

The complaint

Mr B complains about a used car he acquired through a hire purchase agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS). Mr B is unhappy the car has a number of mechanical faults, plus damage to the car's dashboard.

What happened

In August 2023 Mr B acquired a used car, which at the time was around five years old and had travelled 65,783 miles. The car cost £18,800 and after paying a £1,000 deposit, the remainder was funded by a £17,800 hire purchase agreement with BMWFS.

Shortly after acquiring the car Mr B complained about a number of issues with the car, relating to a grinding noise when turning, seat belt and seat issues, rust on the brake disks and a cut on dashboard. After raising these issues with the dealership who provided the car, Mr B then complained to BMWFS.

BMWFS responded to Mr B's complaint and as he did not receive a satisfactory response, referred his complaint to our service. BMWFS did then respond to Mr B and in summary said it was willing to cover the cost of most of the repairs, but not any repairs required to the dashboard. It explained that this was a used car and Mr B had the opportunity to inspect the car before deciding to proceed with the purchase. BMWFS did however offer Mr B a refund of four monthly repayments to reflect he had not had full use of the vehicle.

Mr B remained unhappy with the offer and did not consider it to be fair as it did not cover the cost of the dashboard repairs. The case was then considered by one of our investigators who set out why they considered the complaint should be upheld. In summary, they noted BMWFS appeared to accept the car was not of satisfactory quality when supplied and so focused on the redress required to put things right. They found that BMWFS's offer to cover the cost of the repairs, but exclude the dashboard repair costs, and pay Mr B four monthly instalments, was not unreasonable. They did however find that Mr B should receive an additional payment of £200 to cover the distress and inconvenience caused.

The investigator found that it would be unreasonable to require BMWFS to cover the cost of the dashboard repairs as Mr B had a chance to review the car before deciding to buy it. Any cosmetic damage could therefore have been identified prior to purchase and Mr B could decide if he still wanted to purchase the car and/or if a different price was preferable.

Mr B did not accept the investigator's findings and said the damage to the dashboard was not visible as it was covered by a sign in the car. Mr B reiterated that he did not want to keep the car and wanted to reject it.

BMWFS did not initially respond to the view but did then question whether interest needed to be added if it arranged for the repairs to be completed.

As the complaint could not be resolved informally it has been passed to me to consider and issue a final decision, as the last stage in our process.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

BMWFS supplied the car to Mr B under a regulated hire purchase agreement. Because of that, our service is able to consider complaints about the hire purchase agreement and the goods, i.e. the car, supplied under the hire purchase agreement. As the supplier of the car, BMWFS has an obligation to ensure the car supplied was of satisfactory quality – as set out in the Consumer Rights Act 2015. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

BMWFS has offered to repair most of the issues raised, which I will come on to shortly, and therefore appears to accept the car supplied to Mr B was not of satisfactory quality. I do not therefore consider it necessary to refer in detail here to that point but considering how quickly Mr B raised the issues, some of which appear to be safety issues, I am satisfied the car was not of satisfactory quality when supplied.

BMWFS has offered to pay for all but the repairs to the dashboard and like the investigator has already found, I'm satisfied this is fair and reasonable in the circumstances of the complaint. Mr B has said that he would prefer to reject the car and end his agreement with BMWFS, but I do not consider this to be reasonable.

The parties have referred to the remedies set out in the Consumer Rights Act 2015 and in particular the automatic right to reject within 30 days. From what has been presented in this complaint, I have not seen sufficient evidence to demonstrate Mr B sought to reject the car within 30 days. It appears that Mr B was willing to accept the issues to be repaired initially and has only sought rejection since the dashboard repair costs have not been included in any redress. Having considered what the Consumer Rights Act 2015 sets out, and as I am required to do, what I consider to be fair and reasonable in all the circumstances of the complaint, I am satisfied that repairing the issues is a reasonable remedy in this case. BMWFS is not required to accept Mr B's request to reject the car.

Turning to the most disputed point of Mr B's complaint and the damage to the dashboard, I have again come to similar conclusions to those already set out by the investigator. The car Mr B was acquiring was a used car, around five years old and had travelled 65,783 miles. It would not be unreasonable to expect a used car of this age and mileage to show signs of wear and tear and in particular to potentially have some cosmetic damage. As has already been set out before, it would not be unreasonable to expect Mr B to inspect the car for signs of cosmetic damage, both inside and out, and then decide if the car is in the condition he is willing to accept.

I note Mr B has referred to the damage not being visible as it was covered up by a sign. But I assume the sign was not in an unexpected position, otherwise Mr B would have mentioned that, and I haven't seen anything to indicate there were deliberate attempts to conceal the damage and mislead Mr B. Mr B could presumably have moved the sign to inspect the area more closely if needed.

While I fully appreciate Mr B is unhappy that the dashboard was not noticed until after he took possession of the car, I do not consider there are sufficient grounds to find BMWFS liable for the cost of any repairs now required to the dashboard. Nor do I consider BMWFS should be required to take back the car and end Mr B's agreement.

BMWFS also offered to refund four monthly repayments from the hire purchase agreement to cover the loss of use Mr B has had from the car. I haven't seen anything to indicate Mr B has not been able to use the car at all, but I accept his use is likely to have been impaired to some extent. I find that BMWFS's offer to refund four monthly repayments to be reasonable in the circumstances here. I also find that BMWFS should pay Mr B an additional £200 for the distress and inconvenience he has been caused as a result of supplying a car that was not of satisfactory quality.

Putting things right

To settle this complaint BMWFS should now cover the cost of the repairs to the seat belt, driver's seat, and suspension shock. BMWFS and Mr B should agree whether Mr B arranges for the repairs to be completed and BMWFS then reimburses him. But I can appreciate this is not an inconsiderable sum, so if Mr B cannot afford the repairs, BMWFS should arrange and pay for the repairs directly. As Mr B has not yet born any cost of repairs, there is no requirement to add any interest to the repair cost amount.

BMWFS should refund an amount equivalent to four monthly repayments due under the hire purchase agreement. But as this is an amount equivalent to four monthly instalments, rather the payments for four specific months, interest would not need to be included on this amount.

And finally, Mr B should be paid an additional amount of £200 to reflect the distress and inconvenience caused.

My final decision

My final decision is that I uphold Mr B's complaint and direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to settle it in accordance with what I have set out above in the putting things right section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 November 2024.

Mark Hollands
Ombudsman