

The complaint

Mr G complains about the redress he's been offered since he returned a car he was financing through an agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (AFS).

What happened

I issued my provisional decision on this complaint in January 2023. An extract from that provisional decision is set out below.

Mr G took receipt of a used car in July 2021. He financed the deal through a hire purchase agreement with AFS.

The car had many problems and eventually an agreement was reached to return it to the dealership as it wasn't of satisfactory quality. The dealership agreed to refund Mr G's £15,000 deposit and to settle the finance agreement with AFS.

Mr G returned the car and the agreement was settled by the dealership. They refunded £19,299.87 to Mr G but say they paid Mr G more than they intended to. They want Mr G to return £4,299.87 as they only intended to return his £15,000 deposit.

Further promises were made by the dealership, and by AFS, to pay additional amounts as well as the return of the deposit in order to settle Mr G's claim. But in AFS's final response to Mr G they made no mention of any additional payments but explained that, as the quality issues hadn't impacted on Mr G's use of the car, they wouldn't be refunding any of the finance instalments he'd paid.

Mr G therefore referred his complaint to this service. Our investigator didn't think AFS had done enough to put things right for Mr G. He explained it was this service's usual approach to tell a business to pay interest on any deposit refund and he also thought the business should pay Mr G £150 to compensate him for the distress and inconvenience he'd experienced. He noted that Mr G had paid eight monthly instalments towards his finance agreement but that he'd had the car for a little less than that. He therefore suggested AFS should provide a pro-rata refund for the part of the month Mr G had paid for but had not had any use of the car.

Mr G didn't agree with the investigator. He thought all his finance instalments should be returned and that he should receive additional compensation. AFS didn't agree either. They noted that Mr G had already received an excess payment of £4,299.87 and they explained that he'd been kept mobile when his car was off the road as the dealership had provided a courtesy vehicle. They did, however, agree to pay Mr G £150 in compensation.

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.

I agree with the investigator that further redress should be provided but I'm persuaded that redress should be a little more generous than he suggested. I'll 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.

Mr G acquired his 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 Consumer Rights Act (2015) is the relevant legislation. It says 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.

There's no argument here that the car wasn't of satisfactory quality. Mr G experienced problems with a grinding noise coming from the rear axle, a passenger air bag fault, an issue with the front suspension, a knocking noise whilst moving, a rear tail gate automatic closure problem, SOS limited functionality, a retracting side step fault and an issue with the offside front window tints. When a further issue with a headlight washer was being investigated it was noted that there were signs the car had been in a front end collision before Mr G had taken charge of it. All parties agree that the car should therefore be rejected, the finance agreement has been settled and the deposit has been refunded.

Our investigator suggested AFS should calculate interest on the deposit and pay that to Mr G. I'd agree, as Mr G has been deprived of the deposit whilst he's been financing a car that was of unsatisfactory quality.

The investigator also suggested AFS should pay Mr G £150. I don't think that's sufficient to compensate Mr G for the distress and inconvenience he's experienced. I've read that Mr G had to take the car back to the dealership on at least four occasions and that was before the issue with the headlight washer/front end damage was investigated. There have also been problems arranging adequate redress. I can see that on 23 February 2022 AFS emailed Mr G and said he'd receive his deposit, an additional £3,000 from the dealership and that they'd refund an additional monthly instalment. But subsequently, when the dealership refunded too much money, that offer was rescinded. I think that inconvenienced Mr G. On balance, I think £300 compensation is a fairer assessment of the compensation due.

Our investigator didn't think AFS needed to refund any of the finance instalments that had been paid. The relevant legislation allows the business to retain some of the finance instalments they have been paid to compensate them for the use the consumer has had from the car. The correspondence suggests that the car was returned having completed about 6,000 miles in about eight months. That's a little under average mileage. Mr G has also explained that his car was in the garage for about eight to ten weeks. So, I think Mr G's use of the car has been impaired by the problems he's experienced. But AFS mitigated some of that by providing Mr G with a courtesy car whilst his car was in the garage. Mr G has explained that courtesy car wasn't of the same standard as the one he was financing. I'd agree, the courtesy car appears to have been a Volkswagen Polo and Mr G's Range Rover was of a higher specification. Taking all of that into account and considering the impaired use Mr G had from the car because he would have been concerned about the noises and problems with it, I think AFS should refund three of the eight finance instalments Mr G paid them. When coming to that decision I've also taken into account that Mr G paid eight

monthly instalments but only had the car for about seven and a half months.

