

Complaint

Mr K has complained about the quality of a car that BMW Financial Services (GB) Limited ("BMW FS") supplied to him through a hire-purchase agreement.

Background

In August 2023, BMW FS provided Mr K with finance for a used car. The car was just under four years old and it had completed 87,937 miles.

The cash price of the vehicle was £34,000.00. Mr K paid a deposit of £500 and applied for finance to cover the remaining £33,500.00 he needed to complete his purchase. BMW FS accepted Mr K's application and entered into a 60-month hire-purchase agreement with him.

The loan had an APR of 13.9%, interest, fees and total charges of £12,322.00 and the total amount to be repaid of £45,822.00 (not including Mr K's deposit) was due to be repaid in 60 monthly instalments of £763.70.

Mr K says that since taking delivery he has experienced difficulties with the battery; brake discs and pads, as well as cosmetic issues with the paintwork, windscreen and alloy wheels; and finally he's been unable to fully utilise the multimedia system.

Mr K complained to BMW FS saying he wished for the issues to be rectified or be able to reject the vehicle. During the course of his discussions with BMW FS, Mr K notified it that he wished to reject the vehicle. After eight weeks BMW FS wrote to Mr K explaining that it had been unable to issue a final response by this stage and informed Mr K of his right to refer the matter here if he remained dissatisfied. Mr K chose to refer his complaint to us shortly after receiving BMW FS' 8-week letter in March 2024.

Mr K's complaint was reviewed by one of our investigators. She thought that BMW FS had supplied Mr K with a vehicle that was of satisfactory quality. So she didn't recommend that Mr K's complaint be upheld. Nonetheless, she thought that BMW FS should pay Mr K £300 as a result of the difficulties Mr K had in resolving the matters with it.

BMW FS accepted our investigators' assessment. But Mr K did not. So the case was passed to an ombudsman as per the next stage of our dispute resolution process.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied that what I need to decide in this case is whether the car supplied to Mr K was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for BMW FS to do put things right.

Having carefully considered matters, I'm satisfied that the vehicle BMW FS supplied to Mr K was of satisfactory quality and I'm therefore not upholding Mr K's complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, BMW FS purchased the vehicle from the dealership Mr K visited. Mr K then hired the vehicle from BMW FS and paid a monthly amount to it in return. BMW FS remained the legal owner of the vehicle under the agreement until Mr K's loan was repaid.

This arrangement resulted in BMW FS being the supplier of Mr K's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Mr K's agreement with BMW FS. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

Is there a fault with the vehicle?

Having considered everything provided, I'm satisfied that there is a fault currently present on the vehicle. I know Mr K is unhappy with more than just the battery and I will consider everything that he is unhappy with. But the main reason I agree that there is a fault with the car is because, while there may be a dispute regarding the party responsible for it, there appears to be no dispute that, at the very least, the battery is failing to hold its charge.

The motor dealer checked the battery on the vehicle in January 2024 and confirmed that the battery had discharged and recommended that an energy diagnosis be carried out. Mr K arranged for that energy diagnosis to be carried out by the dealer. The engineer confirmed that the battery was failing to hold its charge and needed to be replaced. So I'm satisfied that there is a problem with the battery and it is affecting the car being able to function.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, meant that the car wasn't of satisfactory quality at the point of supply.

Was the vehicle that Mr K was supplied with of satisfactory quality?

It is clear that Mr K has a number of issues with the vehicle and these extend past just the battery. But just because things might have gone wrong with the vehicle, it doesn't automatically follow that it wasn't of satisfactory quality when it was initially supplied to him. I've therefore considered all of the issues Mr K has highlighted and I set out my thoughts on them.

The battery

As I've set out in the section above, there is no dispute that the battery on the vehicle Mr K was supplied with needs replacing. Mr K says that this means that car was not of satisfactory quality and BMW FS should have this replaced. I've reviewed matters and formed my own view on whether the battery needing to be replaced means that the car wasn't of satisfactory quality.

In doing so, I have to keep in mind that Mr K took possession of a car that was not only used, but it was just under four years old when it was sold and it had completed just under 90,000 miles. And there are clearly different expectations regarding the expectations of quality when comparing a vehicle which has had some use, to a new car. I think it's fair to expect an older car will require repair or maintenance work sooner than a newer or less used model.

I appreciate Mr K's strength of feeling. But the engineer which carried out the energy diagnostic, which Mr K arranged and believes supports his case, confirms that a battery only has an expected lifespan of around three to four years. Equally, this doesn't take into account the fact that the vehicle Mr K was supplied with had a number of added options – such as heated seats – which use more battery power and are likely to affect the lifespan of a battery.

In my view, I don't think it is unreasonable that a car which has had four years use and which has completed almost 90,000 miles in this time, will have a battery that needs replacing in the not-so-distant future.

The brakes

Mr K has said, and has provided an estimate supporting the fact, that the brake discs on the vehicle need to be replaced. At the time Mr K requested the estimate, in February 2024, the brake pads were 7 millimeters ("mm") and the discs were close to the minimum specification.

