

The complaint

Mr W complains about the quality of a car he acquired through a hire purchase agreement financed by BMW Financial Services (GB) Limited trading as Alphera Financial Services (Alphera).

What happened

In September 2018 Mr W acquired a used car through a hire purchase agreement. He noticed some faults with the vehicle in the first few weeks of owning it and contacted the dealership and Alphera about these. Mr W wanted to reject the car. The issues raised at the time were as follows:

- Electric screens folding up when retracted
- Rear seats not operating properly
- No service book
- Carpets not secure and rear carpets of the wrong size
- No second key
- Wheels appear out of alignment
- Steering wheel not straight
- Air conditioning not working

Alphera asked Mr W to return the vehicle to the dealership to inspect the faults. In November 2018 Mr W told Alphera he'd had some more serious faults occur, so he wasn't willing to drive the car back to the dealership for this investigation.

Mr W and Alphera agreed that he'd take the car to a local garage for a diagnostic report to be completed. Due to Mr W's ill health, and the time taken to book the vehicle into a manufacturer approved garage, this inspection took place in January 2019. That report identified the following faults:

- Door card requires removal to identify why the window blind is going down, but fabric is sagging
- Coolant level just above maximum. Unable to find any external leak, could be a cylinder head issue. Requires further investigation
- Rear left tyre is wearing on the inner edge and is perished on inner and outer edges

Mr W paid £180 for this diagnostic report but didn't want to pay for the further investigations required in relation to the coolant.

Alphera agreed to pay for the further investigation, and this was carried out in February 2019. That report identified a leak in the front section of the climate control coolant pipe, and

the rear section which crosses the vehicle. It also identified that both front lower suspension arm bushes were starting to crack. Mr W confirmed he wanted to reject the car as a result.

The dealership arranged to collect the car and returned the vehicle to Mr W in June 2019 after they say they completed the required repairs.

When the vehicle was returned to Mr W in June 2019, he took it on holiday, where he experienced a warning light on the dashboard and the engine cutting out. Mr W sent Alphaera a video of the vehicle leaking from the underside and explained that the damaged tyre had not been replaced. Mr W paid £205 for the vehicle to be recovered back to his local garage in November 2019.

That garage produced a further inspection report in January 2020 at a cost to Mr W of £360, which identified a suspected EGR cooler leak. The mileage recorded at this inspection was 48,070.

Alphaera sent Mr W their final response to his complaint in June 2019, they didn't uphold it as they believed the repair work undertaken by the dealership had resolved the fault.

Unhappy with the response from Alphaera, Mr W bought his complaint to this service. Our investigator looked into things for Mr W, and thought that the vehicle was of unsatisfactory quality at the time it was supplied to him. They recommended that Alphaera accept rejection of the vehicle, refund Mr W's deposit, refund Mr W's monthly payments, remove the agreement from Mr W's credit file, refund the cost of diagnostic reports paid for by Mr W, refund Mr W's insurance costs, and pay Mr W £500 in compensation.

Alphaera agreed with some, but not all of the investigator's recommendations. They said they would accept rejection of the vehicle, refund the deposit, refund four of the monthly payments made by Mr W, remove the agreement from Mr W's credit file, refund the cost of diagnostics and pay £500 compensation. Mr W remains unhappy with the offer made by Alphaera. As an agreement can't be reached, the case has been passed to me for a decision.

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.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Alphaera as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £54,000. It was four years old and had travelled around 46,000 miles at the time of supply. With this in mind, I think it's fair

to say that a reasonable person would expect the level of quality to be higher than a cheaper, higher mileage vehicle.

I've seen evidence that Mr W reported to both the dealership and Alphaera that he thought the vehicle wasn't of satisfactory quality within two weeks of acquiring it

From the evidence I've seen, it appears that the air conditioning was refilled. The dealership considered the other items to be minor, and so didn't think they made the vehicle of unsatisfactory quality.

Before an assessment could be made of these items, Mr W experienced some more serious faults, reporting red warning lights on the dashboard in November 2018 which appeared to indicate a water leak. Because of this, Mr W didn't want to drive the vehicle the three to four hours back to the dealership for inspection, and says he stopped using the vehicle at this point, because he was worried the fault would get worse. I think this is reasonable given the seriousness of the warning lights.

When the vehicle was inspected in February 2019 the recorded mileage was 47,115. This inspection found leaks in the cooling system. Considering the warning lights on the vehicle on November 2018, the discovery of the cooling system leak in February 2019, and the low mileage driven whilst the vehicle was in Mr W's possession, I'm persuaded that the faults were likely to have been present at the point of sale.

I haven't seen any evidence to suggest that the fault with the cooling system was caused by driving style, third party damage, or normal wear and tear. I don't think a reasonable person would expect such a serious repair to be required so soon after the purchase of a high value car. So, for these reasons, I'm satisfied that the vehicle was of unsatisfactory quality at the time it was supplied to Mr W.

Mr W's car was collected by the dealership sometime between February and June 2019, and Alphaera say that repairs were carried out. Unfortunately, the job card from this repair hasn't been provided, so I'm unable to see exactly what work was undertaken. But the vehicle was returned to Mr W by the dealership in June 2019.

