

The complaint

Mr V complains that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS) was misrepresented to him and of unsatisfactory quality.

When I refer to what Mr V or BMWFS have said or done, it should also be taken to include things said or done on their behalf.

What happened

In April 2024, Mr V acquired a used car through a hire purchase agreement with BMWFS. The car was first registered in August 2019 and had travelled around 60,279 miles when supplied. The cash price of the car was £36,897 and he paid an advance payment of £3,500. The amount of credit was for £33,397 and the duration of the agreement was 60 months; with 60 monthly payments of around £701.

In June 2024, Mr V complained to BMWFS that the car had been misrepresented to him. He said he was told the car had a full service history and a tyre would be replaced with the same brand as the other tyres. In addition, he said he was told the car had been recently fault checked and serviced, but later found it needed new brake discs and pads, there was a thumping noise at low speed turning and the glove box was broken. Mr V also complained about a smell of cigarette smoke that had been masked by a valet before collection.

BMWFS partially upheld Mr V's complaint. They said the brake pads and discs were serviceable items rather than a fault, but the noise coming from the car requires further investigation. They offered to refund 20% of Mr V's monthly payments since he raised the complaint and pay a further £150 for the distress and inconvenience caused.

Our Investigator reviewed matters and initially thought Mr V's complaint should be upheld. Both Mr V and BMWFS accepted the Investigator's findings, but when the car was further inspected, the noise was found to be a characteristic of the car. So, BMWFS withdrew their acceptance of the Investigator's view, and their initial offer to carry out repairs due to the costs incurred recovering and further inspecting a car that they consider to be of satisfactory quality.

Unhappy with the dealership's findings, Mr V arranged and paid for a further independent inspection – which confirmed the presence of an abnormal drumming and vibration when turning that they didn't consider to be standard or a recognised trait of similar cars they'd inspected before.

The Investigator reviewed the new information provided by both parties and no longer thought the complaint should be upheld. They didn't think the car had been misrepresented, and said they were now satisfied the car was of satisfactory quality when supplied. They said the brake pads and discs were serviceable items and the glove box damage was cosmetic, which can be reasonably expected for the car's age and mileage. And they were persuaded by the evidence provided by the manufacturer's technical engineer that the noise was a characteristic of the car, rather than a fault that would make it of unsatisfactory quality.

Mr V didn't agree. In summary, he said the noise and vibration is a known comfort problem. While he accepts this isn't a mechanical fault, he considers it to impact the driving experience which is a crucial consideration when purchasing a luxury car. And had he known about this issue, he wouldn't have proceeded with the purchase – so maintains the car was misrepresented to him through omission.

As no agreement has been reached, the matter 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.

I think it's firstly important to explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a reasonable outcome is. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've taken into account the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time.

Mr V was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

Was the car misrepresented?

Under section 56 of the Consumer Credit Act 1974, the finance provider (BMWFS) can be held responsible for what they say and for what is said by a credit broker or a supplier before the consumer takes out the credit agreement. So, I've taken this into account when considering this complaint.

To conclude there has been a misrepresentation in Mr V's case, I must first be satisfied that:

1. A false statement of fact has been made; and
2. That false statement induced Mr V to enter into the agreement to acquire the car.

Both points need to be satisfied for me to say a misrepresentation has been made.

Service history

I've seen Mr V asked the dealership via email if the car had a full service history, to which he says he didn't receive a response. However, he says he was later assured over the phone that the car did have a full service history. I haven't been provided with evidence of this call and the dealership has a different position on this matter. They say Mr V wasn't informed the car had a full service history at the time of sale.

I've reviewed the evidence that is available including the sales advert wording and note there is no mention of the car having a full service history. Mr V has provided a screenshot of the dealership's website which confirms all cars have had a recent service if required. I consider this to be a general statement rather than a specific representation relating to the car Mr V

acquired and note this doesn't confirm the car would come with a full service history. I've considered the car hadn't been serviced since 2022 when it was supplied to Mr V, but it's also been confirmed that the car wasn't due a service at the time of supply, as the manufacturer's service intervals for this car are every two years. This would also suggest the car had been historically serviced in line with the manufacturer's recommendations.

As I don't consider the first misrepresentation criteria has been met, it's not necessary to consider the second criteria. However, for completeness, I note Mr V signed a demands and needs document at point of supply. This shows that Mr V answered "Yes" to a declaration that said: *"I understand and accept the number of previous owners, service history and number of keys such inspection has evidenced."* If the service history was a key consideration for him in the decision-making process, I find it would've been reasonable for him to have requested the service history records before agreeing to this declaration and proceeding with the sale.

Tyre replacement

I've seen messages between Mr V and the dealership that show Mr V was told a tyre needs replacing. I'm satisfied Mr V was told this would be replaced with one of the same brand as the others. However, as this happened after Mr V had agreed to acquire the car, I'm unable to find a false statement of fact was made that induced Mr V into entering the agreement.

Quality

Mr V says the car was misrepresented to him because the dealership failed to make him aware of known quality issues. I haven't seen any evidence of the car being advertised as fault free or in perfect condition. So, I don't have enough to say a false statement of fact was made in relation to the car's quality.

