

The complaint

Mr K complains about the quality of a car he acquired from BMW Financial Services (GB) Limited trading as Mini Financial Services ('Mini FS'). He says that the car has had a series of errors and needed significant repair work that hasn't been completed. He would like the car properly repaired and some compensation for the distress and inconvenience this has caused.

What happened

Our Investigator thought the complaint should not be upheld. Mr K disagreed with the Investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Mr K's complaint should be upheld. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision

Mr K has explained that he was involved in a car accident and his previous car had been written off. Because of this, he was looking for a new car.

In 2023 Mr K acquired a car using a hire purchase agreement with Mini FS. The car was used and was just under five years old, it had already covered 39637 miles. The price of the car was £15,650 and if Mr K makes all the payments under the 60-month finance agreement he will pay a total of £19,459.60.

Mr K said he wanted a car in the best condition possible due to the toll the issues with his previous car had taken on him. But as soon as he started to use the new car, he found there were problems, he says these were:

- *The heating didn't work properly, and this could fog up the windscreen.*
- *The sensors on the wipers were not working properly.*
- *The heated seats were not working properly.*

Mr K returned the car within five days to get these issues put right.

Mr K says that it took over a month for the repairs to be made and for the car to be delivered back to him. But when the car was returned, he noticed that there was some damage to the paintwork and some chips to the windscreen. Mr K says the delivery driver confirmed this damage was present when he received the car to deliver.

After some contact with the dealership Mini FS agreed to take the car back again and it has made repairs to the windscreen. But it hasn't repaired the paint chips.

Mr K had a courtesy car throughout the first period the car was undergoing repairs. However, he is not happy with the courtesy car as whilst it was a similar make and model to the car he had purchased, it had advertisements for the car manufacturer on it. Mr K said this was embarrassing and reduced his enjoyment of some important events. He says all of this has caused him a significant amount of distress and inconvenience.

Mr K complained to Mini FS about this. Mini FS didn't uphold the complaint as it felt that the issues Mr K had complained about had been resolved by the dealership. Mr K didn't agree with this and brought his complaint to the Financial Ombudsman Service.

One of our Investigators has considered the complaint and has not upheld it. She thought it was reasonable to say the car was of unsatisfactory quality as the dealership had taken steps to repair the heating issues and the sensors. And whilst the courtesy car did have advertisements on the doors, it was reasonable for it to be supplied to Mr K in this condition when his car was being repaired.

She also said that the windscreen and paintwork issues were not present at the time of sale so Mini FS was not responsible for them. She didn't think any further compensation was reasonable.

Mr K didn't agree with what our Investigator said and there was some further correspondence. I don't think any new issues were raised but it's clear Mr K is still not happy with the repairs to the car, and he feels he should be compensated for the time and worry this has all caused.

What I've provisionally 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Mini FS as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that 'the quality of the goods is satisfactory'.

To be considered 'satisfactory', the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the car's history.

The CRA quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

Here, the car was acquired used with a cash price of around £15,600. I think a reasonable person would accept that such a vehicle would probably have some parts that may becoming worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that a vehicle will be relatively durable - considering its age, price and mileage at the outset. So even though the vehicle wasn't new Mr K should have been able to use it for a reasonable period of time before it needed significant work. It should still be free from minor defects in its appearance and finish.

Were there faults with the car?

There isn't any disagreement that the car was supplied to Mr K with faults. Initially there were faults with the heating system and some sensors, these have been repaired satisfactorily. While these initial faults were being repaired the car's windscreen and paintwork was damaged. I don't know how the car was damaged, but Mr K noticed it as soon as it was returned to him, and the delivery driver confirmed that this damage was on the car before it came into his care. So, these faults or damage haven't been caused by Mr K.

Was the car supplied of satisfactory quality bearing in mind these faults

When Mr K took delivery of the car initially it needed some repairs straight away to the heating system and the sensors. So, the car wasn't of satisfactory quality when it was initially supplied to him.

And whilst these repairs were being carried out the car was damaged. So, when Mr K took delivery of the car again, it still wasn't of satisfactory quality, due to the windscreen and paintwork damage. I don't think it's reasonable to say that Mr K was supplied with goods of a satisfactory quality.

Added to this, Mr K agreed to the car and finance agreement on the basis that the car he would receive would be without windscreen damage and chips to the bonnet paintwork. But the car he has been supplied with is damaged in this way, so he hasn't been supplied with goods of the same quality as those he agreed to purchase.

And I think it's reasonable to say that Mini FS was aware of these problems, and it should have put them right. Some of the correspondence I've seen between Mini FS and the dealership says that:

'Whilst I appreciate that a resin was applied to the windscreen, the chip and the resin is still visible, are you able to look at this and review replacing the windscreen entirely?

The customer has advised that chips on the bonnet are still visible as well, are you able to confirm what was actioned or discussed about this?'

Mr K says that he did attempt to return the car when he initially found it was faulty but was told it should be repaired as a starting point. Mr K says he does not want to return the car anymore, he would like it to be repaired and to receive fair compensation. I think this is reasonable.

Mini FS has recognised there are problems with the car and has taken some steps to put these right. I have considered if the car has been repaired satisfactorily and whether Mr K should receive any compensation for the inconvenience and worry this has caused him.

Having thought about everything I don't think that the car has been satisfactorily repaired. Mr K has supplied photographs that clearly show the windscreen and paintwork damage are still visible. I don't think this is right and it means the car isn't free from minor defects in its appearance and finish.

To remedy this, I think the windscreen should now be replaced. And the paintwork damage should be properly repaired. Mini FS should do these at no further cost to Mr K.

Mr K has complained that the courtesy car he was provided wasn't suitable because it had advertisements for the car manufacturer on the outside. Whilst I appreciate Mr K feels very strongly that this has led to 'embarrassment' on his part I don't think the dealership was acting wrongly when it supplied a courtesy car that had these advertisements. So, I'm not upholding this aspect of Mr K's complaint.

That said, I note that Mr K has been inconvenienced by all the faults the car had, and still has. He has had to make time to facilitate the car repairs. What's more, it seems his car was waiting for a repair for around a month at one point. He was kept mobile in a courtesy car, but ultimately that wasn't the car he was paying for.

I can imagine this would have been very frustrating and stressful for Mr K as he says. Particularly as he had already told the dealership that, following the earlier car accident and lengthy insurance negotiations, he wanted the purchase to be straightforward. So, these long running problems with the car would have been particularly distressing for him. Given all of the circumstances here I think £350 is reasonable compensation for this.

Developments

Mini FS, and Mr K, received my provisional decision. And neither party had anything to add to it.

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.

Mini FS and Mr K didn't raise any new points after receiving my provisional decision. So, I've reached the same conclusions I reached before, for the same reasons. I still think that Mini FS didn't supply Mr K with a car of satisfactory quality, and it should now put this right in the way I said in the provisional decision, and which is repeated below.

As there are no new points to consider, I won't add anything to my provisional decision.

Putting things right

Mini FS should now:

- Replace the windscreen on the car at no cost to Mr K.
- Repair the chips on the car bonnet at no cost to Mr K.
- Pay Mr K £350 for the distress and inconvenience this has caused him.

My final decision

For the reasons I've explained above and in the provisional decision, I uphold Mr K's complaint.

BMW Financial Services (GB) Limited trading as Mini Financial Services should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 8 January 2025.

Andy Burlinson
Ombudsman