

The complaint

Mrs B has complained that she is unhappy with the quality of a car she acquired in September 2021 using a hire purchase agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services ("BMW").

What happened

Mrs B acquired a used Kia Sportage in September 2021, using a hire-purchase agreement with BMW. The car was just over three years old, with a mileage of 37,900. The cost of the car was £21,490, and Mrs B borrowed the full amount over a term of 48 months, with a monthly repayment of £393.95. There is a final payment of £6,717.80, to be made if Mrs B wants to keep the car at the end of the four years.

Mrs B told us that, in February 2022, there was a strong burning smell within the car, and on further inspection she found a hole had been burnt through the back of the driver's seat, and wires could be seen. She took the car to the nearest Kia garage to be checked. It carried out a diagnostic check, and said that someone had removed the driver's seat, and when it was put back, wires related to the heated seat mechanism had been trapped under the seat which had caused a spark.

I should say here that Mrs B said that she had previously noticed a burning smell when using the heated seats, but had thought it emanated from outside the car rather than inside it.

Mrs B complained to BMW about the damage to the seat. It upheld her complaint to the extent that it said the necessary repair had been carried out at no cost to Mrs B. It said Kia had removed the trapped wires and the vehicle was working and classed as safe and any cosmetic damage was underneath and at the bottom of the seat.

Mrs B remained unhappy that the damage to the seat wasn't repaired, in that there remains a hole in the seat through which wires are visible. She has safety concerns for her grandchildren when travelling in the back of the car and is also worried about charges for damage being imposed when she returns the vehicle at the end of the agreement. So she brought the complaint to this service as she was unable to resolve it with BMW.

Our investigator looked into this complaint, and concluded that Mrs B's complaint should be upheld. BMW disagreed, and asked that it be reviewed by an ombudsman.

I issued a provisional decision in June 2023, in which I explained that I agreed with our investigator that the complaint should be upheld, but that I disagreed on the appropriate remedy. Mrs B responded to say that she accepted my provisional decision. BMW did not respond, despite two reminders of the deadline for responses.

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.

I've decided to uphold Mrs B's complaint. I'll explain why.

Because BMW supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case, the car was just over three years old. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered a degree of wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

In my provisional decision I set out my reasoning as follows:

"Mrs B sent in photographs of the hole in the seat, with wires visible, along with a description of the sequence of events. BMW has provided copies of the hire purchase agreement, emails between it and the dealership, and the invoice for the repair carried out in March 2022.

As I noted above, BMW said that the cause of the problem was determined as being that someone had removed the driver's seat, and when it was put back, wires related to the heated seat mechanism had been trapped under the seat, which had caused a spark.

BMW said that it checked with the dealership, and that company said that, after checking with the relevant parties, it had been told that Kia had not had the vehicle in for any repair work on the seat, the dealership's own team had not had the seat removed and the garage from which it bought the car denied taking the seat out. There was no reason for anyone other than Kia to take out the driver's seat. The dealership also said it had spoken to an auto electrician who said that, if the wires had been caught, they would have shorted and then tripped the fuse. This would have happened relatively soon after the wires were trapped, rather than months later. Mrs B told us that she had not taken the seat out.

Given that all parties deny having removed and replaced the seat, and the dealership said there's no reason for anyone other than Kia to take out the driver's seat, it's difficult to establish exactly what happened here. I note the comments from the auto electrician but I can't see that he or she would have had an opportunity to examine the car and so I don't think I can place much weight on them in this particular case.

The repair invoice describes the work as follows:

'Re-connected seat electrics after inspecting seat with no signs of heat damage coming from any internal components - Carried out overnight road test with electrics connected and in use – no fault found at time of test and no heat damage found coming from driver's seat – all ok'

I've thought carefully about all of the evidence provided. There's nothing from what I've seen to suggest that Mrs B removed the driver's seat, or had it removed by a third party. There are limited reasons to do so - such as replacement, access to the area underneath the seat, or replacement of the carpet - and as car seats are unwieldy I don't think it would be undertaken lightly. The description of the repairs on the invoice is (unsurprisingly) quite brief, so does not mention the exact state of the wiring or explain how the spark arose in this case.

The issue here is whether the car was of satisfactory quality at the point of supply. On balance I think it most likely that it wasn't. I say this because there was clearly a fault with the wiring, and Mrs B had had the car for less than six months when it occurred (and as I explained, said she had noticed a burning smell earlier without realising the source). And as I've said, I have no evidence to suggest it was caused by any action of Mrs B's during the time she'd had the car. So I think there was most likely a fault present at the point of supply, and my current conclusion is that the complaint should be upheld. In that respect I agree with our investigator.

On that basis I need to consider the appropriate remedy. Our investigator first said that BMW should take further action to put things right, which might involve, at the very least, replacing the appropriate seat components such as the wiring, and parts to rectify the hole in the seat. Or, if more economically viable, the other option was to replace the driver's car seat. BMW accepted this, but said it couldn't arrange for the car to be taken to the dealership for repair. Mrs B has recently had quite serious health problems, and was unable to drive what was quite a long distance to the dealership.

After several attempts to resolve the situation, our investigator issued a second view about the complaint, saying that she thought it appropriate for Mrs B to be able to reject the car and end the agreement. BMW disagreed with this, in summary disputing whether any fault was present at the point of supply, and saying that in any case there is no mechanical fault remaining, so the only damage is cosmetic.

I've thought carefully about BMW's comments. I've explained above why I think it's most likely that the car wasn't of satisfactory quality at the point of supply. But I don't think it would be fair and reasonable to require BMW to accept the ending of the agreement and rejection of the car. Instead, my current conclusion is that it would be fair for BMW to arrange for the driver's seat to be repaired to deal with the hole and exposed wiring (but if it is more cost effective to replace the seat, this should be done so as to match the other seats in the car). I say this because Mrs B has continued to be able to use the car and I've no evidence of any continuing mechanical fault following the wiring repair. But I don't think it's fair to leave Mrs B with what is effectively an incomplete repair – and I do understand her concerns about small children travelling in the car where there is a hole in the seat and exposed wiring.

I note Mrs B has had quite serious health problems, so if necessary BMW should arrange with the dealership for the car to be collected and taken there for repair (or alternatively taken to a local Kia outlet for repair there), and then returned to Mrs B, at no cost to her."

As I noted above, Mrs B has accepted my provisional decision, and BMW didn't respond. As no new evidence has been provided, I have no reason to change my conclusions, and therefore I uphold this complaint.

Putting things right

BMW should make arrangements for the driver's seat to be repaired to deal with the hole and exposed wiring (but if it is more cost effective to replace the seat, this should be done so as to match the other seats in the car). If necessary BMW should arrange for collection of the car and delivery to the most appropriate repair location, and then return to Mrs B.

My final decision

For the reasons given above, I uphold Mrs B's complaint and direct BMW Financial Services (GB) Limited to carry out repairs as specified above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 18 August 2023.

Jan Ferrari
Ombudsman