The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. I'm satisfied that the fault with the coolant system was first discovered more than 30 days after Mr W acquired the vehicle, and that Alphaera were entitled to that opportunity to repair the vehicle. So, I think it's reasonable that this took place.

Mr W reported further faults and provided the inspection report from January 2020 to Alphaera, identifying ongoing faults with the cooling system.

I haven't seen any evidence that any further action has been taken with the vehicle, and it was returned to Mr W unrepaired in November 2020, as the local garage were going to begin charging storage fees for it.

As the fault identified in the January 2020 report is the same as that reported by Mr W in November 2018, and as that identified in February 2019, I'm satisfied that it is linked, and therefore that the vehicle remained of unsatisfactory quality. Alphaera had an opportunity to repair this fault in June 2019, but this was not successful. So, I'm satisfied that Mr W should have been granted his final right to reject the vehicle after he reported the failed repair in June 2019.

All things considered, I think Mr W should be allowed his final right to reject the car.

Putting things right

This means that the car is collected from Mr W with nothing further to pay, the finance agreement is brought to an end, and Mr W has his £1,000 deposit refunded (plus interest). The agreement and any adverse information should be removed from Mr W's credit file.

Mr W has been unable to use the vehicle for an extended period of time. He says he stopped using it in November 2018 when the red warning lights appeared. The vehicle was then at a local garage or the dealership for diagnostics or repairs from January to June 2019.

After this, the vehicle broke down and was recovered back to the local garage. It's not clear from the evidence if Alphera investigated Mr W's concerns after the failed repair, or if Mr W was able to use the car at all between June 2019 and when he bought his complaint to this service.

Mr W has provided evidence of an odometer reading in February 2021 where the car had covered 48,106 miles. This is 2,106 miles more than when he acquired it in September 2018, which persuades me that Mr W has had very little use of the car whilst it's been in his possession. But he has had some use of the vehicle, and I think it's reasonable that Alphera should retain the monthly payments made by Mr W that relate to this use.

Without the job cards, or any investigation by Alphera of the faults for some time in late 2019, it's difficult to say exactly when Mr W had both possession and use of the vehicle. The agreement between Mr W and Alphera has an agreed annual mileage of 6,000 miles. So, it might have been expected that Mr W would travel around 500 miles a month in the vehicle. As the vehicle has travelled around 2,000 miles, I find that Mr W should be responsible for four monthly payments toward the use of the vehicle.

I understand that Mr W cancelled his direct debit for the monthly payments sometime in 2019. So, I find that Alphera should refund any monthly payments made by Mr W over the four that are considered fair useage, and clear any outstanding arrears.

Mr W has paid a total of £540 for diagnostic reports, and £205 for recovery of the vehicle, so Alphera should refund Mr W for these payments, plus interest.

Mr W was required under the agreement to maintain the insurance on the vehicle. I've seen evidence that Mr W paid a total of £2,990.50 to insure the vehicle from 15 January 2019 to 15 January 2020. There was a period in mid-2019 where Mr W took the vehicle on holiday after the dealership had completed repairs, so I think he was responsible for the cost of the insurance during this period. However, I'm satisfied that the vehicle was either not in Mr W's possession, or was undriveable, for the majority of this time period. Mr W was also unable to drive the vehicle for some months before the January 2019 insurance renewal and appears to have cancelled the policy sometime after the January 2020 renewal.

So, on balance, I'm satisfied that Mr W has paid for around 12 months of insurance cover on a vehicle that was either not in his possession, or that he was unable to drive.

Mr W has explained that he had access to other vehicles, and he's unlikely to have replaced the vehicle in the short term. So, I find that Alphera should refund Mr W the full annual premium of £2,990.50 plus interest.

Finally, Mr W has been put to significant inconvenience in having a car that he couldn't drive for a long period of time due to the fault. He's had to take the vehicle to local garages and arrange for diagnostics and repairs. Alphera didn't address Mr W's concerns following the failed repair in June 2019, leading to distress and inconvenience for Mr W in trying to resolve

the matter. All things considered, I find that Alphera should pay Mr W a total of £500 compensation to reflect the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint and I require BMW Financial Services (GB) Limited trading as Alphera Financial Services to:

- End the finance agreement and collect the car at no further cost to Mr W
- Refund Mr W's deposit of £1,000 plus 8% yearly simple interest calculated from the date of payment to the date of settlement.
- Refund any monthly payment made by Mr W over the four payments considered to be for fair useage, plus 8% yearly simple interest calculated from the date of payment to the date of settlement.
- Waive any outstanding arrears
- Remove the finance agreement and any adverse information from Mr W's credit file
- Refund Mr W £745 for the diagnostic reports and vehicle recovery fees plus 8% yearly simple interest calculated from the date of payment to the date of settlement.
- Refund Mr W £2,990.50 for the insurance fees plus 8% yearly simple interest calculated from the date of payment to the date of settlement.
- Pay Mr W £500 compensation to reflect the distress and inconvenience caused

If Alphera considers that its required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 October 2021.

Zoe Launder
Ombudsman