

## **The complaint**

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

## **What happened**

On 31 March 2023, Mr B was supplied with a new car through a hire purchase agreement with BMW. He paid an advance payment of £3,000 and the agreement was for £69,470.31 over 48 months; with 47 monthly payments of £889.52 and a final payment of £38,048.06.

When the car was delivered, Mr B complained there were three chips in the paintwork, and the satnav wasn't working. The car was taken to the supplying dealership for repair on 27 April 2023, by which point Mr B had travelled around 1,600 miles in the car. Mr B collected the repaired car on 17 May 2023. He was provided with courtesy vehicles for the entire period the car was being repaired.

However, Mr B wasn't happy with the repair, and he said he could still see the dent under where a chip was. He also said that, before the car went in for repair, when he travelled from just north of London to Manchester for a football match with his 9-year-old son, he was using an app on his phone to navigate but, because his phone was overheating and because the satnav wasn't working, he had to rely on traditional methods of navigation (use of road signs) instead. And this resulted in him being 20 minutes late for the match and getting lost on the way back home.

BMW responded to Mr B's complaint on 12 June 2023. They said the car had been repaired and that Mr B had been provided with courtesy vehicles while the car supplied to him was off the road. However, they also offered a full tank of fuel, a ceramic paint protection, a replacement tyre to replace one that had developed a slow puncture, the repair of a paint chip which had occurred after the car was supplied to Mr B, and £350 credit in compensation for the inconvenience that had been caused.

Mr B wasn't happy with this, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said the evidence showed the paintwork repair hadn't been done properly, and BMW agreed that a further repair would be done. Mr B accepted this.

The investigator also thought that, while the compensation offer BMW had made was mainly fair, he didn't think the £350 credit was reasonable as it could only be used to spend with the manufacturer. The investigator also said that Mr B had suffered a significant amount of inconvenience by what had happened, and the car still required a further repair to put things right. As such, he recommended that BMW increase the compensation to £500, and that this wasn't provided by way of a restricted use payment.

Mr B didn't agree with the investigator. He said he was unhappy with the £500 recommended, and that he wouldn't even accept £1,000 due to the inconvenience and

embarrassment of driving a car with a paintwork issue and missing 20 minutes of a football match he was attending with his son.

Because Mr B didn't agree, this matter has been passed to me 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 B 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, BMW 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 BMW can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr B to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr B 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 BMW to put this right.

In this instance, the faults Mr B initially found with the car's paintwork and the satnav aren't disputed. Nor is it disputed that the car still needs some work doing to the paintwork, and BMW have agreed to do this at no cost to Mr B. While I understand how frustrating this would've been for Mr B, I'm not satisfied that three paint chips and the satnav not being correctly activated is sufficient to say the car wasn't of a satisfactory quality when supplied. So, I think it's reasonable that BMW have agreed to repair the car, rather than allow Mr B to replace or reject it.

As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think BMW should do to put things right.

### **Putting things right**

The evidence shows that Mr B has been able to use the car while it's been in his possession. And while it was being repaired, he was provided with courtesy vehicles to keep

him mobile. While Mr B wasn't happy that the courtesy vehicles weren't like for like – one was electric, and he doesn't have a specific charger fitted at his home, and the other was a smaller model of car – there's no requirement for a courtesy car to be of the same make, model, and specification as the car being repaired. Mr B was offered courtesy vehicles to keep him mobile, and this was for a period of just a few weeks. So, I'm satisfied BMW acted reasonably by providing Mr B with the alternative transport they did.

Because of this, I think it's only fair that Mr B pays for the usage he's had of the car, which includes the time he was provided with courtesy vehicles. So, I won't be asking BMW to refund any of the payments he's made.

In addition to agreeing to repair the current issues with the paintwork, BMW offered Mr B a full tank of fuel, a ceramic paint protection to reduce the likelihood of further paint chips, a replacement tyre to replace one that had developed a slow puncture while the car was in Mr B's possession, and the repair of a paint chip which had occurred after the car was supplied to Mr B. Given the circumstances, I'm satisfied this offer is more than reasonable.

However, it's clear that Mr B has been inconvenienced by having to arrange for the car to be repaired, and by this repair being unsuccessful. And he was further inconvenienced by having to travel back to the dealership on multiple occasions. He also needs to take the car back for further repair, and his initial use of the car was impaired by not having a working satnav. So, I think BMW should compensate him for this.

The investigator had recommended BMW pay Mr B a total of £500, which is in line with what I would've directed for the significant impact on Mr B, had no recommendation been made. As such, I see no compelling reason not to adopt this as part of my final decision. I'm also in agreement that this should be paid to Mr B in a non-restricted use way i.e., not by way of a BMW credit.

Turning to the football tickets, Mr B has said he was attending a match with his son, for his son's birthday, and that the tickets cost him £1,000. He's provided copies of these tickets. He's also provided evidence to show he transferred someone £1,000 on 14 March 2023.

However, the tickets Mr B has provided are two adult tickets, neither of which are in Mr B's name. Nor are either of the tickets in the name of the person Mr B transferred £1,000 to in March 2023. Given this, from the evidence I've seen, I can't be satisfied that Mr B paid £1,000 for these tickets. As such, I won't be considering any additional compensation on that basis.

Therefore, if they haven't already done so, BMW should:

- arrange to repair the paintwork of the car at no cost to Mr B, which includes the application of the ceramic paint protection they offered; and
- pay Mr B a total of £500 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

## **My final decision**

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 February 2024.

Andrew Burford  
**Ombudsman**

