

complaint

Mr R complains that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited wasn't of satisfactory quality.

background

BMWFS supplied Mr R with a new car in May 2016. He says he had to return the car three times due to a fault with the transmission. The first fault he says was within a year of the agreement. He also complains that he has been without the car whilst it was repaired.

BMWFS say it investigated and fixed the issue (under warranty) each time - and although the symptoms appeared the same, as different parts were replaced, they didn't agree it was the same fault. They went on to say that they found no underlying issues to cause concern. As they didn't agree a fault was present when the car was sold, they rejected Mr R's request to reject the car.

Mr R didn't agree there was no underlying fault, so the complaint was brought to our service.

Our investigator looked into the complaint. He said that considering the age and mileage of the car he wouldn't have expected it to have had such problems. And Mr R should be able to reject it as BMWFS had a chance to repair but failed to do so.

BMWFS didn't agree with the investigators view, so the complaint has been passed to me to issue a final decision.

my provisional findings

I issued a provisional decision on 02 November 2018 saying I intend to uphold the complaint. This is what I said –

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Based on what I've seen from both parties, I uphold this complaint. I'll explain why –

BMWFS is the supplier of the car under a hire purchase agreement. So I can look at its obligations concerning the quality of the car. The relevant law here is the Consumer Rights Act 2015. Under this BMWFS is required to supply a car that is of satisfactory quality. Goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of description, price, and other relevant circumstances.

In this case Mr R was supplied a brand new car for a cash price of around £23,000. In these circumstances I think it is reasonable to expect a high standard of quality.

Throughout this complaint there has been no dispute that the car was returned three times and a fault was found that needed repairing. Both parties agree on this point.

From the records I have seen it appears the first repair is logged as a 'flywheel replacement', the second a 'slave cylinder', and the third a 'clutch' replacement. I can see that the first issue occurred within one year of supply, and at that point the car had travelled only 10,480 miles. By the time of the third problem the car was around two years old and with roughly an extra 4,500 miles on the clock. Because of the low mileage and age of the car it seems these sort of problems would not be reasonably expected wear and tear. I would expect the car to be more durable than that. There is also no persuasive evidence that the problems are likely to have been caused by Mr R.

The problems also seem to be linked to the same thing – the transmission. BMWFS says

that although the symptoms have been the same each time, as different parts have been replaced, it's a different problem. It seems more likely to me that the repairs have never really addressed the underlying issue with the transmission as Mr R has complained of the same symptoms each time. But even if I accepted that these were separate issues, ongoing faults like these still don't seem acceptable on a high value car supplied brand new and with a relatively low age and mileage.

I understand that a diagnostic report was mentioned, but BMWFS advised Mr R that he would need to pay for this. After a number of faults were found and confirmed and the issue kept occurring, I would expect BMWFS to carry out proper testing to find out what's causing the issue. So I'm not persuaded this should have been pushed back on to Mr R to arrange and pay for.

Based on the information I've seen from both BMWFS and Mr R, I think it's most likely that the faults were inherent problems related to the transmission. The cash price of the car was relatively high and it has done relatively low mileage so I'm not satisfied these types of failures are reasonable at this stage. I therefore find that the car wasn't of satisfactory quality.

The question is now about what is a suitable remedy to put things right. I can see that BMWFS have had three attempts to repair the car already. Even if these were different repairs considering the relevant law I think BMWFS has had a reasonable opportunity to repair the car already.

It isn't clear if the car is still faulty – but Mr R says it is making some strange noises and is clearly unhappy with continuing to drive it. He has now said he has lost faith in the car and no longer feels it's safe. Mr R says he has had several problems with the car suddenly losing drive when he was out, this is evidenced by the fact he has had to use a recovery service to continue the journey. So I can understand why.

Mr R would continue to feel concerned about the car. Looking back at the history of problems and repair attempts I think that he should have been allowed to reject the car much sooner. All things considered I think that rejection of the car is now a fair and reasonable option. So I think BMWFS should cancel the finance agreement and take back the car.

In considering what Mr R should be paid due to the above circumstances, there is a number of factors to consider. This was a new car and it has clearly been distressing for Mr R when the car has been cutting out. He has also had concerns over continued use and the inconvenience of trips to and from the garage to get the issue sorted out. BMWFS should make a payment of £250 for the trouble and upset this has caused.

Mr R said that in total the car has been off the road for over six weeks whilst being repaired, and no courtesy car was supplied during this period – this meant him having to find alternative ways to travel. Although I'm satisfied the car has been off of the road and not in use for periods, neither party has supplied information to say exactly how long this was. To compensate Mr R for the period he didn't have use of the car and in the absence of the precise number of days, BMWFS should make an additional payment of £350. I'm satisfied that there were long periods when the car was in use with no fault, so I don't find that BMWFS need to refund the full amount that Mr R has paid over the duration of the agreement.

responses to my provisional decision

Mr R had nothing further to add.

BMWFS didn't respond.

my findings

As neither party has disputed my provisional findings, I see no reason to depart from my provisional decision.

my final decision

My final decision is that I uphold this complaint and direct BMW Financial Services(GB) Limited to make the following award.

- return the deposit Mr R paid of £3825 plus 8% yearly simple interest from the date the amount was paid until settlement is made.
- collect the car at a convenient time and at no cost to Mr R.
- pay Mr R £350 to compensate him for the time the car has been off the road and add 8% simple yearly interest to this amount.
- remove the agreement from Mr R's credit file.
- pay Mr R £250 compensation for the distress and inconvenience he suffered.

If BMWFS considers it necessary to deduct tax from the interest part of this award then it should provide Mr R with a certificate of tax deduction so he might claim the amount back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 January 2019.

Tom Wagstaff
ombudsman