

The complaint

Mrs M complains about charges BMW Financial Services (GB) Limited ("BMWFS") told her to pay for damage to a car when it was returned.

What happened

In May 2018 Mrs M took out a hire purchase agreement with BMWFS for a new car. She gave notice of her intention to voluntarily terminate this agreement in April 2021.

BMWFS arranged for their agent to inspect the car on 28 April 2021. Mrs M received a copy of the inspection report, listing the following damage:

Component	Condition	Cost
Wheel LHF	Scratched	£68
Wheel LHR	Scratched	£68
Bonnet	Scratched	£106
Bumper front	Scratched Right Corner	£45
Wing LHF	Scratched	£106
Door LHF	Scratched	£106
Door LHR	Scratched	£106
Qtr panel LHR	Scratched	£106
Qtr panel RHR	Scratched	£106
Door RHF	Scratched	£106

Following this inspection, BMWFS sent Mrs M an invoice for £711 for damages outside wear and tear.

Mrs M contacted BMWFS on 3 May 2021, disputing this charge. She said that, before the car was collected, she'd had the rear bumper professionally resprayed and a new tyre fitted. She said the windscreen had also been replaced a few months earlier. Mrs M said the car had been in excellent condition – and that the added resale value due to the very low mileage far outweighed the cost of polishing out any superficial marks.

BMWFS responded to Mrs M on 11 May 2021. They said they'd reviewed the report of the initial inspection, together with the appraisal completed by their refurbishment centre when the car arrived on site. They reduced their invoice to £242. They said this was for damage to the alloy wheels and bonnet, which fell outside the guidelines for fair wear and tear.

Mrs M offered BMWFS £68, for the cost of a repair to one alloy wheel. She said their inspector had been overzealous in his assessment of the car.

On 4 June 2021 BMWFS sent Mrs M their final response, saying they were satisfied the damage had been recorded correctly and fell outside the wear and tear guidelines they work to. They said they were unable to take the return mileage into account when assessing the vehicle - and didn't accept her offer of a reduced payment.

One of our investigators reviewed the evidence about the damage to the alloy wheels and bonnet. He also considered the terms and conditions of the agreement Mrs M had signed and the industry standard - the fair wear and tear guidelines published by the British Vehicle Rental and Leasing Association (BVRLA).

The investigator said he was satisfied the charge for the damage to the alloy wheels had been raised correctly, because this was more than fair wear and tear. But he said BMWFS should remove the other charge for damage to the bonnet, because he didn't think there was conclusive evidence to support this.

BMWFS accepted our investigator's view, agreeing to reduce the balance Mrs M owed by £106.

Mrs M said she was willing to pay for the damage to the alloy wheels. But she didn't think the investigator's view took account of distress and inconvenience she'd been caused as a result of BMWFS incorrectly demanding £711, when in fact only £136 was due. She felt they'd been "trying it on" here. Mrs M said BMWFS had ignored numerous emails she'd sent them about this.

Mrs M stressed that she'd acted responsibly by arranging her own inspection of the car at a local dealership and ensuring the damage they'd identified was put right. She didn't think the inspector had followed BVRLA guidelines. Mrs M said the car had been returned with an above average resale value due to its low mileage – and she'd certified this mileage to a prospective purchaser, which had assisted BMWFS to resell the car.

The investigator was satisfied BMWFS had followed the correct procedure in raising the charges, so he didn't think compensation was justified. He explained that the low mileage had no bearing on damage charges. The investigator said the fact that he'd asked BMWFS to reduce their charge didn't mean their initial assessment had been wrong, or they were "trying it on".

Mrs M disagreed. She felt BMWFS must have known the report was wrong and/or fraudulent, as they reduced their invoice. She asked for an ombudsman to review whether she should be compensated for distress and inconvenience.

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.

Entering into consumer credit contract such as this as a lender is a regulated activity, so I'm satisfied I can look into Mrs M's complaint against BMWFS.

The damage charges are no longer in dispute, so there's no need for me to discuss that. My decision focusses on whether Mrs M should be paid compensation for distress and inconvenience she's been caused.

I appreciate voluntarily terminating a hire purchase agreement can be a stressful decision to make. But I can only consider an award for distress and inconvenience caused by something BMWFS did wrong – not for the overall impact of the situation on Mrs M. So I've started by considering whether BMWFS acted unfairly or unreasonably by sending her an invoice for £711.

I've read the hire purchase agreement Mrs M signed, to see what kind of damage BMWFS could charge her for. The first page has a section headed "other charges", which says:

“If the vehicle is not returned in good repair and condition (allowing for fair wear and tear), we will charge you a set cost for each item of damage we would have to repair to return the vehicle to the state we expected it to be in (we use recognised industry standards to determine this). These charges reflect the cost to us in carrying out the works needed. A list of the current charges that may apply can be found on our website...”

I consider the BVRLA guidelines to represent good practice across the industry, giving fairly detailed descriptions of damage that should be considered fair wear and tear when a vehicle is returned. I can see Mrs M feels strongly that the inspector didn't follow these guidelines when he assessed the scratches on the bodywork. She says there was no primer showing, and she was confident they'd polish out.

I've looked at what the guidelines say about scratches to paintwork:

“Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out.”

So in assessing whether a scratch would be classed as fair wear and tear under these guidelines, my first consideration is whether it exceeds 25mm in length. If the scratch falls within this size restriction, I'd then go on to think about whether it can be polished out – and if the primer or bare metal is showing.

BMWFS have provided a copy of the inspection report dated 28 April 2021 and the photos of the damage, which I've reviewed. A ruler has been included in the photos to show the size of the damage.

With any visual inspection, I don't consider it unusual for opinions to differ as to whether damage will polish out. The photos confirm it had recently rained - and I accept that water marks and reflections on the car make it more difficult to assess the severity of the damage in some of the photos.

But I find the BVRLA guidelines to be clear that any scratches longer than 25mm fall outside what would be considered acceptable as fair wear and tear. And I do think the photos of the car show scratches of more than 25mm in several areas of the bodywork. So I don't think it was unreasonable for BMWFS to initially raise an invoice to Mrs M for £711 for damage to the car. I've seen nothing to suggest they acted incorrectly here – or that they were “trying it on”.

And in any event, the evidence I've seen shows Mrs M didn't pay this invoice. BMWFS have told us that, when she disputed the damages, they reviewed the photos taken before the car was collected and the assessment of the true costs after the car arrived on site. I've seen evidence showing they emailed Mrs M on 11 May 2021, saying they'd reduced their invoice to £242. I'm satisfied this was a fair and reasonable thing for BMWFS to do.

Our investigator felt the charge for damage to the bonnet should be cancelled – and both parties have agreed. So there's no need for me to comment on that damage. The cancellation of this charge means the invoice will be reduced by £106.

I understand the thought of having to pay a damage charge of £242, instead of £136, has had an impact on Mrs M. But I don't think this would be enough to say BMWFS should make any further award. So although I realise Mrs M will be disappointed with this decision, I won't be directing BMWFS to do anything more to resolve her complaint.

My final decision

BMWFS has already agreed to reduce their invoice to Mrs M by £106 to settle this complaint and I think that's fair in the circumstances.

So my decision is that BMW Financial Services (GB) Limited should remove the £106 charge for damage to the bonnet.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 July 2022.

Corinne Brown
Ombudsman