

The complaint

Mr S is complaining that the car he acquired through a hire purchase agreement with BMW Financial Services (GB) Limited (“BMW”) was not of satisfactory quality, and he should be able to reject it.

What happened

Mr S acquired a used car from BMW in July 2022. In the first few months, there were some issues with the steering identified by Mr S. It seems the dealership carried out toe in and wishbone or control arm repairs initially, and then when he complained to BMW he asked to reject the car saying he was aware of a lot of cars having this problem. He chased BMW for a response, and eventually they issued a final response letter (FRL) in December 2022 saying that no further fault could be found, and the vehicle was performing as they’d expect. They didn’t uphold the complaint.

In 2023 Mr S complained again, saying he still had steering issues, and a complaint was opened or possibly the same complaint was re-opened by BMW in June 2023. A different BMW dealership had inspected the car and found a steering rack fault, and repairs were authorised and carried out at the time as Mr S’s warranty was coming to an end. But he again expressed a desire to reject the car.

BMW issued a final response letter (FRL) in October 2023, saying that the issues complained about in the first complaint and the second complaint were not linked, and offered a month’s payment refund in respect of the car needing to go into the garage for repairs, but didn’t agree the car should be able to be rejected.

Mr S brought his complaint to our service at this time, and an investigator investigated it and gave their view in December 2023, not upholding his complaint. They said that they were satisfied that the issues repaired were separate, where Mr S felt that it was the same underlying issue, so he believed he had the right to reject the car based on the original repairs having failed/not rectified the problem.

Unable to reach an agreement, the case has been passed to me for a final decision. Mr S has said he thinks BMW have been clever in splitting the complaint and making it look like its two separate complaints, and that he feels they have withheld information about what they found and some details of the faults and diagnosis. He believes he gave BMW the right to fix it and then had the right to reject the car after that, which they’ve refused. He said it has been the same issue all along, that the car has an issue when making left turns on long bends.

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 done so, I’ve reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven’t commented on any specific point, it’s because I don’t

believe it's affected what I think is the right outcome. 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 had regard to 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 S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

I think the issues here have become confused. BMW in fact haven't split the complaint at all. They've clearly said in their FRL from October 2023 that the complaint began in October 2022, when they couldn't replicate or diagnose any fault and therefore didn't uphold the complaint, and then when Mr S has contacted them again in 2023, he has said the fault had reoccurred, so he's asked to reject the car.

In fact, from their contact notes with Mr S, I can see he had been asking to reject the car since back in October 2022, when he raised the initial complaint. It says in those notes that Mr S told BMW he didn't feel safe to drive the car, and asked for payments to be paused on it, but BMW advised him they couldn't do this. After the investigation, they didn't uphold the complaint at that point, saying they couldn't replicate or find a fault.

This answer was given rights to be referred to our service, but this didn't happen at the time. As such, without us having had the case to investigate, I can only fairly assume that the outcome of that FRL was accepted by Mr S, albeit potentially begrudgingly.

Then in the second FRL in October 2023, BMW have agreed that a fault has now been identified and diagnosed which required the steering rack to be repaired/replaced. They have explained that this problem had generated intermittent fault codes in the car's computer system, which had not been seen when they had looked at the car previously in 2022, so this fault hadn't been present when they inspected the car in 2022.

I've also considered the mileage Mr S has been able to do in the car. The contract allows for 10,000 miles per annum, and at the MOT date in June 2023, around the time he made his second complaint, he'd had the car just under a year, and the mileage recorded was around 34,500, so an increase in just less than a year of a little over 11,500 miles.

Fundamentally, I'm not persuaded that any fault has been proven from 2022. Some fairly minor repair work to the control arm or wishbone was undertaken prior to Mr S's complaint, which would class as wear and tear repairs in my opinion. But nothing was diagnosed at the point the complaint was answered with a non-uphold decision in December 2022. Mr S did not bring the complaint to our service at that point. but is adamant that the same fault has occurred in 2023 as previously in 2022. But the technicians at BMW have confirmed it can't have been the same fault, as neither they, nor Mr S, had reported any fault codes being seen in 2022.

