

The complaint

Mr C complains about the quality of a car he acquired under a hire purchase agreement with BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ("BMWFS").

What happened

In September 2022 Mr C entered into an agreement with BMWFS for a used car costing £18,450. Under the terms of the agreement, everything else being equal, Mr C undertook to make an advance payment of £2,000 followed by 41 monthly payments of £317.69 followed by 1 monthly payment of £6,995 making a total repayable of £22,020.29 at an APR of 8.9%.

In September 2022, just 24 hours after taking delivery of the car, the message *"incorrect Diesel Exhaust Fluid Quality"* appeared on the car's dashboard.

In October 2022 the above message was investigated and a repair to the car undertaken.

In November 2022 Mr C experienced a fault with the air conditioning which he says made the car, at least in certain circumstances, unsafe to drive.

In January 2022 Mr C notified BMWFS of his dissatisfaction with the car and to advise that to date he had incurred a substantial sum in diagnostics and repairs. At this point in time the issue with the air conditioning was under investigation and waiting repair.

In March 2023 BMWFS issued Mr C a final response letter ("FRL"). Under cover of this FRL BMWFS said it understood the car had been successfully repaired, but as a gesture of goodwill it was prepared to refund Mr C one monthly agreement payment of £317.69.

In May 2023 Mr C sold the car for £15,364. He says he sold the car because the fault with the air conditioning hadn't been repaired and there were new, or further, faults with the car. Mr C says that selling the car for £15,364 left him with £141 after his agreement with BMWFS had been settled.

Mr C's complaint was considered by one of our investigators who came to the view that Mr C had been supplied with a car that was of unsatisfactory quality. He then went on to explain what BMWFS should have to do to fairly and reasonably compensate Mr C.

Mr C accepted the investigator's view but BMWFS didn't say whether it accepted it or not. And because of the latter Mr C's complaint was passed to me for review and decision.

In December 2023 I issued a provisional decision on this case. In summary I said:

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

I would first like to acknowledge that I'm very aware that I've summarised the circumstances surrounding 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.

Mr C acquired the used car through a hire purchase agreement with BMWFS. The hire purchase agreement is a regulated consumer credit agreement and because of that our service is able to consider complaints about the agreement. As the provider of the hire purchase agreement BMWFS is also the supplier of the car to Mr C. As the supplier of the car BMWFS is responsible for the quality of the car and the Consumer Rights Act ("CRA") implies terms into the hire purchase agreement requiring the car to be of satisfactory quality. Exactly what is satisfactory quality will depend on the specific circumstances of any given case. In this instance, where the complaint relates to a car, I think it reasonable that when considering whether the car is of satisfactory quality the car's age and mileage at the time it was supplied and when any faults occurred are all key considerations.

In my view what I need to decide in this case is whether there is sufficient evidence to demonstrate the car had a fault when Mr C took the decision to sell it, if it did, was that fault present or developing at the time when the car was supplied to Mr C and if it was, did that fault make the car of unsatisfactory quality when supplied.

In cases where it's not clear what happened or where the evidence is incomplete or inconclusive, I base my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence.

did the car have a fault when Mr C sold it?

Mr C says the car's air conditioning hadn't been repaired when he sold it and the car had developed further faults, whereas BMWFS says the car, as of 29 March 2023, had been fully repaired. But based on everything that has been said and submitted I'm satisfied that the car had at least a fault with the air conditioning when Mr C sold it. I say this because following BMWFS' FRL dated 29 March 2023 the garage appointed into looking into the air conditioning and looking to undertake a repair in respect of the same said to Mr C, on 26 April 2023 under cover of two separate emails:

"...unsure if the parts for the air-con have arrived..."

"I'm sorry that you have been let down and not had the correct...experience..."

did the car have a fault, or was one developing, at the time it was supplied to Mr C?

