

## The complaint

Mr I is unhappy with the quality of a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS").

## What happened

On 25 March 2022 Mr I took out a hire purchase agreement with BMWFS. This was for a brand new car with a cash price of £47,755. Mr I agreed to pay £5,825 in advance, with the rest repayable over 48 months using the finance agreement.

Mr I told us he's had ongoing problems with a number of the car's features, including:

- failing to lock or unlock when the button on the key fob is pressed.
- doors unlocking, lights coming on, or the window opening when the key fob isn't present.
- the media system crashing or losing connectivity, which meant he couldn't use features such as satnav, radio, Bluetooth, and other technology.
- the reversing camera either giving unclear images or not working at all.

Mr I said he'd taken the car back to the supplying dealer several times to try to fix these issues. He provided a copy of the dealer's estimate dated 28 June 2022, listing the following work:

*"Carry out recall... Programming control units (head unit)"*

Mr I also showed us a copy of the dealer's invoice dated 12 October 2022 and a summary document dated 28 October 2022 explaining work they'd carried out. It says:

*"Key issue: new software has been inputted into the vehicle and the keys have been reset and coded.*

*Head unit / cluster fault: Again the vehicle has new software inputted and all devices have been removed from the head unit / TCB."*

In February 2023 Mr I complained to BMWFS that he was still having problems with the car despite the dealer's attempts to fix it. He said he wanted to return it - either for a refund or a replacement vehicle. Whilst awaiting their response, Mr I took the car back to the dealer for further diagnostic and repair work.

The dealer's job card shows the car was returned to them on 6 April 2023. Technician's notes dated 14 April 2023 confirm:

*"Carry out touch function test – intermittent fault – requires new CID screen – manufacturing defect – internal electrical fault."*

The technician's notes confirm the CID screen was replaced on 18 April 2023.

On 20 April 2023 BMWFS issued their final response, rejecting Mr I's complaint. They said they were satisfied the car had been of satisfactory quality when they'd supplied it.

Dissatisfied, Mr I brought his complaint to us. After looking into what had happened, our investigator said she didn't think the car had been of satisfactory quality when it was supplied to Mr I. So, she thought it was fair for him to reject the car and get his deposit back.

The investigator thought Mr I should receive a 10% refund of the monthly payments he'd made since 28 June 2022 to reflect the fact that the media system and keys hadn't been working properly since then. She said BMWFS should pay Mr I £150 compensation for the distress and inconvenience he'd been caused; and remove any adverse information that's been recorded on his credit file about this agreement.

BMWFS disagreed. They said Mr I had returned the car for a technical update, but this wasn't a safety recall. They said although Mr I made several appointments with the dealer, on some of these occasions no work had been carried out because he hadn't turned up or wasn't happy with the courtesy car he'd been offered.

BMWFS felt other factors could be causing the problems Mr I's been experiencing, such as his phone software, or a non-genuine tint applied to the car windows. As the most recent appointment had been rescheduled to October 2023, they thought it would be fair to allow the dealer to reassess the car and confirm whether the faults were present.

Mr I provided another update, saying he was still experiencing the same issues with the car. He showed us a copy of a document from the dealer dated 20 October 2023, confirming they'd *"carried out software update ref headunit issue"*.

Mr I said he was happy with our investigator's view of his complaint but pointed out that he'd have to pay £80 to remove his personalised number plates from the car. As BMWFS didn't accept our investigator's recommendations as to how this complaint should be resolved, it's been passed to me to make a final decision.

### **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.

The agreement Mr I entered into was a hire purchase agreement, so I'm satisfied I consider his complaint about it. Under this type of agreement, BMWFS is the supplier of the car, so they're responsible for a complaint about its quality.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of those goods is satisfactory.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. I bear in mind this was a new car costing £47,755 - and that this is generally considered to be a premium brand. So, I think Mr I was reasonably entitled to expect all of its main features to be working properly.

I've reviewed all the evidence in detail. But I'll be focussing on the issues with the media system because Mr I told us this affects his ability to use features such as satnav, radio,

Bluetooth, and other technology. I wouldn't consider the car to be of satisfactory quality if those features weren't working properly, regardless of whether there were also other faults.