Mr V says he wouldn't have entered into the agreement had he been made aware of a known characteristic that impacts the comfort of the car. However, to find there has been a misrepresentation by omission, I would need to be satisfied the dealership knowingly misled Mr V or failed to disclose a material fact. I don't find this to be the case here. Mr V acquired a used car with considerable mileage, from a dealership that sells various cars of different makes, models, ages and conditions. Car characteristics can be impacted to varying degrees based on inevitable wear and tear on used cars, and I wouldn't expect a dealership to set out all of the possible characteristics of each car they sell.

Overall, for the reasons set out above, I don't find the car was misdescribed or misrepresented to Mr V.

Was the car of satisfactory quality?

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr V entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Mr V acquired a used car that was over three years old and had covered over 60,000 miles. Its cash price was £36,897. So, what would be considered satisfactory quality would be

considerably different to if Mr V had acquired the same car brand new and at a greater cost. As this was a used car with notable mileage and age, it's reasonable to expect parts may already have suffered wear and tear, and wouldn't be free from minor cosmetic defects, when compared to a new car or one that is less travelled.

I've carefully considered Mr V's version of events and the evidence he's provided. Having done so, it's clear there have been faults that have needed repairing since the car has been in his possession. And it's not in dispute the faults were present at the point of supply. However, to uphold this complaint, I would need to be persuaded that these faults also meant the car was unsatisfactory quality. It's important to make clear that a car having faults doesn't always mean the car is of unsatisfactory quality.

Some of the issues here, such as the glove box, smell and brake discs and pads, were cosmetic or wear and tear related, which can be reasonably expected of a used car. The brake discs and pads were within specification when the car underwent a pre-sale inspection, so I don't consider this made the car of unsatisfactory quality. This was also confirmed by an independent engineer.

The dealership offered to repair the glove box and replace the cabin filters, brake discs and pads as a gesture of goodwill. This offer was declined by Mr V. The dealership has since withdrawn this offer, due to the significant costs incurred in carrying out further inspections into the noise coming from the car, to reaffirm their initial findings. While I appreciate this will be disappointing for Mr V, as I don't find these issues made the car of unsatisfactory quality when it was supplied, I can't reasonably say BMWFS are responsible for the impact caused or costs incurred by these issues. So, I'm unable to direct them to honour the offer previously made by the dealership as a goodwill gesture.

The key issue in dispute here is the noise the car makes when turning at low speed. I've considered the evidence available and note the car has been inspected twice by an independent engineer. Both inspections confirmed the presence of an abnormal juddering/vibrating noise when cornering. Neither identified a fault, but both did conclude further investigation was required to determine the cause of the noise, which could be a potential fault with the rear differential. It was recommended that further investigation should include a comparison road test of a similar car by the main dealer.

The car was inspected by a workshop approved by the manufacturer and no mechanical faults were found. It was confirmed Mr V's complaint could be reproduced, but it was noted that identical cars with the same tyre dimension and make show the same symptoms under identical conditions.

BMWFS confirmed the noise is widely known and acknowledged as a normal characteristic of the particular system fitted on the car Mr V acquired, as well as other models.

I've seen a technical service bulletin (TSB) that says:

"Because of the different speed between front and rear final drive, the locking effect of the centre differential can vary significantly in tight bends. This locking effect has a positive effect on the vehicle's driving dynamics, but the resulting tension in the drive train can briefly lead to noises/vibrations.

The tension does not have a negative effect on the service life of the components."

"This concern is merely a comfort-related problem. The noises are construction-related.

No damage occurs to components..

..Replacing components will not solve the issue.”

Having considered the above, I'm persuaded it's more likely than not the noise is a characteristic of the car, rather than something that would make the car of unsatisfactory quality. And as mentioned above, it's important to note that Mr V acquired a used car with considerable mileage. So, characteristics such as this can worsen over time following usual wear and tear of the car's components.

I've considered Mr V's comments about cases where more significant repairs have been carried out to address the noise, suggesting there are cases where it can rise above manufacturer expectations. He believes the two independent reports supports this to be case for his car. However, the Technical Service Bulletin Mr V has referred to says further remedial works may be required if the noise is found to be significantly more noticeable or worse than an identical comparison vehicle under identical conditions – which wasn't found to be the case when his car was inspected by the manufacturer approved workshop.

Overall, having carefully considered all of the available evidence, I'm not persuaded there was a fault that would render the car of unsatisfactory quality when it was supplied. And as I can't say BMWFS supplied Mr V with a car that was of unsatisfactory quality, I don't agree they should terminate the agreement or refund any payments he's made. I realise this will come as a disappointment to Mr V, but I don't think BMWFS needs to do anything further.

BMWFS made an offer to pay a 20% refund of premiums from the date Mr V raised his complaint to the date they issued their final response, and an additional £150 in compensation. Mr V should now contact BMWFS directly if he now wishes to accept this.

My final decision

For the reasons set out above, my final decision is that I do not uphold Mr V's complaint and don't think BMW Financial Services (GB) Limited trading as ALPHERA Financial Services needs to do anything to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 8 October 2025.

Nicola Bastin
Ombudsman