

The complaint

Ms O has complained about the quality of a car she acquired, using finance from BMW Financial Services (GB) Limited, trading as ALPHERA Financial Services ('BMWFS').

What happened

In July 2021, Ms O entered into a hire purchase agreement with BMWFS, for a new car. However, in January 2022, she raised concerns about the safety of the car. Specifically, about a door not opening properly, and opening while driving. After failed attempts to repair the fault, Ms O rejected the car.

BMWFS agreed to this, and refunded an overpayment, plus the equivalent of two months' repayments. But what remained in dispute was that Ms O felt she was entitled to a full refund of all of her monthly repayments. So she brought a complaint to our service.

One of our investigators looked into what had happened. She thought that the refunds Ms O had already received were fair, as Ms O had use of the car for some time. However, she was satisfied that, as the car had been rejected, Ms O was entitled to a refund of the £1,500 deposit. She also considered that Ms O should be paid £150 compensation for the distress and inconvenience caused.

Both Ms O and BMWFS accepted our investigator's view. But the complaint has come to me for decision, because the deposit refund remains outstanding. BMWFS has queried whether Ms O has already received it. Ms O has confirmed that she has not.

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.

The parties have agreed with the investigator's proposal, which I also agree is fair, for the same reasons. What's left to me is to look at what's happened with the deposit. Ms O has confirmed she's not received it from the dealership, and I have no reason to doubt this. Accordingly, it remains outstanding, so BMWFS should pay it now. I'm satisfied that BMWFS is liable to pay it under section 75 of the Consumer Credit Act 1974, which puts it in the dealership's shoes. Whether or not BMWFS is then able to reclaim it from the dealership is not a matter for our service.

Putting things right

BMWFS should refund Ms O her deposit. I understand she paid it in two instalments – one of £500, and one of £1,000. So BMWFS needs to add 8% simple interest a year, from the dates each instalment was paid, to the date of settlement. It must also pay £150 compensation, if it hasn't already.

My final decision

It's my final decision to uphold this complaint. I require BMW Financial Services (GB)

Limited, trading as ALPHERA Financial Services, to:

- refund Ms O her deposit, adding 8% simple interest a year, from the date of each payment, to the date of settlement; and
- pay Ms O £150 compensation, if it hasn't already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 17 May 2023.

Elspeth Wood
Ombudsman