

The complaint

Mr G complains that BMW Financial Services (GB) Limited trading as Alphera Financial Services (“Alphera”) has treated him unfairly by requesting a payment for the impaired value of a car supplied under a hire purchase agreement he had voluntarily terminated.

What happened

I issued a provisional decision on this complaint last month. In that decision I explained why I thought the complaint should be upheld and what Alphera needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

In September 2019, Mr G entered into a hire purchase agreement with Alphera. He used the proceeds of that agreement to fund the final payment on a previous hire purchase agreement he held with another provider. The agreement with Alphera was for £8,500 over 48 months, with monthly repayments of £137.73 and an optional final repayment of £3,498. Mr G also paid a cash advance payment of £50. At the time of this agreement, the car was three years old and had done 28,345 miles.

In September 2022 Mr G’s car broke down. A local garage diagnosed that it had suffered a significant failure to the engine that would be uneconomical to repair. So, in December 2022 Mr G asked Alphera what his options would be to end the agreement. Alphera told Mr G that he would be able to voluntarily terminate the agreement at no cost, and return the vehicle to the lender. Or it told him that he could settle the agreement by paying £4,687.26. Some frequently asked questions, appended to the letter, reminded Mr G that he would be liable for any damage to the vehicle when it was returned.

Mr G accepted Alphera’s offer to voluntarily terminate the agreement. And he reminded the lender that the car was not drivable due to the damage to the engine. Alphera arranged for the car to be collected from the garage at which it was being stored. The car was collected on 24 January 2024.

It appears that there were some administrative issues in transferring Mr G’s car to an appropriate auction to be sold. The car wasn’t sold at auction until 4 May. The net proceeds of that sale amounted to £2,475. Following the sale Alphera wrote to Mr G to tell him that the sale had completed at £4,200 less than would be expected for the car had the engine been in working order. So it asked Mr G to pay the difference under the terms of his agreement.

Mr G complained to Alphera about the charge it was asking him to pay. He said the letter he’d been sent about the voluntary termination told him that he would have nothing further to pay. And he said that he’d made the engine problems very clear to Alphera before it issued that offer to him. Alphera told Mr G that it thought it had acted fairly, so he brought his complaint to us.

Before we could assess Mr G's complaint, Alphera said that it had reviewed its communications with Mr G. It said that it thought its customer service in dealing with Mr G could have been better. So it offered him £250 to acknowledge its poor customer service.

I have first considered the engine failure that Mr G experienced. I note that Mr G had enjoyed the successful use of the car for around three years following his hire purchase agreement with Alphera. And I have also taken into account that the manufacturer of Mr G's car provided a warranty of five years for the engine – at the time of the failure Mr G's car was six years old. I haven't seen anything to make me think that the problems with the engine were caused by the car not being of a satisfactory quality, including being sufficiently durable, at the time he signed the hire purchase agreement. So I don't think Alphera is responsible for any of the costs associated with the repair of the engine.

So in order to fairly decide this complaint I think I should first consider what happened when Mr G told Alphera about the car, and asked for its advice on how he should proceed with the hire purchase agreement. As I have explained, in December 2022, Alphera wrote to Mr G to give him two options to conclude the agreement, given that the repairs to the car were not economically viable. Mr G was told he could either voluntarily terminate the agreement and return the car at zero cost, or pay £4,687.26 to settle the agreement and retain the car.

I do have some concerns about the information Mr G was given. He was correctly told, in the information appended to the settlement letter, that he would be liable for the repair of any damage to the car. But given that Alphera was aware that Mr G's car's engine had completely failed, and was uneconomic to repair, I think it might have been helpful to ensure he was aware that constituted "damage" to the car. I think there is a risk that a more natural understanding of that phrase might have suggested things such as dents and scuffs to the bodywork.

So I am not persuaded that Mr G was treated entirely fairly when he made his decision about how to proceed, and I think that then leads me onto the remainder of my findings when I consider what might have happened had Mr G had a better understanding of his choices and liabilities.

By voluntarily terminating his agreement, Mr G surrendered the car to Alphera. It was then reasonable for Alphera to sell that car in order to recoup its lending. Indeed the information that was sent to Mr G explained that, by telling him that it might be important for him to consider whether there was equity in the car that he might lose by surrendering the vehicle.

It is understandable that, given the problems with the engine, that Mr G's car was sold at auction for much less than it would have achieved had it been in full working order. So Alphera has calculated the amount of that loss, and that constitutes the £4,200 that Mr G has been asked to pay.

But I am not persuaded that this fairly reflects the loss that Alphera has incurred here. Alphera told Mr G that the outstanding amount on his hire purchase agreement was £4,687.26. So by paying that amount he would have no further liability to Alphera under the agreement, and would retain the car. By selling the car Alphera has generated net proceeds of £2,475. So it seems to me that the amount Alphera has lost is actually £2,212.26.

I am currently persuaded that, had Alphera tailored its communications with Mr G to reflect what it knew of the problems with the car, Mr G would have instead minimised his losses by paying the settlement charge, and either repairing or selling the car himself. I think he only chose the voluntary termination option as the information he was given by Alphera was insufficient and led him to believe that voluntary termination might be the most beneficial option.

It does seem that there was an extended period where administrative errors by Alphera delayed the sale of Mr G's car. Industry statistics suggest that used car prices fell, on average, by around 2% over that time. So it is possible that, had no delays occurred in the sale of the car, a higher price might have been achieved. So I'm currently minded to conclude that a sale price some £50 higher might have been reasonable.

So I currently think that a fair resolution to this complaint would be for the amount Alphera is claiming from Mr G, to represent the impaired value of the car, be reduced to £2,162.26. But I note the offer Alphera made to represent the poor customer service it provided. So I think it would be reasonable for that to be taken into consideration too. So I think a final settlement amount of £1,900 would be reasonable here.

I appreciate that these findings might be disappointing for Mr G. But ultimately I don't think Alphera is responsible for the failure of his car's engine. I do, however, think that he might have made a different choice in how to end his hire purchase agreement had he received better information at that time and so reduced the amount he needed to pay Alphera.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. I haven't received anything further from either Mr G or Alphera.

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 I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr G and by Alphera. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Given that neither party has provided me with any new evidence or further comments I see no reason to alter the conclusions I reached in my provisional decision. It follows that I don't think Alphera is responsible for the failure of Mr G's car's engine. I do, however, think that he might have made a different choice in how to end his hire purchase agreement had he

received better information at that time and so reduced the amount he needed to pay Alphaera.

Putting things right

To put things right, Alphaera should do the following;

- Reduce the amount required from Mr G to settle his hire purchase agreement to £1,900 and issue a new invoice for that payment.
- Remove any adverse information it has added to Mr G's credit file in relation to the outstanding final settlement. Any future failure to pay the outstanding amount noted above, after the normal invoice payment period has expired, may be reported to Mr G's credit file at that time.
- If it hasn't already done so, pay the £250 offered to Mr G, for his inconvenience due to the poor levels of customer service he experienced.

My final decision

My final decision is that I uphold Mr G's complaint and direct BMW Financial Services (GB) Limited trading as Alphaera Financial Services to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 August 2024.

Paul Reilly
Ombudsman