

## **The complaint**

Mrs S complains that the car she acquired financed through a hire purchase agreement with BMW Financial Services(GB) Limited ("BMW") is of unsatisfactory quality.

## **What happened**

Mrs S is represented in her complaint by her husband, Mr J. For the sake of simplicity in this decision I have referred to all the submissions from Mr J as being made by Mrs S. In November 2020 Mrs S was supplied a used car, financed through a hire purchase agreement with BMW. She said from around May 2021 she found flaws with the vehicle, including the DAB radio cutting out frequently and the satellite navigation (SATNAV) failing to update in real time, on one occasion almost causing a road traffic accident. In addition, there was a rattle in the boot and the steering wheel developed marks. Mrs S took the car back to the dealership on more than one occasion. The dealership couldn't find a fault with the SATNAV or the radio despite Mrs S providing her own video evidence. It said the marks on the steering wheel were not a manufacturing defect. With regards to the boot trim the dealership said this could be repaired but it would need to order an additional part. Mrs S also said BMW kept offering to buy back the car and offered another one with a more expensive agreement.

Mrs S brought a complaint to BMW. In it she said proper investigations of the faults with the DAB radio, SATNAV and the steering wheel weren't carried out and technical reports of work done were not provided. She said a courtesy car she was given with a similar specification didn't appear to have these faults.

In its final response BMW said it had spoken to the dealership and been advised that no fault was found with the SATNAV and Radio. Mrs S wasn't satisfied and brought her complaint to this service.

Our investigator concluded there wasn't enough evidence to say there was a fault with the car. Mrs S disagreed with the findings and asked for a decision from an ombudsman. She said that while she agreed that wear and tear might be the case with the steering wheel and boot lid, she questioned how this could be the case with the SATNAV and Radio. She went on to say that BMW had refused to accept her video evidence proving the issues with the car. The investigator had noted that BMW should repair the boot lid within four weeks but Mrs S noted that the investigator hadn't addressed the fact that BMW hadn't sorted the boot lid in the time it said it would.

On 5 September I issued a provisional decision. I said:

*Mrs S signed the agreement on 18 November and collected the car on 21 November 2020 and said she started finding faults around May 2021. Her first email correspondence to BMW regarding the faults is dated 17 May, which indicates the faults were likely present or developing within the first six months of the contract.*

*BMW accepted that the rattle in the boot was because of a manufacturer's defect. But that the white marks on the steering wheel were not. I've seen a photo of these marks. As these marks developed over time it's difficult to conclude with the evidence provided whether they were apparent or developing at the point of sale. And it's quite possible they appeared as a result of wear and tear. So, I cannot safely say they were the result of a manufacturer defect. Mrs S reported the issues with the SATNAV and Radio repeatedly over a sustained period of time. The dealership did look at the car and reported the following in an invoice dated 27 August:*

*"Investigated DAB cuts out. Tested vehicle in local area to dealer and was unable to get DAB to fault. Unlike FM that may get crackly when reception is poor DAB will just cut out and coverage is not as much as FM across the UK. Investigated marks on the steering wheel, these have been inspected by our Warranty Department and this is not a manufacturing defect. We can have this repaired for £120 plus VAT. Investigated RTTI operation being too slow and tested car and confirm RTTI is working as expected and comparably with a similar specified vehicle."  
(RTTI is Real Time Traffic Information)*

*I've no reason to doubt the car was checked for these faults and I'm not disputing these were the findings at that time. I can see that BMW offered to buy back the car but that this was rejected by Mrs S on the grounds that this would mean entering a new more expensive agreement for another car. But Mrs S said the problems with SATNAV and Radio continued to occur. She asked for an independent inspection and provided her own video evidence. In its final response BMW said this wasn't necessary.*

*I've looked at the videos supplied by Mrs S and I consider that an independent inspection was warranted so I asked Mrs S if she would consider commissioning one. Mrs S commissioned an inspection by an independent BMW specialist.*

*The invoice said: "Investigated intermittent loss of radio reception. Downloaded fault codes and studied live data, also Maps/SATNAV, not keeping real time information. Checked for updates and made sure all programmes up to date."*

