

The complaint

Mr M complains about the quality of a car financed by BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ('AFS').

What happened

The parties are familiar with the background facts of this case so I will only summarise these briefly and focus on giving reasons for my decision.

Mr M got a car from AFS but says he is unhappy with its quality – specifically that it started to lose power and was subsequently identified to need a replacement turbo to remedy this.

AFS refused to cover the cost of the replacement turbo. In summary, it said that Mr M had not shown the issue was present at the point of sale – and that it could be due to lack of servicing.

Our investigator upheld the complaint and said that AFS should pay for the cost of the replacement turbo along with a refund of some rentals and other compensation

AFS said it couldn't accept the outcome without further information.

Mr M has explained that he has had the car repaired now which fixed the issue but that he is experiencing other problems with it now.

The matter has come to me to make a final decision.

I issued a provisional decision on this matter which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to resolve disputes informally – so I won't be commenting on everything put forward by the parties – I will focus on the matters I consider central to this complaint.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. AFS is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into

account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

AFS supplied Mr M with a second-hand car. Here I note the car had travelled around 29,300 miles and was around three years old at the point of supply. So it is fair to say that the reasonable person would accept that it is likely to require more repairs and maintenance than a newer, less road worn car. The price agreed was £27,950 which would be less than the new price but is a significant amount of money for a car in any event.

The issue that Mr M complained to AFS about appears to be related to loss of power. It seems the initial problems started around 8 months after the car was supplied. Eventually it was identified that this was because the turbocharger needed replacing. At this point Mr M had travelled around 5,000 miles in the car.

I acknowledge that Mr M had not purchased a brand new car – however, it wasn't very old or high mileage when it was supplied. Furthermore, this was not an inexpensive purchase with a cash price of £27,950. And when the turbocharger failed he had not done significant mileage in it or had it for even a year. I note a turbocharger is a fairly expensive part to replace – and is generally expected to be quite durable. So prima facie it appears that in the particular circumstances it failing at the point it did would indicate the car was not of satisfactory quality when supplied.

I do note that an expert report was carried out which concludes that the turbocharger fault would not have been developing at the point of sale and points to the mileage Mr M travelled. However, it does not really address the issue of durability – and whether this would be reasonably expected wear and tear in a car of this age, mileage and price.

Furthermore, the report points to a lack of servicing which might have contributed to the issue however this seems somewhat speculative here. There is not persuasive evidence that Mr M failed to service the car when it needed to be serviced (the record of last service indicates that it wasn't due another service when it started losing power in August 2022) – or that Mr M bought the car in the knowledge that it was improperly serviced. So I don't think it is reasonable to rely on these comments from the expert as a reason to say the car as supplied was of satisfactory quality.

All things considered, I think it fair and reasonable that AFS cover the cost of the turbocharger replacement and also the related diagnostics/troubleshooting to do with lack of power which Mr M paid for leading up to the identification of the turbo issue.

I appreciate there are a few diagnostic reports. However, some of these appear to relate to general servicing or issues not directly related to the loss of power/turbocharger fault. So all in all I think that it is fair that Mr M get back the following:

- the cost of work detailed on invoice dated 20/9/22 relating to lagging acceleration and replacement of solenoid costing £340.57
- the cost of diagnostic work on invoice dated 7/11/22 which identified the turbocharger needed replacement costing £312

Mr M has explained that his partner paid for these reports. However, he has since provided sufficient evidence for me to be satisfied that he is out of pocket for these costs so I am satisfied I can award these to him.

Mr M has explained he had the turbocharger fixed at the end of June 2023 and has submitted invoices for £1,558.99 and £221.86 total. I am satisfied from the information we have got that the invoices relate to the turbocharger repair and that it is fair and reasonable for AFS to cover these.

Mr M appears to have stopped driving the car due to the turbocharger issue from when the diagnostic was carried out on 7 November 2022 up to when it was fixed on 23 June 2023. So I think Mr M should be reimbursed his rentals for this period.

Mr M has been caused inconvenience by the issues he has experienced including taking the car in for diagnostics and repairs. Our investigator recommended £150 to reflect this. I have considered the information on our website to inform an appropriate award here and what Mr M has said along with the actions of AFS. I acknowledge here that AFS could have been more pro-active – but it did commission a report in order to get to the bottom of things. Overall, and in considering my wider award and Mr M's submissions to date I think £150 is fair here.

Mr M has confirmed that the turbocharger replacement resolved the issue with the loss of power and the car has since travelled an additional 5,000 miles.

Mr M has unfortunately said that more recently (and since our investigator issued a view on the case) he has had some other issues with the car relating to the DPF – several fault codes have been identified. He says that he has been told the DPF is cracked and needs replacing.

I do note that Mr M was having fault codes related to the DPF at the time the turbocharger issue was identified around November 2022. One of the diagnostic tests also said that the DPF needed replacing.

Mr M didn't raise the DPF issue with AFS as part of his original complaint which was about the need for a turbocharger replacement to remedy the lack of power issues he was having. While part of the quality of the car the current issue appears to be unrelated to this and I am conscious has not been fully investigated. I note any further investigation at this stage might delay a resolution to the issue over the turbocharger replacement as well. I am conscious my decision relates to a significant amount of money which Mr M says he is now owed. As a result I am limiting my findings to the power loss issues connected to the turbocharger which Mr M originally complained to AFS about. Mr M is then able to liaise with AFS about the apparently unconnected DPF issue and allow an opportunity for a fuller investigation. And if he is unhappy with the resolution he may wish to take that matter further. To be clear my findings here do not relate to the issue with the DPF which Mr M is now raising.

My provisional decision

I uphold this complaint and direct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to:

- reimburse Mr M for the repairs associated with the turbo costing £1,780.85;*
- pay Mr M for the cost of the diagnostic reports mentioned above totalling £652.57;*

- *refund Mr M for the rentals under the agreement covering the period from 7 November 2022 to 23 June 2023;*
- *pay yearly interest at 8% simple on all refunds from the date of payment to the date of settlement; and*
- *pay Mr M £150 compensation for distress and inconvenience.*

If AFS considers it appropriate to deduct tax from the interest award it should provide Mr M with a certificate of tax deduction so he may claim a refund if appropriate.

Mr M said he had nothing further to add. AFS did not respond.

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.

Neither party has given me cause to depart from my provisional findings above. So I am deciding this case on the same basis.

Putting things right

AFS should put things right in accordance with my direction below.

My final decision

I uphold this complaint and direct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to:

- reimburse Mr M for the repairs associated with the turbo costing £1,780.85;
- pay Mr M for the cost of the diagnostic reports mentioned above totalling £652.57;
- refund Mr M for the rentals under the agreement covering the period from 7 November 2022 to 23 June 2023;
- pay yearly interest at 8% simple on all refunds from the date of payment to the date of settlement; and
- pay Mr M £150 compensation for distress and inconvenience.

If AFS considers it appropriate to deduct tax from the interest award it should provide Mr M with a certificate of tax deduction so he may claim a refund if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 December 2023.

Mark Lancod
Ombudsman