

complaint

Miss L complains about the issues that she's had with a car that was supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services.

background

A used car was supplied to Miss L under a hire purchase agreement with Alphera Financial Services that she signed in December 2017. The car was about three years old and had been driven for 18,883 miles. Miss L arranged through the dealer for a third party to visit her to programme a spare key for the car but in doing so the third party accidentally wiped clean the car's central processing unit. The car was returned to the dealer for that issue to be rectified and Miss L was provided with a courtesy car. Miss L settled her agreement in August 2018 but she then reclaimed seven monthly payments of £166.94 each from Alphera Financial Services under a direct debit indemnity and she complained to it. She wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He appreciated Miss L's frustration about the issues with the central processing unit but he didn't think that Alphera Financial Services had acted unfairly in asking Miss L for her monthly payments. And he said that the indemnity claim caused Miss L's account to go into arrears with the amount still being owed which would also result in adverse information being recorded on her credit file. And he said that Miss L was kept mobile so he felt that no compensation should be given as both the dealer and Alphera Financial Services had acted fairly.

Miss L has asked for her complaint to be considered by an ombudsman. She says, in summary, that she didn't ask for the money back and has gained nothing from it. She says that the central processing unit issue was not "*a minor fault*" and she's done nothing wrong and is having to pay for other people's mistakes. She also says that she's entered into an individual voluntary arrangement because she's having financial problems due to a relationship break-down.

my findings

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

Alphera Financial Services, as the supplier of the car, was responsible for ensuring that the car was of satisfactory quality. That will depend on a number of factors, including the age, and mileage of the car and the price that was paid for it. The car that was supplied to Miss L was three years old, had been driven for 18,883 miles and cost £8,998. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

The car was supplied to Miss L in December 2017. There was an issue with the spare key in March 2018 and Miss L arranged through the dealer for a third party to visit her to programme a spare key for the car but in doing so the third party accidentally wiped clean the car's central processing unit. The car was returned to the dealer and it rectified the issue with the central processing unit. Miss L says that she was without the car from March to July 2018 but the dealer says that the car was returned to Miss L in May 2018 and she was

without her car for less than two months. Miss L was provided with a courtesy car during that period. Miss L wasn't happy with the courtesy car but I'm not persuaded that there's enough evidence to show that the courtesy car wasn't suitable for her or that it would be fair or reasonable for me to require Alphera Financial Services to take any further action relating to the courtesy car.

I can understand Miss L's frustration about the issue with the central processing unit. But that issue was caused accidentally by the third party who was programming the spare key and the issue has been rectified by the dealer. I don't consider that that issue caused the car not to be of satisfactory quality when it was supplied to Miss L and I find that it wouldn't be fair or reasonable for me to require Alphera Financial Services to take any action in connection with that issue.

Miss L settled her agreement in August 2018 and she then reclaimed seven monthly payments of £166.94 each from Alphera Financial Services under a direct debit indemnity. She says that she didn't ask for those payments back and that she thought that they were a goodwill gesture from Alphera Financial Services.

Miss L had agreed to make monthly payments of £166.94 to Alphera Financial Services and it had taken the payments that she'd made into account when calculating the settlement figure. I consider that Alphera Financial Services was entitled to those payments and I'm not persuaded that there's any evidence to show that it refunded them to Miss L as a goodwill gesture. I consider it to be more likely than not that Miss L claimed those payments back from it under a direct debit indemnity. That caused her account to go into arrears and I consider it to be fair and reasonable for Alphera Financial Services to seek repayment from Miss L of the amount that she reclaimed (to the extent that it's legally entitled to do so).

I sympathise with Miss L for the financial and other difficulties that she's experiencing. But I'm not persuaded that Alphera Financial Services has acted incorrectly in its dealings with her. And I find that it wouldn't be fair or reasonable for me to require it to write-off the outstanding amount that is due from Miss L - or to take any other action in response to her complaint. But in seeking repayment from Miss L, Alphera Financial Services is required to respond to any financial difficulties that she's suffering positively and sympathetically.

my final decision

For these reasons, my decision is that I don't uphold Miss L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 9 October 2019.

Jarrold Hastings
ombudsman