It is my understanding that a new brake pad will be around 10mm in thickness and a customer should consider replacing it once the thickness reaches 3mm – although I accept that the minimum thickness to ensure a car does not fail an MOT for this reason is 1.5mm. In any event, given the estimate states that the current brake pads were 7mm thick, the information provided does not suggest to me that the brake pads need replacing.

In terms of the brake discs, I do accept that the evidence provided indicates that Mr K has been told that these need replacing sooner rather than later. Again, I appreciate Mr K's frustration at this being required sooner than he anticipated when he took delivery as well as his strength of feeling on this matter.

But the fact remains that parts such as brake discs will deteriorate over time and eventually require replacing. It is generally accepted that the brake discs will not last the entire lifetime of the vehicle. So I don't think that brake discs needing to be replaced after a vehicle has been used for around 90,000 miles means that those brake discs weren't durable.

In reaching my conclusions, I've thought about what Mr K has said about going to a manufacturer dealer (and, in his view, paying more as a result) precisely because he expected consumables such as the battery and brake discs will have been replaced prior to the vehicle being supplied to him. But I've not seen anything to indicate that the price Mr K agreed to pay was conditional on consumables subject to wear and tear through usage - such as the battery and brake discs – having been replaced.

I accept that Mr K may have formed his own assumptions and expectations as a result of visiting a manufacturer dealer, rather than a whole of market motor dealer. However, the CRA requires me to consider what a reasonable person's expectations – not Mr K's expectations - would be in relation to the faults Mr K has complained about.

I think a reasonable person would consider that a car's battery and brake discs may have suffered wear and tear - after 4 years and 90,000 miles - and that these parts are likely to need replacing in the time that the vehicle is with them (albeit, in this case, it is unfortunate that the battery and brake discs have needed replacing shortly after the vehicle was supplied). I also think this this expectation is irrespective of the type of dealer arranging for the vehicle to be supplied.

So even though the battery and the brake discs on the vehicle may need replacing, bearing in mind the vehicle's age as well as the mileage completed, I'm not persuaded that this means that the vehicle wasn't durable, or wasn't of satisfactory quality at the time it was supplied to Mr K.

The paintwork, windscreen and alloy wheels

Mr K is unhappy with the appearance of the vehicle. He has said that it has stone chips to the front bonnet, bumper and wings. However, I understand that Mr K viewed the vehicle prior to him taking delivery of it. So he would have seen its condition as well as any repairs to the paintwork.

It isn't unusual for a vehicle which has completed almost 90,000 miles to have had some cosmetic repairs to the paintwork. As Mr K chose to accept the vehicle in the condition that he did, I can only assume that he was happy to do so – albeit he may now be dissatisfied at this given the other issues he now has with the car.

Mr K did raise concerns about the appearance of the vehicle's alloy wheels and a chip in the windscreen around the time he took delivery. I can see that Mr K accepted a voucher to refurbish all four of the alloy wheels on the car. Furthermore, Mr K agreed to have the chip in the windscreen repaired. So I'm satisfied that Mr K was offered reasonable remedies in relation to these issues.

I don't know if Mr K has sought to have the alloy wheels refurbished. However, I appreciate that Mr K says that the windscreen repair was not of sufficient quality and that in his opinion that the windscreen now needs to be replaced. I've thought about what Mr K has said. But I've not been provided with a diagnostic report, inspection report or any other type of independent corroboration of Mr K's arguments in relation to this matter.

In the absence of anything corroborating what Mr K has said, I'm not in a position to agree that there is a fault in relation to the windscreen, that any of the matters in relation to the appearance of the vehicle mean that the vehicle wasn't of satisfactory quality, or that it would be fair and reasonable for Mr K to now reject the vehicle as he now wishes to.

Multimedia system

I've noted that Mr K is unhappy that he is not able to use all the functions of the vehicle's multimedia system. However, some of the functions of the multimedia system are only automatically available for a certain period of time – typically the first three or so years of the car's life. After this the functions can be used but an account needs to be set up and a subscription may be payable.

I understand that Mr K has been told that he needs to set up an account should he wish to be able to use all the services on the multimedia system. The fact that he hasn't set up such an account is the reason why he hasn't been able to use the multimedia system's full range of options. As this is the case, I'm not persuaded that there is anything wrong with the vehicle in relation to the matter.

Overall and having considered everything that Mr K has said as well as everything he has provided, in relation to the issues he's having with the vehicle supplied, I'm satisfied that it's more likely than not that the issues Mr K is unhappy with are due to general wear and tear and are to be expected for a vehicle of the age and mileage Mr K was supplied with.

I do consider that some of these issues deteriorated after Mr K was supplied the car – namely the battery and the brake discs. But I'm not persuaded that the car supplied to Mr K by BMW FS was not of satisfactory quality and it follows that I'm not upholding Mr K's complaint.

I appreciate that this is likely to be very disappointing for Mr K – particularly as he will be left in a position where he is being expected to pay for a car which he's unable to use without first getting it repaired. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

As I'm not upholding Mr K's complaint, I'll leave it up to him to contact BMW FS directly should he wish to accept the £300 and it wish to pay this.

My final decision

For the reasons I've explained, I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 September 2024.

Jeshen Narayanan
Ombudsman