Given how quickly Mr C reported a fault with the air conditioning, this being only a couple of months after he acquired the car, the seriousness of the fault ('white smoke' entering the car's cabin) the number of miles added to the car's odometer by Mr C between September and November 2020, I can confirm that I'm satisfied, on the balance of probabilities, that the car had, or was developing, a fault when it was supplied to Mr C.

was the car of unsatisfactory quality when supplied to Mr C?

I accept that the car that Mr C acquired was around six and half years old and had travelled approximately 50,500 miles meaning it wouldn't be unreasonable to expect it to be showing signs of wear and tear and not be in the same 'as new' condition that it would have been in when first manufactured. It could also be said that the failure of the air conditioning on a six and half year old car that had travelled over 50,000 miles might not make it of unsatisfactory quality at the time of supply.

But the price Mr C paid for the car wasn't insignificant and the car could be considered a prestige model. So I think a reasonable person:

- would expect the air conditioning in such a car to be working
- would consider not purchasing such a car if the air conditioning was faulty
- wouldn't expect the air conditioning to fail so quickly and involve the sort of repair costs that have been estimated

So, I'm satisfied that in the particular circumstances of this case it's fair to conclude, on the balance of probabilities, that the car was of unsatisfactory quality when supplied to Mr C.

Given what I've concluded above, what I now need to decide is what BMWFS should have to do to fairly and reasonably compensate Mr C.

In my view BMWFS, in the particular circumstances of this case, should:

- refund to Mr C the advance payment he made of £2,000
- refund to Mr C £31.77 (10% of £317.69) of the agreement payments he made in November and December 2022 and in February and April 2023 to reflect the impaired use and impaired enjoyment he had of the car during this time
- refund to Mr C £216.66 ($22/31 \times £317.69$) of the agreement payment he made in January 2023 to reflect the 22 days he had no use of the car in, or around, this time
- refund to Mr C, if it hasn't done so already, £317.69 of the agreement payment he made in March 2023 (as offered under its FRL) to reflect the distress and inconvenience this whole matter has caused him
- refund to Mr C, on evidence being provided, the costs he incurred in obtaining diagnostic reports and in having repairs undertaken in respect of the diesel exhaust fluid quality issue and the air conditioning issue – according to Mr C these costs total £1,098.60 (£216.00, £216.00, £543.00, £123.60)

- pay Mr C interest on all of the above refunds at 8% simple a year from the date of payment (by Mr C) to the date of settlement (by BMWFS)

For the sake of completeness and for the avoidance of any doubt I would like to add that I'm satisfied that:

- Mr C acted in good faith and reasonably in approaching the original supplying dealership and his warranty provider before approaching BMWFS
- Mr C acted in good faith and reasonably in selling the car
- BMWFS have not been financially prejudiced by Mr C selling the car and settling his agreement

Mr C responded to say he accepted my provisional findings and to say that he had nothing further to add.

BMWFS didn't respond to my provisional findings by the date I gave for a response.

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.

As Mr C responded to say he accepted my provisional findings and BMWFS didn't respond to them I can confirm I see no reason to depart from them and I now confirm them as final.

My final decision

My final decision is that BMW Financial Services(GB) Limited trading as ALPHERA Financial Services must:

- refund to Mr C the advance payment he made of £2,000
- refund to Mr C £31.77 of the agreement payments he made in November and December 2022 and in February and April 2023
- refund to Mr C £216.66 of the agreement payment he made in January 2023
- refund to Mr C, if it hasn't done so already, £317.69 of the agreement payment he made in March 2023
- refund to Mr C, on evidence being provided, the costs he incurred in obtaining diagnostic reports and in having repairs undertaken in respect of the diesel exhaust fluid quality issue and the air conditioning issue
- pay Mr C interest on all of the above refunds at 8% simple a year from the date of payment (by Mr C) to the date of settlement (by BMWFS)*
- remove any adverse information it may have reported to credit reference agencies in respect of this issue

** HMRC BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to take off tax from this interest. If Mr C asks for a certificate showing how much tax has been taken off this should be provided*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 January 2024.

Peter Cook
Ombudsman