AFS say that I should take account of the over payment Mr G received from the dealership. The dealership clearly want that overpayment back and have explained to Mr G it was paid in error and that they only wished to refund the £15,000 deposit. Any overpayment is therefore a matter between Mr G and the dealership and not something I need to consider here.

My provisional decision

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

- *Pay Mr G 8% simple yearly interest on the £15,000 deposit he has already been refunded. Calculate that interest from the date of payment until the date of settlement.*
- *Refund three monthly finance instalments in respect of the impaired use Mr G has experienced. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.*
- *Pay Mr G £300 to compensate him for the distress and inconvenience he's experienced.*
- *Remove any adverse reports they may have made to Mr G's credit file in relation to this issue.*

The business responded to my provisional decision and said:

"I have read your provisional decision and we are surprised to be penalised this heavily.

1. AFS do not provide courtesy cars, this is not something we have access to and as such this is not something that we feel should be penalised on. In any instance you have not asked Mr G how long he had the supposed courtesy car for? How have you come to the calculation of three monthly rentals to be returned?

2. You have commented on the mileage being 6,000 and that this is just under average use. You then go on to say he did not have use of the vehicle for 8-10 weeks, yet he still managed to cover 6 months of average mileage in 3-4 months, it is fair that he pays for that mileage.

3. Notwithstanding the second point, Mr G was given a courtesy car – regardless of value, he was still able to keep mobile. Yet you have instructed a refund of entire payments, rather than even suggesting a proportion.

4. We are disappointed with the use of the term generous – we do not make offers based on generosity, but based on fact. In an instance like this, you have commented on his experience with the dealer, yet you feel we need to be more generous. The situation where the dealer rescinded their offer was solely due to Mr G – he was sent more money than he was owed, it is incredibly simple to return funds to someone. His refusal caused his own inconvenience, I am sure Mr G would not be happy to compensate the dealer for holding their funds? Yet we are expected to compensate him for something he could have easily resolved – that is absolutely not fair."

Mr G also responded and said:

"I feel that the refund of the 3 months payments does more reflect the amount of time that I did not have the vehicle in my possession throughout the 7 months of owning the car.

There is one main point that I feel has still not been addressed. A final payment of

£785.74 was taken by BMW Financial Services (GB) Limited on 01st March 2022. This payment would have been the payment due for March 2022. I returned the vehicle to the dealer on 27th February 2022. At this date the agreement should have been terminated and no further payments taken. Therefore, I respectfully request that the payment taken on 01st March 2022, 3 days after the vehicle had been returned to the dealer, also be refunded in full as this payment was not due and the agreement had ceased."

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.

With regard to AFS's first three points, I explained in my provisional decision the basis upon which I'd come to my assessment that it would be reasonable to refund three months rentals. I don't think it's therefore necessary to repeat that, other than to say it was based on the amount of time Mr G had been without his car, the impaired use whilst he had it, the mileage he'd completed, and the fact that Mr G had paid eight monthly instalments but only had the car for about seven and a half months. I also took into account the fact that a courtesy car was provided but that the car wasn't of the same standard. I don't think on that basis that my calculation of impaired use was unreasonable, and I'm not minded to change it.

I'm not asking AFS to provide compensation that in my opinion is more than is necessary. AFS say Mr G's refusal to return money that he's been over paid created his own inconvenience. I don't think that's a matter I need to comment on. As I said in my provisional decision:

"AFS say that I should take account of the over payment Mr G received from the dealership. The dealership clearly want that overpayment back and have explained to Mr G it was paid in error and that they only wished to refund the £15,000 deposit. Any overpayment is therefore a matter between Mr G and the dealership and not something I need to consider here."

Mr G says I haven't taken his overpayment into account but I did note that. I said:

"I think AFS should refund three of the eight finance instalments Mr G paid them. When coming to that decision I've also taken into account that Mr G paid eight monthly instalments but only had the car for about seven and a half months."

Putting things right

I've not therefore been provided with any additional information that would lead me to change my provisional decision. My provisional decision therefore becomes my final decision on this complaint.

My final decision

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

- Pay Mr G 8% simple yearly interest on the £15,000 deposit he has already been refunded. Calculate that interest from the date of payment until the date of settlement.
- Refund three monthly finance instalments in respect of the impaired use Mr G has

experienced. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.

- Pay Mr G £300 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to Mr G's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 February 2023.

Phillip McMahon
Ombudsman