I haven't seen anything confirming the exact date the problem with the media system came to light. I've seen evidence showing the car was returned to the dealer on 28 June 2022 and 12 October 2022 for updates to the head unit. I understand this to be the interface for the car's various information and entertainment systems.

Mr I has shown us a text message confirming he made the October appointment on 26 August 2022. So, I'm satisfied that he asked the dealer to look into the issue with the media system not working properly within six months of getting the car. Having thought about all of this, I think it's most likely that the fault was already present or developing when the recall was carried out on 28 June 2022.

The CRA makes it clear that if a car isn't of satisfactory quality within six months of delivery, it must be taken not to have been of satisfactory quality from the start. This wouldn't apply if BMWFS provide evidence showing the car was of satisfactory quality when it was delivered. As I haven't seen any such evidence from BMWFS, I find the car wasn't of satisfactory quality when it was supplied to Mr I.

I've seen a copy of the complaint Mr I made to BMWFS in February 2023. I think he made it clear in that letter that he wanted to reject the car because the dealer's attempts to repair it hadn't been successful.

I'm satisfied that Mr I had the right to reject the car at that point. After taking it back to the dealer for repair in October 2022, he was entitled to expect it to be of satisfactory quality. And I'm not persuaded that it was.

I appreciate BMWFS feel the problems Mr I has been experiencing may be due to other factors, such as his own phone software. But the technician's notes I've seen dated 14 April 2023 confirm there was at least one fault:

*"requires new CID screen – manufacturing defect – internal electrical fault."*

The technician's notes go on to confirm the central information display (CID) screen was replaced on 18 April 2023.

I've considered whether it would still be fair for Mr I to reject the car, after this repair in April 2023. But Mr I says none of the dealer's attempted repairs have resolved the problems. He's shown us another document from the dealer, dated 20 October 2023, saying they've carried out another software update in relation to the headunit issue.

For these reasons, I find Mr I should be allowed to exercise his right to reject the car and receive a refund of the £5,825 deposit he paid. I bear in mind that Mr I is currently still using the car. I think it's fair that he should pay for the use he's had of it. BMWFS should make arrangements to collect it without charge on a date that's convenient for Mr I, ending the agreement on the date of collection.

I appreciate Mr I will have to pay a fee to DVLA to remove his personalised number plates before the car is returned. But based on the evidence I've seen, I think he's had the enjoyment of these number plates on the car for around 17 months. And I can't say how long he'd have kept these plates on the car if it had been of satisfactory quality. So, I don't think it's fair for me to direct BMWFS to cover the transfer fee.

I'm satisfied Mr I hasn't had full use of all the car's expected features due to the issues with it. So, I think it's fair for BMWFS to refund 10% of the monthly payments he's made since 28 June 2022.

Although Mr I was provided with a courtesy car whilst this one was in for repair work, I do think the problems with it have caused him stress and inconvenience. He told us that having to run it to the dealer and collect it each time it's gone in for repairs has been inconvenient because he needs the car for work, the school run and other commitments. He said he's felt anxious about paying so much money for a car with the faults he's been experiencing. I consider £150 compensation to be fair for the stress and inconvenience he's been caused.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct BMW Financial Services (GB) Limited to:

- Make arrangements to collect the car without charge to Mr I, on a date that's convenient for him.
- End the agreement, at no further cost to Mr I.
- Refund the £5,825 deposit Mr I paid.
- Refund 10% of the monthly payments Mr I has made since 28 June 2022.
- Add 8% simple interest to each of the refunded and reimbursed payments, calculated from the date of each payment until the date of settlement.
- Pay Mr I £150 for the distress and inconvenience he's been caused.
- Remove any adverse information that's been recorded on Mr I's credit file about this agreement.

Interest should be added to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.

If BMWFS consider tax should be deducted from the interest element of the award, they should tell Mr I how much they've taken off. They should also give him a tax deduction certificate if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 29 December 2023.

Corinne Brown  
**Ombudsman**