

The complaint

Mr W complains about a car he acquired through a hire purchase agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS). Mr W says that when collecting the car he noticed damage that was not present when he initially agreed to buy it, the car was not serviced as agreed and since acquiring the car he's had mechanical issues.

What happened

Around August 2023 Mr M acquired a used car through a regulated hire purchase agreement with BMWFS. The cost of the car was £16,200 and Mr M paid a £1,000 deposit, funding the remaining amount through the hire purchase agreement.

Mr M says that when he went to collect the car he noticed there was damage to the bodywork that was not there when he first agreed to buy the car. He was offered £100 off the price of the car but was told this is all that could be done. Immediately after acquiring the car the service light came on and Mr M was told that all cars were serviced prior to being sold. Around three months later Mr M began to experience mechanical issues with the car and it was going into limp mode.

Mr M raised his concerns immediately with the dealership who supplied the car and as he got no satisfactory response, complained to BMWFS. BMWFS did respond to his complaint and agreed to cover the cost of the required repairs and servicing, which came to £4,022.20. BMWFS also offered a refund of £1,441.90, which was five monthly repayments to reflect the loss of use he'd had.

Mr M did not accept the offer from BMWFS and was not prepared to pay out the significant sums for the required repairs and servicing, even though BMWFS had offered to refund him. As Mr M remained unhappy with the response, he referred his complaint to our service as he was entitled to do.

One of our investigators considered the complaint and explained why they thought Mr M's complaint should succeed. They recommended Mr M be allowed to reject the car and end his agreement with BMWFS, receive a refund of his deposit and some monthly rentals, with interest, and £200 for the trouble and upset he'd been caused. If BMWFS has recorded any adverse information on Mr M's credit file, this should be removed.

Mr M accepted the investigator's recommendations. BMWFS did respond with some questions, but we did not hear further about whether or not the investigator's findings had been accepted. As BMWFS has not accepted the investigator's view, the complaint has been referred to me so a final decision can be issued.

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.

The circumstances of this complaint are well known to both parties and from what I have seen there is no dispute about the circumstances surrounding Mr M's complaint – in particular about the quality of the car when he received it. I have therefore summarised this complaint in far less detail than the parties and I'm not going to respond to every single point made by all the parties involved, as again there appears to be no dispute about what Mr M has said.

BMWFS responded to Mr M's initial complaint and offered to cover the cost of the repairs required and the servicing cost. It also offered additional compensation for the loss of use Mr M had from the car. BMWFS therefore appears to accept the car sold was not of satisfactory quality and not as described, i.e., in the same condition it was when Mr M agreed to buy it. The immediate servicing requirements of the car also indicate the car was misrepresented as the dealership claims all cars are serviced prior to being supplied. For the avoidance of doubt, I have also found the car was not of satisfactory quality, or as described and Mr M was misled about the servicing being completed prior to acquiring the car. Considering BMWFS appears to accept these findings, I see little benefit in commenting further here in any more detail.

BMWFS did offer to reimburse Mr M the cost of the repairs and servicing when he complained. But Mr M was reluctant to cover the considerable costs and then be reimbursed by BMWFS. I can appreciate Mr M's concern as this was in excess of £4,000 at the time. Mr M complained immediately to BMWFS and BMWFS will I'm sure be aware that under the Consumer Rights Act 2015, which applies to Mr M's hire purchase agreement with BMWFS, Mr M has an automatic right to rejection within the first 30 days of the agreement. Having considered the circumstances of this complaint, I'm satisfied that Mr M should have been allowed to reject the car when he immediately complained to BMWFS. So it would be reasonable in my view for BMWFS to take back the car and end the agreement with Mr M, ensuring nothing further is owed. BMWFS should now arrange a convenient time for the car to be collected from Mr M and meet any costs associated with the collection.

Mr M should receive a refund of his initial deposit payment of £1,000, with interest. And Mr M says that the car has had minimal usage because he has sought to reject the car and it has also suffered further mechanical issues. BMWFS offered to refund five monthly repayments for the loss of use Mr M has had from the car and I am satisfied the additional 25% refund of repayments since is also reasonable to compensate Mr M for the continued loss of or impaired use caused by the problems at the outset and subsequent mechanical issues. Interest should be added to the refunded sums and this should be calculated at 8% simple interest per year from the date of payment until the date of settlement.

I don't believe any adverse information has been recorded by BMWFS on Mr M's credit file, but if it has this should be removed. Mr M has suffered significant inconvenience as a result of what has happened here and this has in my view been compounded by BMWFS's lack of response to the investigator's view. This has caused further delays and prolonged matters unnecessarily in my view, especially considering BMWFS appears to accept the complaint should be upheld. Considering the circumstances of this complaint, I'm satisfied an additional payment of £200 is reasonable.

My final decision

My Final decision is that I uphold Mr M's complaint against BMW Financial Services (GB) Limited trading as ALPHERA Financial Services and direct it to settle the complaint in line with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 November 2024.

Mark Hollands
Ombudsman