

## **The complaint**

Mr T complains that a car acquired with finance from BMW Financial Services (GB) Limited trading as Alphera Financial Services ("BMWFS") was mis-sold to him.

## **What happened**

In January 2022 Mr T was supplied with a car and entered into a hire purchase agreement with BMWFS.

In December 2022 Mr T had the car serviced. At the service it was discovered that the front drive shafts had been removed. This meant that the vehicle didn't have the four wheel drive capability that Mr T required and thought he had purchased.

Mr T complained to BMWFS. In its final response, BMWFS said it wasn't upholding the complaint because Mr T hadn't provided evidence to support his claim.

Mr T remained unhappy and brought his complaint to this service. He wants to reject the car.

Our investigator upheld the complaint. He said the evidence showed that the vehicle had been modified so that it was no longer a four wheel drive and that these modifications had taken place before the point of supply. The investigator said that the modifications meant that the vehicle wasn't of satisfactory quality because it didn't conform to its description under the agreement. The investigator said that Mr T should be allowed to reject the car. He also said that BMWFS should refund three monthly hire payments to reflect the time that Mr T didn't drive the car following discovery of the modification in December 2022.

BMWFS said that it agreed that the car should be rejected but it didn't agree to refund three monthly hire payments. It said that Mr T had covered more than average mileage since December 2022. It offered a refund of 1 ½ months hire payments.

Mr T didn't accept the counter offer and I've been asked to review the complaint.

## **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.

BMWFS has accepted a rejection of the car so I won't be commenting on the modifications or the quality of the car. For the avoidance of doubt, I agree with the investigator that the vehicle wasn't of satisfactory quality because it didn't conform to the description under the agreement.

I'll focus on what's a fair and reasonable resolution to the complaint.

Mr T has explained that he specifically wanted a vehicle with four-wheel drive because he was previously involved in a bad accident in wintertime and he wanted the extra safety of a four wheel drive. He's told this service that following the discovery of the modifications to the front drive shafts in December 2022, he didn't use the car for three months because he

didn't feel safe driving the car in the winter months due to the modification.

I've thought about whether it was reasonable for Mr T to stop driving the car during this period. The evidence provided I support of Mr T's complaint doesn't address any safety implications of the modifications. However, it's accepted that a four wheel drive vehicle has better traction than a front wheel drive vehicle in bad weather conditions like rain and snow. It's more likely that these weather conditions will occur in the winter months – the same months Mr T didn't drive the car. Taking into consideration the fact that Mr T had previously been involved in a bad accident in a front wheel drive vehicle, I think it was reasonable for him not to drive the car during the winter months.

I've considered the points raised by BMWFS. It says that Mr T has covered over 5000 miles since December 2022 and that because the UK average mileage is 7400 miles per year, Mr T's use of the car should be taken into consideration when deciding what refund of payments to make.

There's no definitive figure for UK average mileage. I've seen reference to figures of between 7,400 and 13,000. The average mileage figure varies according to several factors including urban/rural driving, age group, lifestyle and occupation. So I'm not persuaded that 7,400 is a definitive figure which I should apply here. But even if it is, this doesn't change my view that it was reasonable for Mr T to stop using the car during the winter months because of his safety concerns. It's on this basis that I think it's fair to ask BMWFS to refund three monthly payments.

### **Putting things right**

To put things right, BMWFS should do the following:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mr T

Refund the advance payment of £3500

Refund three monthly payments

Refund the cost of the inspection report of £72

Pay 8% simple interest per year on all amounts refunded calculated from the date of payment to the date of settlement

### **My final decision**

My final decision is that I uphold the complaint. BMW Financial Services (GB) Limited trading as Alphera Financial Services must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 December 2023.

Emma Davy  
**Ombudsman**