

complaint

Mr K complains that a car he financed through a hire purchase agreement with BMW Financial Services (GB) Limited ("BMW Finance") was a different specification than the one he ordered and had faults.

background

Mr K ordered a new car through an online agency in May 2017. He had previously used this agency to secure his previous hire purchase deal which was for the same car and specification. He entered into a hire agreement with BMW Finance to finance the deal.

But Mr K says that when the vehicle arrived it was different from what he expected as it didn't have:

- rear cup holders
- extra storage to the right of the steering column
- driver visual for satellite navigation above the steering column

He says that he later discovered that the car had been manufactured 39 weeks before he received it. And he said that if he'd known that he would not have accepted it.

Mr K was also disappointed with the car because it had:

- some scratches to the paintwork
- faulty parking sensors
- hadn't been properly valeted on receipt and had a
- high delivery mileage

BMW Finance checked the model and specification. They confirmed that the model and specification that Mr K had ordered was the one he had received. They explained that the items Mr K expected were optional and should have been added to the order if that's what he wanted.

They explained that it was usual for new cars to be held in storage waiting new owners as the manufacture hadn't built the car to order. And they explained that the mileage Mr K noticed represented the delivery mileage.

BMW Finance offered to repair the scratches and the faulty parking sensors and to valet the car and they also offered to pay him £250 to compensate him for the inconvenience he'd been put to and provide a further £30 to have the car thoroughly cleaned.

But Mr K wasn't happy with their offer and so he referred his complaint to this service.

Our investigator didn't think BMW Finance had done anything wrong. She thought their offer of compensation was reasonable given the faults Mr K had identified with the vehicle and she also thought the mileage was to be expected given the delivery distance.

She clarified the specification of the car and looked back to see what Mr K ordered the last time and she noted that the two models were the same. Unfortunately, it wasn't possible to get the calls from the online agency so she could not review exactly what was agreed between Mr K and the online agency who passed the order to the dealership. But she was

satisfied that the car Mr K received was the same model he had ordered and so she didn't think it would be fair to suggest BMW Finance had done anything wrong.

She also considered Mr K's concerns that the car had been in storage for some time before he took ownership of it. She noted that Mr K was the first owner and the car had only completed delivery miles so she didn't think it would be right to suggest BMW Finance were wrong not to tell Mr K his car had been manufactured earlier as she accepted their position that manufacturer's would often supply from stock.

But Mr K disagreed and he asked for an ombudsman's decision. He said his main concern was that he hadn't received the car he expected to receive and he explained that the online agency had not told him that, despite satellite navigation now being standard, he would not have a driver visual above the steering column. He said if he was told this, and the additional storage, were optional he would have ordered them.

He also stressed that he would not have ordered the car if he'd been told it had been in storage so long. He was upset at BMW Finance's assertion that he'd signed to accept the condition of the vehicle when it was delivered to him. He explained that this signature was clearly only to confirm the car's controls had been explained to him and he insisted that he had reported issues with the car very promptly.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I know it will disappoint Mr K and I'm aware that he's been waiting some time for a resolution to his complaint but I'm afraid that, having reviewed all the evidence, I agree with the investigator's view. Please let me explain.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

the faults with the car

Mr K acquired his car under a hire agreement. The relevant law says that it should have been of satisfactory quality. If it wasn't then BMW Finance is responsible. I take account of relevant law when deciding what is fair and reasonable. On this basis if I thought the car was faulty when supplied, I'd think it fair and reasonable to ask BMW Finance to put this right.

It's clear that the car was not in the condition Mr K would have expected of a new car when he received it. There were scratches; it wasn't as clean as it could have been and there was a problem with the parking sensors which needed adjusting.

Whilst these faults must have been annoying for Mr K I don't think they were significant and that I could reasonably require BMW Finance to take the vehicle back on this basis.

I see they've offered Mr K compensation and money to get the car cleaned to the correct standard and I think the level of this compensation is reasonable given the circumstances. So I don't think they need to take any further action here.

I've also reviewed the mileage concerns Mr K complains of but I agree with the investigator's comments here and don't find those to be unexpected given the delivery distance.

the vehicle specification

If Mr K was told something that was incorrect, and if he relied on this information when deciding to enter into the contract with BMW Finance, then I would think it fair and reasonable to ask them to put things right.

I've not had the call records from Mr K's conversations with the online agency. It's clear that the vehicle Mr K ordered was the same make and model as the one he previously had. The items Mr K complains of appear to be optional and whilst he tells me this isn't what was agreed on the phone, the only evidence I have had available to consider, or could reasonably call upon, suggests that the model he ordered was the one he received.

So I've not been provided with information that would lead me to fairly suggest BMW Finance have done anything wrong here. Whilst I know it will be frustrating for Mr K, the evidence suggests that the vehicle received is the one that was ordered.

the manufacturing date of the vehicle

Manufacturers will frequently import vehicles and BMW Finance have explained that it's usual to take them from stock and that this can mean that the vehicle's are made some time before they are supplied.

In this case that period appears to be about nine months which does seem a little long.

But have BMW Finance been unfair to Mr K by not telling him about this? I don't think they have. The car was provided on a hire agreement so there was no option for Mr K to purchase the vehicle and take ownership at the end of the hire term. So depreciation or resale values are not factors. BMW Finance have confirmed that it was the newest model and no changes had taken place between the date of manufacture and the registration date and I've not been provided with any information that would suggest the vehicle had deteriorated whilst in storage. The car supplied appears to have been the one ordered; Mr K was the first owner and I don't think he's been inconvenienced by its extended storage.

Whilst reviewing this case it has been clear that Mr K has waited some time to receive his decision. I'd like to thank him for his considerable patience whilst we've been thoroughly reviewing and collating the evidence. But I'm afraid I haven't seen sufficient evidence here to suggest that BMW Finance have done anything wrong. So I won't be asking them to take any further action.

my final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 June 2018.

Phil McMahon
ombudsman