

The complaint

Miss M complains about the quality of a car she has been financing through and agreement with BMW Financial Services (GB) Limited, trading as ALPHERA Financial Services (who I'll call Alphera).

What happened

Miss M took receipt of a used car in October 2022. She financed the deal through a hire purchase agreement with Alphera.

In November 2022, Miss M had problems closing the automatic boot. The car was inspected, and lubricant was applied, but the fault didn't go away, even after a further repairs were arranged.

Alphera partially upheld Miss M's complaint. They offered to refund one monthly finance instalment in respect of the inconvenience caused.

Miss M referred her complaint to this Service and the fault with the boot persisted. Our investigator thought Alphera should now allow Miss M to reject the car but as Alphera didn't respond, the complaint has been referred to me, an ombudsman, to make a 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.

I think Alphera should now allow Miss M to reject this car as I don't think it's been of satisfactory quality. I'll explain why I think that.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Miss M acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Alphera, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is 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.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Miss M. The car here was about five and a half years old and had already completed about 30,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

The faulty boot was reported very soon after Miss M took receipt of the car. The relevant legislation explains that if the fault occurs within the first six months, we are to assume it was present at the point of supply, when Alphera were responsible for the car's quality, unless they can demonstrate otherwise. I don't think Alphera have demonstrated otherwise and, regardless, as Miss M reported the issue so quickly I think it's more likely than not that it was present, or developing, when the car was supplied to her.

In those circumstances, the relevant legislation allows the business one opportunity to repair the fault but if that repair fails they should allow the consumer to reject the car.

It seems likely to me that the repair carried out towards the end of 2022 did fail as the problem returned and hasn't gone away. I've thought about whether the issue is one that is significant enough to warrant rejecting the car. Miss M has explained that the car boot doesn't lock on occasion, and she has two dogs who sit in the boot area. I can understand that a problematic boot would be a concern for her, and I think the issue is one that a reasonable person would consider significant.

So, Alphera should now allow Miss M to reject the car.

Putting things right

Alphera should collect the car at no cost to Miss M and they should end the finance agreement.

They'll need to refund any deposit Miss M has paid and, as she's been deprived of that money, they will need to add interest to that refund.

Miss M has been inconvenienced by these issues. She's had to take the car for repairs, has needed to escalate her complaint to this Service when I think it could have been resolved earlier, and has been kept waiting for a resolution. In the circumstances, I think Alphera should pay her £300 to compensate her for the distress and inconvenience caused.

Miss M's use of the vehicle has been a little limited due to the problem with the boot, and the delays in repairing the fault. In the circumstances, I think the refund of one monthly rental that Alphera have already offered is sufficient to cover that impaired use.

My final decision

For the reasons I've given above I uphold this complaint and tell BMW Financial Services (GB) Limited to:

- Allow Miss M to reject the car and end the finance agreement.
- Collect the car at no cost to Miss M.
- Refund any deposit/part exchange contribution that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.

- Refund one monthly instalment in respect of loss of use. Add 8% simple interest* per year from the date of payment to the date of settlement (unless this has already been done).
- Pay Miss M £300 to compensate her for the distress and inconvenience she's experienced.
- Remove any adverse reports they may have made to Miss M's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 10 September 2024.

Phillip McMahon
Ombudsman