

The complaint

Mr R complains that the redress after BMW Financial Services (GB) Limited (BMWFS) agreed he could reject his car. He would like his deposit refunded along with payments made from when the rejection was agreed.

What happened

The details of this complaint are well known to both parties so I won't repeat them again here, instead I will focus on giving the reasons for my 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 have reached the following conclusions:-

- BMWFS accepted our investigators view in part but didn't agree to Mr R's deposit being refunded in full due to what it felt was damage that fell outside of fair wear and tear. Our investigator asked BMWFS several times to clarify what damage charges BMWFS wished to still apply but BMWFS hasn't responded. I think it has had sufficient time to do so. On this basis I think it's only fair to Mr R that I go ahead and make a final decision based on the information that I have to date.
- Whilst we are not bound by consumer legislation we do take it into account. The Consumer Rights Act 2015 explains that refunds due to consumers on rejection of goods can be reduced to consider usage of the goods. And the contract Mr R signed allowed for charging for damages outside of fair wear and tear. So, I think it's reasonable Mr R could have expected some potential reduction of money owing to him when BMWFS agreed to rejection of his car.
- BMWFS refunded three of the eight payments Mr R made to reflect fair usage. I think that was reasonable as although Mr R disputes the mileage driven the evidence we have, showed Mr R drove 5000 miles whilst he had the car. We would usually add 8% simple interest to such refunds from the date of payment to the date of settlement so BMWFS should add this if it hasn't already done so.
- When there is agreement to reject vehicles we usually expect any deposit to be refunded with 8% simple interest added from the date of payment to the date of settlement. I am pleased to note that BMWFS, whilst it disputes a total refund being made, has agreed to the addition of simple interest to the refund.
- In terms of damages BMWFS has provided pictures of the car's condition on collection but not a vehicle condition report the day the car was collected. The photos don't mark areas of damage. And it appears that a BCA report dated 12 October 2022 doesn't note most of the damage that BMWFS charged Mr R for. Also, the report was carried out some months after the car was collected. Our investigator asked BMWFS questions about the alloys, the charge for a key, paintwork damage

and the tyres but has had no response despite various prompts. As BMWFS hasn't provided sufficient proof of the damage it is charging for I don't think I can reasonably agree to its charges being deducted from the deposit refund due to Mr R.

- Our investigator recommended a distress and inconvenience payment of £250. I think this is reasonable and am pleased BMWFS agreed to this along with agreeing to no negative information being recorded on Mr R's credit file.

My final decision

My final decision is that I uphold this complaint.

In full and final settlement BMW Financial Services (GB) Limited should:

- Repay Mr R's deposit in full with 8% simple interest added from the date of payment to the date of settlement
- If it hasn't already done so, pay Mr R 8% simple interest from the date of payment to the date of settlement of his three refunded monthly payments
- Ensure no negative information is recorded on Mr R's credit file in relation to this agreement
- Pay Mr R £250 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 August 2023.

Bridget Makins
Ombudsman