

The complaint

Mr T complains about the quality of a car he has been financing through an agreement with BMW Financial Services (GB) Limited, trading as ALPHERA Financial Services (“Alphera”).

What happened

I issued a provisional decision on this complaint in November 2023. An extract from that provisional decision is set out below.

While I would agree with our investigator’s suggestion that the car should be repaired, I don’t think the current proposal is sufficient to remedy matters for Mr T. I’ll explain why.

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.

Mr T acquired his 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.

There’s no longer a dispute that this car wasn’t of satisfactory quality. In those circumstances, the relevant legislation allows the business one opportunity to repair the car. The car broke down about four months after Mr T took receipt of it and Alphera agreed to the repair in June 2023. But the car wasn’t returned to Mr T until mid-October 2023, and when it was repaired the turbos hadn’t been fitted, although they will be when parts are available. There was also some bodywork damage, and Mr T was unhappy that the engine “run-in” directions restricted his use of the car and would require him to have it serviced every 6 months or 5,000 miles and not every 12 months or 10,000 miles. He’s subsequently told us that the car has had a diesel leak.

Our investigator suggested that Alphera should repair the car, pay Mr T £500 in compensation for the distress and inconvenience caused, refund rentals from February 2023 until the car is roadworthy, provide a pro-rata refund of tax and insurance, and add 8% simple interest to any refunds.

I don’t think that redress resolves things for Mr T. I’d agree with the investigator’s view on road tax and insurance refunds. But the car is not fully repaired yet and Mr T’s use of it has

been impaired by the fact the turbos haven't been replaced, and the engine requires running in. He is, however, able to use the car, so I think Alphera should refund 30% of all finance instalments since the car was returned to him on 11 October 2023 and until the turbos are replaced and the car is properly repaired. They should refund all finance instalments paid from the point the car failed (February 2023) until it was returned to Mr T on 11 October 2023. Interest should be added to the refunds as Mr T has been deprived of that money.

I don't think it's fair to ask Mr T to pay for the additional services it seems the running-in guidance requires. Mr T was supplied with a car that required servicing every year or every 12 months and Alphera should; therefore, pay for any additional services required. They can do that, as and when the services are called for, or can arrange a service plan on Mr T's behalf.

Mr T has experienced significant delays here. He's not been provided with a courtesy car and has had to arrange alternative transport, he's been paying for a car for many months and hasn't been able to use it, repairs have been promised but delayed, and he's had to escalate his complaint to this Service when I think it could have been resolved earlier. In those circumstances, I would agree with the investigator's suggestion that Alphera should pay him £500 in compensation for the distress and inconvenience caused.

Since the investigator provided his view the car has been returned to Mr T with some bodywork damage and interior staining. The dealership is happy to repair that damage and, as it doesn't relate to the condition of the car as supplied to Mr T I will make no further comment on it.

Mr T has also advised us of a recent diesel leak from the car. He's explained that he has told the dealership about that issue. I've not seen evidence that the leak is related to a failed repair, but that may be the case. I don't know if the dealership have rectified the problem for Mr T but if it's still a problem, and Mr T is unable to resolve matters with the dealership, he will need to raise the matter with Alphera to give them an opportunity to respond. It's not something I'll, therefore, consider in this decision.

My provisional decision

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

- *Collect the car when parts are ready and repair it at no cost to Mr T.*
- *Pay Mr T £500 to compensate him for the distress and inconvenience caused.*
- *Provide a refund of any rentals paid by Mr T while his car was being repaired. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Refund 30% of finance payments made by Mr T from the date the car was returned to him part repaired (11 October 2023) until the date the turbos are repaired, and the car is returned to Mr T. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Refund the costs incurred to insure and tax the car while it was being repaired, as directed in the investigator's findings. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Pay for any additional services (as directed above) that may become due as a result of the engine being replaced.*
- *Remove any adverse reports they may have made to Mr T'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.

Further comments and/or evidence

Alphera didn't provide any further evidence for me to consider.

Mr T provided a bit more information on the diesel leak he was experiencing. He said he'd lost faith in the car, and he also explained that Alphera had reported some missed payments to his credit file that were impacting his ability to obtain credit.

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 don't think I've been provided with any additional evidence or comments that would lead me to change my provisional decision. I've already explained that if Mr T is unable to resolve the diesel leak issue with the dealership, he may be able to refer a complaint to Alphera for their consideration. As I've not been persuaded to change my provisional decision I will be asking Alphera to remove any adverse reports they may have made to Mr T's credit file. If Mr T thinks he's been financially disadvantaged by the application of those markers he'll need to complain, in the first instance, to Alphera about that.

Putting things right

I've not been provided with any additional evidence that would lead me to change my provisional decision. My provisional decision therefore becomes my final decision on this complaint.

My final decision

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

- Collect the car when parts are ready and repair it at no cost to Mr T.
- Pay Mr T £500 to compensate him for the distress and inconvenience caused.
- Provide a refund of any rentals paid by Mr T while his car was being repaired. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund 30% of finance payments made by Mr T from the date the car was returned to him part repaired (11 October 2023) until the date the turbos are repaired, and the car is returned to Mr T. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund the costs incurred to insure and tax the car while it was being repaired, as directed in the investigator's findings. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Pay for any additional services (as directed above) that may become due as a result of the engine being replaced.
- Remove any adverse reports they may have made to Mr T'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 Mr T to accept or reject my decision before 30 January 2024.

Phillip McMahon
Ombudsman