*Miss S said the independent BMW specialist diagnosed and rectified the faults with the car. She said she tested the car on the same routes where she encountered problems during journeys. There were road closures which the SATNAV picked up on and rerouted her accordingly. The car was also taken on a long road trip and the maps provided live updates. She went on to say the DAB radio hasn't knocked out once since she received the car back from the BMW specialist. The signal has remained strong and consistent.*

*I'm pleased to see that the problems with the SATNAV and DAB radio have been rectified. But given the apparent ease and speed of the independent specialist to rectify the problems I wonder why these tests weren't carried out by the dealership. I consider had it done so the car would've been fixed a lot sooner and without the subsequent inconvenience to Mrs S.*

*In her complaint Mrs S asked for a full refund of what she had paid plus the same interest that BMW have charged her, 5.9%. She asked for £1,000 for the distress and inconvenience and for a refund of one month for the loss of use of the car.*

*As the car SATNAV and DAB are fixed, I won't be asking BMW to unwind the finance agreement. I do understand Mrs S's strength of feeling regarding compensation. She*

*says she and her husband have had sleepless night and had to take time off work to try and resolve the issue only to be told the same thing by BMW over and over. She also said they spent several hours drafting complaints, looking for information and on phone calls as well as visits to the garage. Regrettably, it's not within my power to award any compensation to Mr J, as he is not the complainant.*

*I do think BMW could have arranged for the car to be inspected sooner on the basis that Mrs S was able to provide video evidence. And Mrs S has been inconvenienced by having to chase the issues with the SATNAV and Radio and with the time it has taken to get the boot lid fixed. Subject to any further information I might receive I'm minded to instruct BMW to pay Mrs S £250 for the distress and inconvenience this has caused her. I understand this is less than Mrs S has asked for but it is in line with our guidelines and what I would expect under the circumstances.*

*I also agree that a refund of one monthly payment is fair and reasonable for the loss of use of the car while being inspected and for the unreliable features of the SATNAV and Radio. Mrs S paid for the inspection and I find it fair and reasonable for BMW to refund the cost of this, £90.*

After reviewing the independent inspection BMW had nothing further to add. Mrs S provided some additional comments which I have responded to below.

### **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'm satisfied my provisional decision still stands.

Referring to my provisional decision where I said Mrs S had asked for one-month refund for loss of use of the vehicle, Mrs S said that this wasn't what she had suggested in her initial complaint. She said loss of radio and SATNAV was persistent for 14 months and this is something she had to live with daily. She said compensation for this amounted to more than one month's refund.

In her initial complaint I can see Mrs S asked for a full refund of payments, so I apologise for my error above. I do understand that problems with SATNAV and radio persisted and I can appreciate that this was frustrating for Mrs S. But Mrs S still had full use of the car over this period except when it was in the garage. And the problems that persisted were intermittent. As the problems have been corrected now my decision is based on what is proportionate and I remain of the view that a one month refund is fair and reasonable.

Mrs S also said that while she appreciated that her husband, Mr J, is not the main complainant, he did have to take emergency leave to deal with the car. She said she had been unable to take the time off so it had been left to her husband to take time off to arrange the independent inspection. She said she wanted to make this a priority and get the inspection done as quickly as possible. She believed her husband's time should be considered for compensation.

The rules under which I am obliged to operate are set out in the Dispute Resolution (DISP) Rules published as part of the Financial Conduct Authority's (FCA) Handbook. These say we can only look at complaints brought to us by an "eligible complainant". There are two parts to the eligibility rules and the complainant must meet both parts for them to be eligible. DISP 2.7.3R sets out the first part of the rules. An eligible complainant must be a person that is:

- (1) A consumer...

DISP 2.7.6R sets out the second test which is that to be an eligible complainant a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent: the complainant is (or was) a customer, payment service user or electronic money holder of the respondent, in this case BMW. The finance agreement at the heart of this complaint is between BMW and Mrs S, not Mr J. So, while it's possible Mr J may meet the first test, he does not pass the second and so is not an eligible complainant within this complaint. As such I don't have the power to award him compensation.

### **Putting things right**

In order to put things right BMW Financial Services(GB) Limited must:

- Pay Mrs S £250 in compensation.
- Refund one monthly payment.
- Refund the cost of the independent inspection, £90. Mrs S should provide BMW with a copy of the invoice/proof of payment.

### **My final decision**

My final decision is that I uphold this complaint and BMW Financial Services(GB) Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 October 2022.

Maxine Sutton  
**Ombudsman**