When further diagnosis work was undertaken in 2023, a fault was identified which was by then producing intermittent fault codes, which was then successfully repaired. We've been told the car was working fine after this repair.

Unfortunately, due to a backlog, it has taken our service 8-9 months to get to the point of issuing this final response, and I apologise to Mr S for this delay. Because of the delay, I wanted to check there had been no further problem with the steering since the repairs in 2023. Mr S hasn't raised any further concerns since bringing his case to us and in looking at the mileage recorded on the MOT checker, I can see the vehicle had by June 2024 covered

around 51,000 miles, so a further 17,000 miles approximately since the last MOT test in June 2023. I'm satisfied therefore that the repairs carried out in 2023 have successfully rectified the problem, but Mr S always retains the right to complain again should the fault reoccur, or the repairs fail.

Alongside this, I am satisfied that this repair in 2023 classes as BMW's one allowable repair under the CRA, as I am satisfied this fault made the vehicle not of satisfactory quality. If this issue reoccurs, or another fault occurs which makes the car of unsatisfactory quality going forward, Mr S may then be entitled to reject the car.

But I'm not persuaded that Mr S had the right to reject this car in 2022 or 2023 based on the evidence provided. He had asked to reject it back in 2022 according to the contact notes, but no evidence of a fault was identified at that time by either party. When a fault has been identified in 2023, which I appreciate might manifest in the same way as the concerns Mr S raised in 2022, it's been successfully repaired. I'm satisfied this is a fair outcome under the Consumer Rights Act 2015 (CRA), where repair is one of the fair outcomes when faults are diagnosed.

I think that part of the problem here has been BMW's response to Mr S complaining. He's told them in 2023 that the same fault has occurred, and he wants to reject the car, and judging by the communications I've seen, BMW seem to have investigated this on the assumption that what Mr S has said is true, and it's a re-occurring fault.

But the evidence they have doesn't back this up, they said there was no evidence of a fault when they investigated the first time. I feel that because it's taken BMW so long to recognise this, it's given Mr S the belief that he would be entitled to reject the car, and BMW were going to allow him to do that. Then, BMW appear to realise they don't need to process a rejection on this case and have seemed to change their mind and don't give him that option to reject in their final response letter. I can understand how this has created frustration for Mr S and empathise with him. But it doesn't take away from the fact that he didn't have a right to reject the car in these circumstances.

Under the CRA, once a car has been supplied for over 30 days, BMW have one right to repair the vehicle if a fault occurs which makes it of unsatisfactory quality. I'm not persuaded that BMW have had their one chance to repair the car in 2022, because I've seen no evidence that this issue was occurring in 2022, and they issued an FRL saying they could find no fault. Alongside this, I'm not persuaded that the fairly minor repairs carried out in 2022 indicate the car was of unsatisfactory quality. I am satisfied that this was a fairly minor wear and tear issue to the control arm/wishbone, which had been repaired before the complaint was looked at or answered.

I've seen no evidence of Mr S disputing the FRL BMW issued in December 2022 which didn't uphold the complaint, and in the first 11 months of his contract through to June 2023, he's driven the car 11,500 miles.

I empathise that then, in 2023, there has clearly been an issue impacting on the steering. It's been diagnosed at that point, but I am satisfied that BMW then have the right to repair that issue. I'm glad they've done that, and Mr S appears to have had no further problems since. I am also satisfied that BMW's offer to refund one month's payment, to recognise the time Mr S had to leave the car in the garage for repairs, is a fair resolution here to his complaint. If he hasn't received that payment yet, I'd suggest Mr S reach out to BMW directly to arrange this if he wishes. But I won't be asking BMW to do any more.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 September 2024.

Paul Cronin
Ombudsman