

The complaint

Mrs H complains about the quality of a car she has been financing through an agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services (“AFS”).

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my 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.

I know it will disappoint AFS, but I agree with the investigator's opinion. Please let me explain why.

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.

Mrs H acquired her car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The relevant law says, amongst other things, that the car should have been of satisfactory quality when supplied. If it wasn't then AFS, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they 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.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mrs H. The car here was about one year old and had completed about 11,300 miles so I don't think a reasonable person would expect much wear and tear.

The relevant legislation explains that if the fault occurs within the first six months we are to assume it was present at the point of supply, when AFS were responsible for the car's quality, unless they can demonstrate otherwise.

Mrs H first complained of a charging system fault with this car in December 2020, only three months after she took receipt of the car. I'm persuaded that it's likely this fault was therefore developing at the point of supply and I can't see that AFS have disputed this. Mrs H also complained about a fault with the 360-degree camera from the onset. She says there are still

faults with that unit despite it having been replaced in November 2020, although the fault is intermittent.

The relevant legislation says that the business should be given one opportunity to fix a fault that was present or was developing from the start. The business have had several opportunities to resolve the charging system fault. They have replaced a battery and have replaced the alternator on three occasions. Mrs H returned the car to them in late November 2021 and had to wait some time before the dealership provided an opinion on the continued presence of the charging system fault. They now say there's no evidence of that fault, but I'm persuaded there is because:

- Mrs H has provided photographic evidence of the fault on the dashboard before she took the car back.
- The dealership initially noted the presence of the fault code.
- It seems unlikely that a replacement alternator would remedy the problem as that repair option had failed on three previous occasions.

So, I think there is evidence the car is still faulty and that repairs have been unsuccessful. In those circumstances I think the car has been of unsatisfactory quality and AFS should now allow Mrs H to reject it.

And, even if I'm wrong about that, the relevant legislation says that when we consider whether goods have been of satisfactory quality we should consider if they've proven to be durable. I don't think that can be said for this car. The car was relatively new when supplied and I think a reasonable person would therefore expect relatively trouble-free driving. But within the first six months the car had experienced problems with the boot, 360-degree camera, charging system and battery. And there were subsequent problems within the first year with the seat memory, driver's window, electrics, and heated seats.

So, I think this car has also been of unsatisfactory quality as it hasn't been durable.

Putting things right

AFS should collect the car at no cost to Mrs H and they should end the finance agreement. They'll need to refund any deposit Mrs H has paid and, as she's been deprived of that money, they will need to add interest to that refund.

Mrs H paid for a service to the car in March 2021 that would have covered the car for the next year. But she returned the car to the dealership in November 2021 and I think it would therefore be fair for AFS to provide a pro-rata refund of the service cost for the part of that year Mrs H didn't have use of the car.

Mrs H has been inconvenienced by these issues. She's had to take the car back to the dealership on several occasions and she's had to chase the dealership for their views on the continuing faults. She's also had to escalate her complaint to this service when I think it could have been resolved earlier. Mrs H has explained that the problems she's had have restricted her daily routine and caused her a lot of anxiety. She's explained that as she works in a primary school she hasn't been able to work from home and has had to resort to public transport to get to work. Mrs H has also explained that she would usually have provided some care for an elderly relative but hasn't been able to do so because she's had no transport.

In those circumstances BMWFS should pay her £350 compensation for the distress and inconvenience she's experienced.

I think the issues Mrs H had will have impacted on the use she's had from the car. The business provided a courtesy car in December 2020 when the alternator failed but they haven't kept Mrs H mobile since she returned the car in late November 2021 and Mrs H has been paying finance instalments for a car she didn't have. In the circumstances I think AFS should refund any finance instalments Mrs H has paid since she returned the car to the dealership on 30 November 2021. Mrs H also had issues with the car from June 2021 to November 2021 and I'd agree with the investigator that AFS should therefore refund 15% of the finance instalments Mrs H paid in that time to reflect the impaired use she had.

AFS should also refund the costs Mrs H incurred to have her private number plate transferred. Mrs H will need to provide copies of any receipts/invoices.

The vehicle invoice details charges for smart repair insurance, tyre and alloy insurance, AutoGlym and 12 months road tax. These expenses were financed through the hire purchase agreement and AFS should therefore provide a pro-rata refund of the insurances for any period Mrs H will now no longer benefit from them. They should also provide a pro-rata refund for the AutoGlym, but Mrs H has benefitted from twelve-month road tax and I'm not persuaded there should be any refund of that.

My final decision

For the reasons I've given above I uphold this complaint and tell BMW Financial Services (GB) Limited to:

- Collect the car at no cost to Mrs H and end the finance agreement.
- Refund any deposit and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund any finance instalments paid since 30 November 2021 in respect of lack of use. Also refund 15% of any finance instalments paid between June and November 2021 to reflect the impaired use Mrs H had from the vehicle at that time. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mrs H £350 to compensate her for the distress and inconvenience she's been caused.
- Provide a pro-rata refund for the service charge Mrs H incurred in March 2021 on provision of the receipt from Mrs H.
- Refund the costs Mrs H incurred to have her private number plate transferred. Add 8% simple interest per year from the date of payment to the date of settlement.
- Provide a pro-rata refund of the tyre and alloy and smart repair insurances to cover the period Mrs H stopped benefitting from those insurances (30 November 2021). Also provide a pro-rata refund of AutoGlym payment for the same period.
- Remove any adverse reports they may have made to Mrs H's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 30 March 2022.

Phillip McMahon

Ombudsman