

complaint

Mrs R complains that the brand new car she purchased under a hire purchase agreement provided by BMW Financial Services (GB) Limited (BMW Financial Services), was not of satisfactory quality, and therefore BMW Financial Services should treat her as having rejected it. Mrs R is assisted in bringing this complaint by her husband.

background

In April 2012 Mrs R entered into a hire purchase agreement with BMW Financial Services to finance the purchase of a new car. The vehicle cost over £25,000. Between May and September 2012 Mrs R experienced problems with the car's electrics. On three separate occasions the car would not start, the car had only done 64 miles on the first occasion this happened. On each occasion the vehicle was repaired by the dealership and returned to Mrs R. On the third occasion the control unit was replaced and this problem has not occurred again since.

On the third occasion Mrs R wanted to reject the car. The dealership offered to replace it, but this did not happen because BMW Financial Services would not agree to the terms under which the replacement car was offered, because it cost more. Mrs R reluctantly took her car back.

Mrs R then experienced other problems, firstly with the air conditioning, and then the brakes. Mrs R was told there were stones in the brake discs. Mrs R disputes this and said she was originally told it was because she was not using the car frequently enough, when she was using it daily. The dealership said it was not able to replicate the intermittent problem that Mrs R said there was with the air conditioning.

BMW Financial Services said that the car had no faults and was fit for purpose.

Mrs R said the problem with the air conditioning persisted. She said she had lost faith in the reliability of the car and she particularly chose this make of car for its reliability, because she has a disabled father she transports around and has health issues herself.

our adjudicator's view

The adjudicator did not recommend that the complaint should be upheld. She was satisfied that, as there were no current faults, the vehicle was therefore fit for purpose and Mrs R was not entitled to reject it. She was satisfied that BMW Financial Services offer of compensation – to write off one month's instalment under the hire purchase agreement (approximately £400) was fair and reasonable for the distress and inconvenience caused.

Mrs R disagreed with the adjudicator, and said, in summary, that she relented and took her car back because the model of car she had was no longer available and BMW Financial Services would not allow her to have a different model of car on the same terms. She said she was told by the dealership that, if she took the car back and there was one more issue, that BMW Financial Services would not "have a leg to stand on". She was only told there were stones in the brakes after she rejected the car, and she intended to instruct an expert to inspect the car, as she believed the air conditioning was still faulty.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs R and to BMW Financial Services on 19 September 2013.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I summarise my findings:

- During her first six months of ownership Mrs R experienced a number of problems. These first began when the car had only done 64 miles and led to the control unit having to be replaced when the car had only done 3,000 miles. I found more likely than not this was because of an inherent manufacturing defect.
- I found that, whilst the issue with the electrics appeared to have been remedied, the question to be determined was whether the vehicle was fit for purpose at the point of sale. On three occasions Mrs R's car would not start, she had to call the dealership to arrange to get the car repaired and make alternative travel arrangements. I was satisfied therefore that, at the time of sale, the car was not of satisfactory quality taking into consideration that it was a new vehicle, which cost a significant amount of money
- I concluded that Mrs R had not waived her right to reject the car when she accepted the vehicle back after the electrics were fixed for the third time. I was satisfied that, based on what the dealership told her at the time, she accepted it back conditional on no further issues arising. As further problems arose I considered that a fair response would be to allow Mrs R to reject the vehicle.
- Although Mrs R did get to use the car, when it was working, and by the time she rejected it she had done nearly 6,000 miles, I accepted that her enjoyment of the vehicle was reduced because of the issues she had. On several occasions she had to be provided with a replacement vehicle whilst hers was in for repairs, and had to make last minute alternative travel arrangements. In the circumstances therefore I considered that Mrs R should fairly only be required to pay 75% of the monthly instalments whilst the car was with her (April 2012 to February 2013). She stopped paying and left the car with the dealership after that.
- I found that, if BMW Financial Services had recorded any adverse information on Mrs R's credit history for non payment of her finance repayments, it would be reasonable for it to remove this.

Subject to any further representations by Mrs R and BMW Financial Services, my provisional decision was that I was minded to uphold this complaint and order it to;

1. cancel the hire purchase agreement at no further cost to Mrs R;
2. remove any adverse information it may have placed on Mrs R's credit history after she stopped her payments in February 2013;

3. refund the advance payment of £408.29 paid by Mrs R when she entered into the agreement;
4. refund 25% of all monthly repayments made by Mrs R under the agreement between April 2012 and February 2013 to reflect her loss of enjoyment in the car;
5. pay interest on all the above sums at 8% simple from the date they were paid by Mrs R to the date of settlement.

BMW Financial Services responded to say that it agreed with my provisional decision. But it said as Mrs R had use of the vehicle for around 6,000 miles it intended to charge her £3,000.

Mrs R said she had nothing further she wished to add and accepted my decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I sympathise with Mrs R and her family. I recognise that she bought this make of car because she wanted a very reliable car, from a reputable manufacturer, because of her and her father's health issues.

Neither Mrs R nor BMW Financial Services has provided any new evidence. I therefore find no basis to depart from my earlier conclusions. I have considered the representations made by BMW Financial Services. I do not consider that it would be fair or reasonable for Mrs R to have to pay it a further £3,000 for her use of the vehicle between April 2012 and February 2013. I had already taken into account, in my provisional decision, that she had used the car.

my final decision

My decision is that I uphold this complaint against BMW Financial Services (GB) Limited. In full and final settlement of it, I make the following order that BMW Financial Services (GB) Limited;

1. cancel the hire purchase agreement at no further cost to Mrs R;
2. remove any adverse information it may have placed on Mrs R's credit history after she stopped her payments in February 2013;
3. refund the advance payment of £408.29 paid by Mrs R when she entered into the agreement;
4. refund 25% of all monthly repayments made by Mrs R under the agreement between April 2012 and February 2013 to reflect her loss of enjoyment in the car; and
5. pay interest on all the above sums at 8% simple from the date they were paid by Mrs R to the date of settlement.

Kim Parsons
ombudsman