

The complaint

Mr K complains about the way BMW Financial Services (GB) Limited trading as Alpera Financial Services (BMWFS) dealt with his complaint about a car he'd acquired through a finance agreement with BMWFS. BMWFS accepted the car was not of satisfactory quality, took the car back, cancelled Mr K's agreement and agreed to pay Mr K an amount of redress. Mr K was unhappy with what BMWFS had offered to pay him and believes it doesn't reflect the limited use he's had of the car, or compensate him for the costs he has incurred.

What happened

The circumstances of this complaint and my provisional findings were set out in my provisional decision of 19 March 2024. In that provisional decision I set out the following:

In June 2022 Mr K acquired a used car through a finance agreement with BMWFS. He experienced some significant issues with the car and after complaining to BMWFS about this, it agreed to take back the car and end Mr K's agreement with nothing further owing. BMWFS agreed to refund the deposit Mr K paid towards the agreement at the outset (£5,137.92), two monthly repayments (totalling £1,423.78) and offered £150 for the distress and inconvenience Mr K had been caused.

Mr K was not happy with the full details of the proposed settlement as he did not consider this was sufficient in the circumstances of his complaint. He did not believe the refund of two monthly repayments was reasonable considering the very limited use he'd actually had of the car. And the proposal did not compensate Mr K for the expenses he'd received in respect of diagnostics and repairs.

Mr K referred his complaint to our service and one of our investigators set out what they thought was fair and reasonable redress in this instance. This ultimately resulted in the investigator recommending BMWFS pay additional sums to Mr K to settle his complaint. BMWFS did not accept the investigator's findings and as the complaint could not be resolved it's been referred to me for consideration, as the last stage in our process.

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.

BMWFS has already accepted the return of the vehicle and appears to accept that the car it supplied to Mr K was not of satisfactory quality. Because of this I see little benefit setting out in great detail the circumstances leading up to BMWFS taking back the car. But for completeness, having considered what the parties have provided about the car, I'm satisfied the car was not of satisfactory quality when supplied to Mr K.

I have considered what the investigator has previously set out, but I am not bound by those findings and I'm required to reach my own findings having reviewed the complaint afresh. I've therefore considered what I believe to be fair redress that is due to Mr K and have set out here what that is and why I consider BMWFS should now pay Mr K an additional sum.

The deposit

BMWFS has refunded the £5,137.92 deposit Mr K paid towards the agreement. But Mr K has essentially been deprived of this money when considering the very limited use he actually had from the car. I'll refer to that in more detail later but in the circumstances here I consider it reasonable for BMWFS to pay Mr K interest on the deposit payment, from the date the agreement commenced until the date it was refunded. This is also in line with the general approach our service takes in similar complaints of this nature and something BMWFS will be well aware of.

Monthly repayments

In his initial correspondence with BMWFS Mr K referred to problems with the car on the day he got it and trying to sort the problems out with the warranty company and then the manufacturer dealership. The specialist garage did tests and the parts ordered took over a month to arrive. It was immediately clear the issues had not been resolved and the car then went to the manufacturer dealership, albeit after having to wait around two months for availability. Mr K says in his letter of 29 March 2023, "In the eight months that I have owned this vehicle, it has been only been [sic] used for 20% of this time." Mr K has more recently told us the car was not drivable in the months of August through December and was parked outside his house at that time.

Considering what has been set out in this complaint I find Mr K's comments about his lack of use consistent with the underlying issues with the car and the impact this is likely to have on his ability to use the car. BMWFS does not dispute the limited mileage Mr K has been able to travel but refers to this being, "...at the customer's discretion and not because the vehicle was out of their possession for a considerable length of time." I don't agree that Mr K's usage was impaired by his own discretion and consider it more likely than not this impaired use was because of the significant underlying problems with the car, paired with what I consider likely to have been a reluctance to use the car and then get stranded when it breaks down.

