

The complaint

Mr H is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited ('BMWFS') was of an unsatisfactory quality.

What happened

In June 2021, Mr H was supplied with a new car through a hire purchase agreement with BMWFS. He paid an advance payment of £5,481 and the agreement was for £49,235.74 over 48 months; with 47 monthly repayments of £675, and an optional final payment of £21,591.10.

Mr H said that, in September/October 2021, he noticed a strange smell in the car, but the supplying dealership couldn't find anything wrong. And, over the winters of 2021/2022 and 2022/2023, the supplying dealership investigated his complaints that the windscreen kept steaming up. He said that, while the dealership accepted the level of condensation was unusual, they couldn't find any reasons for this.

So, Mr H complained to BMWFS. But they didn't uphold his complaint. Unhappy with this, he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator explained that condensation could be caused by a number of different reasons. But, as there was no evidence there was a fault with the car, the investigator said he couldn't conclude that, in this instance, the condensation was as a result of the car being faulty at the point of supply. So, he didn't think BMWFS needed to do anything more.

Mr H didn't agree. He said the car must have some kind of a leak, and just because this hasn't been found, this doesn't mean it doesn't exist. So, he thought he should be able to return the car for a full refund. And he's asked for an ombudsman 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.

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.

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 H 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.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMWFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMWFS can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr H to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr H took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMWFS to put this right.

I've seen that, in an email to BMWFS dated 18 May 2023, Mr H explained *"the misting up was reported in the first winter of purchasing the car ... it has continued to happen through the winter of 2021/2022, stopped and then started again in the winter we have just had (2022/2023) [sic]."*

Mr H has provided a large amount of photographic and video evidence which shows condensation in the car. The vast majority of this evidence shows the car in the dark (early mornings, evenings, and at night) and/or in wintery conditions (with low temperatures indicated on the car's display).

Condensation is caused by warmer air coming into contact with a cold surface (such as car windows), cooling down quickly, and turning into liquid droplets of water. It's very common in cars, especially when the outside temperature is substantially lower than inside the car i.e. during winter, early mornings, at night, etc. And condensation can happen either when the car is in use, or when it's been left unused for a period of time, for example overnight.

Given this, while I'm satisfied Mr H has evidenced the car suffers from condensation under certain conditions, his evidence doesn't show this happens in conditions where condensation wouldn't normally be expected, or that the condensation is caused or exacerbated by a fault or other issue with the car.

It's not disputed the car has been inspected by the dealership on multiple occasions, but they've found no faults. And they consider the condensation to be a normal occurrence, and not caused by a manufacturing defect.

What's more, Mr H hasn't provided any independent evidence to show there's a fault with the car that's causing excessive condensation, or that any such fault was present or developing at the point of supply.

As such, and while I appreciate Mr H has found the situation frustrating, I'm not satisfied there was a fault with the car when it was supplied to Mr H that's causing the condensation. So, I won't be asking BMWFS to do anything more.

My final decision

For the reasons explained, I don't uphold Mr H's complaint about BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 September 2023.

Andrew Burford
Ombudsman