplied with it. Our investigator has said that BMWFS should refund Mr W 5% of all his monthly payments to reflect the impaired use he's had of the car. I'm satisfied that's reasonable in the circumstances of the case.

Mr W has explained the impact being supplied with a car of unsatisfactory quality has had on him. He acquired a brand-new car and was looking forward to using it, and that has been negated by the problems he's experienced after such a short space of time in possession of it. He has explained that the car feels unsafe, and he's changed plans at times to avoid having to use it. No amount of money can change what's happened. But the compensation I'm awarding is in line with what's awarded where the impact of the mistake has caused considerable distress, upset and worry. BMWFS must pay Mr W £200 compensation to reflect the inconvenience of being supplied with a car that wasn't of satisfactory quality.

I'd like to remind Mr W that he's able to reject this decision if he believes he can achieve a better outcome by alternative means, such as through the courts.

My final decision

For the reasons above. I uphold this complaint. BMW Financial Services (GB) limited must:

- end the finance agreement ensuring Mr W is not liable for monthly rentals after the point of collection (they should refund Mr W any overpayment for those if applicable).
- take the car back (if that has not been done already) without charging for collection.
- refund Mr W's deposit of £1,000.
- refund Mr W 5% of all the monthly repayments he's made towards the agreement to cover any loss of use, or impaired use, of the car due to the unsatisfactory quality of it.
- pay 8% simple interest on all refunded amounts from the date of payment until the date of settlement.*
- Pay Mr W £200 to reflect the upset he's been caused by being supplied with a car of unsatisfactory quality.
- remove any adverse information (if any) from Mr W's credit file in relation to this agreement.

*If BMW Financial Services (GB) Limited consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr W how much they've taken off. They should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 August 2025.

Kevin Parmenter
Ombudsman