DRN-5477165

Financial Ombudsman Service

The complaint

Ms F complains that the car supplied by BMW Financial Services(GB) Limited trading as BMW Financial Services ("BMW") wasn't of satisfactory quality. She says the car was brand new, yet she's had innumerable technology problems with it since the start. Ms F wants to reject the car and cancel the credit agreement.

What happened

Ms F entered into a PCP agreement in July 2023 to acquire a brand-new car. The cash price of the car was £30,142.76, and after taking account of the advanced payment of £7,600, the balance was to be repaid via a credit agreement set up over a term of 48 months. The monthly payments were £300.09 and the total repayable if the agreement ran to term was £34,979.23.

Ms F told us:

- The car's technology failed from the start; she's had problems with the phone; the messaging; the music; maps; and other communication systems. She says the iDrive failed to start because it didn't recognise the presence of the car key, and she's had a number of random error messages;
- the issues have been a mix of intermittent and persistent, and she's shared video evidence of most of them with the supplying dealership;
- there's been multiple attempts to rectify the problems, but these have been unsuccessful;
- the supplying dealership acknowledged that the car was faulty from the day it was supplied, but BMW will not engage with her on the matter;
- the situation has caused her significant stress, anxiety and worry as it's affected her work and family life, and because of her personal circumstances, finding the time to contact the dealership most weeks has been extremely challenging;
- she wants to return the car and be put back in the position she would've been in if she'd never bought it in the first place.

BMW offered Ms F some compensation - £150 – in recognition of the poor contact she had received from it. But it did not complete its investigation into Ms F's complaint about the satisfactory quality of the car; it simply said that the supplying dealership had told it that the issues could be related to software and compatibility, and it could not provide any other solution.

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 didn't think that the brand-new car supplied to Ms F had been durable at the point of supply. And because of this, it was not of satisfactory quality when supplied.

He went on to explain that in these circumstances, BMW has an opportunity to repair the car, but that the CRA *"does not give BMW one chance to repair each separate component* *but just one chance to repair the car as a whole".* He concluded that as there'd been multiple attempts to repair the issues and faults with the car, these were failed repair attempts, and accordingly Ms F has the right to reject the car. And he asked BMW to pay some compensation to Ms F in recognition of the distress and inconvenience she'd experienced.

BMW disagrees so the complaint comes to me to decide. It says that the faults are simply a result of compatibility issues with Ms F's mobile, and it disagrees that the car can be rejected because there are no manufacturing faults with it.

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 Ms F and BMW afresh, I've reached the same conclusion as our investigator and for broadly the same reasons. I'll explain why.

The PCP agreement entered into by Ms F 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 supplying 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 CRA says 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 goods.

BMW supplied Ms F with an expensive brand-new car. So, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be driven – free from defects – for a considerable period of time.

I'm satisfied that there was a fault with the technology in the car from an early stage. Ms F has not only supplied credible testimony on this point along with multiple photographs and videos, but I note that there is paperwork supplied by BMW over a lengthy period in 2023 confirming the supplying dealership was repeatedly looking at issues with the system. Critically, there's also an email from the supplying dealership to Ms F, dated May 2024 that says, *"thank you for your patience with the above ongoing technical issue with your vehicle…I need to speak to BMW today to get you a final position on this saga after many updates and hardware components being replaced the issue has been there since day one".* So I'm satisfied that this expensive brand-new car seems to have had persistent connectivity, software and technological issues since the point of supply.

I think it goes without saying that for a new car, and for one that's expensive the problems experienced by Ms F are unacceptable. Specifically, a reasonable person would not expect the iDrive system to be performing in this way and require so many updates so early in its life. So, I think at this stage the car was not sufficiently durable and therefore not of 'satisfactory quality' under the CRA.

I've noted BMW's comment that there are no manufacturing faults with the car. But I have to tell BMW that satisfactory quality under the legislation includes a number of different factors beyond simply manufacturing or mechanical faults – these include appearance, safety, and freedom from minor defects. And I think these are particularly relevant here bearing in mind that the car BMW supplied was expensive and brand-new.

Because the car was not of satisfactory quality Ms F was entitled to a repair or replacement under the CRA and I can see repairs and system updates were undertaken by the supplying dealership.

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 if I am satisfied (after this initial repair) the car continued to suffer from further inherent faults and failed repairs, then it would likely be fair for Ms F to be able to reject it in accordance with her consumer rights as set out in the CRA.

There have been several, failed, attempts to fix the intermittent, but persistent technology issues Ms F complained about, and this has been confirmed by the dealership. So, on balance I think BMW has had a number of chances to repair the iDrive system and has failed.

The CRA allows rejection in circumstances where repair is prima facie a suitable remedy but said repair is not done in a reasonable time or without significant inconvenience to the customer. All things considered, and with the CRA in mind I think it is fair now that Ms F is able to exercise her right to reject the car.

I can see Ms F has been using the car and our Investigator said he thought she should fairly pay for this use. Looking at the mileage covered I agree and think it fair that BMW retains the *majority* of her monthly payments to date. However, Ms F should get some money back to reflect that the use of the car has been impaired by the issues she's experienced.

It is not a science working out what an impaired use refund looks like. But I note here that Ms F has described all the functions that have been impacted by the fault - so use of the car would be impaired by it not working correctly. And the problems have been present for some time. Therefore, I think the investigator's recommendation of a refund of 15% of each monthly payment from inception to date of settlement is fair to reflect impaired use here.

It also appears that Ms F has been caused distress and inconvenience by the issue. She has described in detail the frustration and worry she's experienced, and the time she's spent trying to resolve matters, when her time could have and perhaps should have been spent on more pressing personal matters. So overall I think it also fair she gets some compensation for distress and inconvenience.

Putting things right

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

- ending the agreement with nothing further to pay;
- removing any adverse information (if any) from Ms F's credit file in relation to the agreement.
- collecting the car (if this has not been done already) at no further cost to Ms F;
- refunding her deposit;
- refunding 15% of each monthly payment that she made – this will address her impaired use of the car because of the inherent quality issues;
- paying 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement;
- paying £250 for the distress or inconvenience that's been caused due to the faulty goods (BMW may deduct £150 from this amount if it has already paid its goodwill payment to Ms F);

*HM Revenue & Customs requires BMW Financial Services(GB) Limited trading as BMW Financial Services to take off tax from this interest. BMW Financial Services(GB) Limited trading as BMW Financial Services must give Ms F 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 BMW Financial Services to compensate Ms F as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 31 July 2025.

Andrew Macnamara
Ombudsman