

## **The complaint**

Mr N complains about a car he had under a hire purchase agreement with BMW Financial Services (GB) Limited, trading as ALPHERA Financial Services ("Alphera").

## **What happened**

In March 2022 Mr N entered into a regulated hire purchase agreement with Alphera for a used car. The car was then five years old, its mileage was 38,447 miles, and its cash price was £17,795.

Early on, Mr N noticed some problems. He says the radar sensor didn't work and neither did the active cruise control function. The car sometimes went into limp mode unexpectedly, causing it to brake sharply and almost cause an accident. The brake pads had been installed the wrong way round. There was a problem with the parcel shelf, and he thought there might be an oil leak, because he had to top up the oil after three months. He took the car back to the dealership, which had to order parts before it could repair the radar sensor. When the parts arrived and the dealership tried to repair the sensor, it accidentally damaged it further, and had to order new parts again.

Mr N complained to Alphera about the radar sensor, and Alphera told him it was upholding that complaint, and that the dealership would repair the sensor for free. Mr N also complained that the courtesy cars the dealership had offered him had not been like-for-like replacements for his own car, and had been unsuitable for his needs. He had a family of three and a large dog, and the courtesy cars had been too small. He had had to hire a car for a family holiday at his own expense. However, Alphera did not uphold his complaint about that issue. It said that the dealership was not obliged to give him a like-for-like car (or indeed any car) while his car was being repaired, and it had offered him three courtesy cars, all of which he had rejected. It would only take three or four days

The sensor was eventually repaired, but only after a lengthy delay caused by having to order parts twice. I understand that the other issues have also been resolved. But Mr N was dissatisfied with how he had been treated. He said the whole experience had been horrible. He brought this complaint to our service. Alphera offered him £175 to settle the complaint, but he rejected that offer.

One of our investigators considered this complaint. He did not uphold the complaint about the courtesy cars. He thought the dealership had tried to keep Mr N mobile, and that it wasn't obliged to give him a like-for-like vehicle. He also thought that Alphera was not responsible for this issue anyway. He thought there may not have been an oil leak in the first place, but if there had been, then it had been repaired, along with the other faults. But he upheld the complaint about the defective radar sensor. He accepted that the car had not been of satisfactory quality at the point of sale. For the impaired use of the car, he thought that a refund of ten percent of Mr N's monthly payments from March 2022 to February 2023 (when it was repaired) was fair compensation. He also thought it had been reasonable of Mr N to hire a car for his family holiday, and that this should also be refunded. He said Alphera should pay interest on the refunds at 8% a year from the dates of payment, and another £275 for Mr N's inconvenience. Finally, he said that any negative information about

the finance agreement should be removed from Mr N's credit file.

Neither party accepted the investigator's decision. Alphera did not respond to it. Mr N asked for more than 10% to be refunded, as he said he had paid top price for a good car, the repairs had taken too long, he had been without a car for about two months, and he did not have confidence in the dealership's ability to repair the car if another fault develops in the future.

Because no agreement had been reached, the investigator referred this case for an ombudsman's 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.

Having done so, I agree with the investigator's conclusions, and for broadly the same reasons.

The faults have now been repaired, and I can't speculate here about what might happen if another fault occurs in the future; I can only comment about the faults that have happened already. I accept that the faults (except for the alleged oil leak, about which there is no direct evidence) were present at the point of sale, and so the car did not conform to the statutory implied term that it was of satisfactory quality.

I also accept that the dealership was not obliged to offer Mr N a like-for-like car (that's why they're called courtesy cars), and that it did try to keep Mr N on the road. Alphera is not liable for that issue anyway; it's only liable for the condition of the car which was hired under its hire purchase agreement.

I agree that it was reasonable of Mr N to hire a car for the family holiday, and that it would be fair to require Alphera to refund that cost (£767.96).

Taking all of that into account, I think that refunding ten percent of Mr N's monthly payments is in line with what we would normally award for the impaired use of the car, together with £275 for his general inconvenience. And I will award interest on the refunds.

My only departure from what the investigator recommended is that I do not propose to require Alphera to remove adverse information from Mr N's credit file. This may be a moot point, because it does not appear that Mr N has missed any payments, and I'm not aware of any reason why there should be any negative information recorded. But just in case there is, removing adverse information from a credit file is usually required when a finance agreement has been cancelled on the ground that it was mis-sold or that the goods hired under the agreement have been rejected because they were faulty. There isn't a reason to do it in a case where the goods have not been rejected but have been repaired instead.

### **My final decision**

My decision is that I uphold this complaint. I order BMW Financial Services (GB) Limited (trading as ALPHERA Financial Services) to:

- Refund ten percent of Mr N's monthly payments under the hire purchase agreement from the first payment up to February 2023;
- Pay interest on those refunds at the rate of eight percent from the date of each payment to the date of settlement;

- Pay Mr N £767.96 (being the cost of hiring a holiday car), and pay interest on that payment at eight percent from 1 May 2023 to the date of settlement;
- Pay Mr N £275 for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 25 October 2023.

Richard Wood  
**Ombudsman**