I do not consider it reasonable to expect Mr K to make the £711.89 repayments each month when he has not been able to use the car. Mr K has referred to having only 20% use of the car and I consider it reasonable that Mr K should in the circumstances here only be required to pay for two months rentals in recognition of the significantly restricted use he has had.

BMWFS has I understand refunded £1,423.78 which equates to two months repayments. BMWFS should now calculate the number of monthly rentals Mr K has paid towards the agreement (taking account of any repayments not actually paid by his bank and the two repayments already refunded) and refund all but the initial first two repayments to reflect the loss of use Mr K has had as a result of the problems with the car. I believe this equates to eight additional monthly repayments that would require refunding. If I am mistaken, I would ask that BMWFS clarify this when responding to my provisional decision. Interest should be added to these refunded amounts.

Additional costs

Mr K has provided a copy of an invoice from the manufacturer garage for £1,328.36. This is for diagnostic work, repairs and storage costs. These are all costs in my view that Mr K would not have incurred if BMWFS had supplied a car that was of satisfactory quality. And it is reasonable therefore in my view that Mr K should now be refunded these costs.

I have noted that this includes the cost of a replacement battery and I appreciate batteries

might need to be replaced after a certain amount of use. There appears to be no issue with the battery when Mr K got the car and it appears to have been working fine. The car was however unusable for a certain period of time and I consider it more likely than not that this is what has ultimately caused the battery to require replacing. I am also mindful that Mr K has paid for a new battery for the car that he will have no use of. BMWFS should therefore ensure the cost of the battery is included in the amount to be refunded.

The vehicle invoice refers to an additional payment of £499 for the cost of the warranty sold alongside the car. This appears to have been paid for separately and outside of the finance agreement costs. I find it unreasonable to expect Mr K to pay for the peace and mind offered by the warranty when he was only able to use the car for a very limited amount of time. As referred to above, Mr K has had some use of the car so it would not be unreasonable to expect some of the warranty cost to be paid. But expecting Mr K to pay for a year's warranty in full is in my view unreasonable. BMWFS should refund 80% of the warranty cost (£399) to reflect the lack of benefit Mr K has had from the warranty. Interest should be added to this amount.

Interest

Interest should be added to each of the refunded amounts referred to above from the date of each payment until the date of settlement. Interest should be calculated at 8% simple per year.

Inconvenience

In its initial response BMWFS offered to pay Mr K £150 for the inconvenience caused by the time taken to deal with his complaint. BMWFS's offer does not however take into account the significant inconvenience caused to Mr K by being supplied with a car that was not of satisfactory quality. It does not appear to consider the impact of the car breaking down, the need to take it for repairs and being without the car for a prolonged period of time. Considering all of these factors, I consider £350 is a more reasonable sum to reflect the distress and inconvenience this has caused Mr K. In addition to the sums referred to above, BMWFS should pay an additional sum of £350.

My provisional decision

My provisional decision is that I uphold Mr K's complaint against BMW Financial Services (GB) Limited trading as Alphera Financial Services and direct BMWFS to settle the complaint in accordance with what I have set out above.

I invited both parties to provide any further submissions they would like to be considered, but I did not receive a response from either party.

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, and in the absence of anything further to consider from either Mr K or BMWFS, I see no reason to depart from the findings set out in my provisional decision of 19 March 2024. I am satisfied that BMWFS's original offer of settlement was not sufficient in the circumstances of Mr K's case.

Putting things right

BMWFS should now settle Mr K's complaint in accordance with what I have set out above and what was referred to in my provisional decision.

I remind BMWFS that any interest should be calculated up to the date of settlement with Mr K. And if settlement is not made within 28 days of Mr K accepting this final decision, interest, on the same terms as previously set out, should be added to the £350 distress and inconvenience payment.

My final decision

My final decision is that I uphold Mr K's complaint against BMW Financial Services (GB) Limited trading as Alphera Financial Services and direct BMWFS to settle the complaint in accordance with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 May 2024.

Mark Hollands
Ombudsman