

## The complaint

Mr W complains about the charges that BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (Alphera), applied when he handed back a car he had acquired under a hire purchase agreement.

## What happened

In September 2016, Mr W entered into a hire purchase agreement with Alphera to acquire a used car that was first registered in the UK in June 2013. The cash price of the car was £9,625. The agreement was set for a duration of 48 months. And the car mileage on delivery was approximately 16,728 miles.

On 23 June 2020, Mr W requested to exercise his right of voluntary termination. On 1 July 2020, Mr W received a letter advising him of the next steps, which included a checklist of how to prepare the car for collection. In this correspondence he was advised that an agent working for Alphera would contact him to arrange a collection of the car within five working days. When Mr W didn't hear back from their agent, he called Alphera who asked him to contact their agent directly. After contacting the agent directly, it was agreed that they would pick up the car on 3 August 2020, and that they would provide Mr W with an hour notice on the day before arriving.

On 3 August 2020, Mr W said he took the day's leave from his job, and towards the later part of the day he still hadn't been provided with a notification of when to expect the collection agent. So, he decided to call the agents and enquire. That is when he was informed that the collection of the car had to be cancelled because of traffic, and a new collection date was set for 7 August 2020. On this date the collection agent did arrive, inspected and collected the car. Once again Mr W said that he needed to take the day's leave from his job. On the collection day, Mr W said that he wasn't advised of the findings of the inspection, and only received an email with the inspection report on 9 September 2020. In the report it was noted that Mr W needed to pay £531 for damages to the car. This was for damages to the car that Alphera considered were outside of fair wear and tear. Mr W disagreed as he didn't think the charges were fair. He was also unhappy about how the inspection was carried out. Among other things, Mr W said the collecting agent didn't have proper Personal Protective Equipment (PPE), and didn't ask him to verify the damage or sign the inspection's declaration at the end.

In October 2020, Alphera wrote to Mr W. In this correspondence they said that the events Mr W informed them about were unacceptable and they apologised for any inconvenience caused. They also applied a £50 credit to his account. Mr W has told our service, that when Alphera investigated his concerns about the charges being unfair, they told him that they couldn't see a scratch on the right-hand front door, so they removed the charge for this (£106). Which left the outstanding amount £425 for Mr W to pay. This included: right-hand front alloy scratched (£33), front bumper scratched (£45), left-hand rear quarter panel scratched (£106), rear bumper scratched (£106), right-hand front seat base cover cut (£29) and right-hand front wing scratched (£106).

Mr W was still unhappy with Alphera, so he brought his complaint to our service.

Our investigator thought the complaint should be upheld. He thought Alphaera should pay Mr W a further £100 for the distress and inconvenience caused in addition to the £50 offered. He also thought that it would be unfair for Alphaera to charge for damage to the right-hand front alloy, the left-hand rear quarter panel and the rear bumper.

Mr W agreed with the investigator, but Alphaera disagreed. So, the complaint has been passed to me to decide.

### **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 is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the complaint. But I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues to reach a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Mr W acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at complaints about these sorts of agreements. Mr W's agreement with Alphaera sets out that he needs to keep and maintain the car in a good state of repair and condition.

Alphaera said that the decision to charge for the damage was made in accordance with the British Vehicle Rental & Leasing Association (BVRLA) guidelines. They said that all the damage as seen in the pictures of the inspection report are outside of the BVRLA guidelines.

When reaching my decision, I'm required to consider relevant industry guidance. Here, relevant guidance includes the guidelines on fair wear and tear published by the trade body, the BVRLA. This guidance is generally intended for new cars that have been returned at the end of their first finance agreement, so it is used mainly to consider damage to cars that are a few years old. But it can also be used for older cars, where the age of a car and the number of miles it has covered are taken into account, when considering what would be deemed fair wear and tear. I've also considered that the BVRLA guidance is just that - guidance. While I take it into consideration, I also need to take into consideration what is fair and reasonable in the situation here. So, I think it is fair that any damage is assessed by considering whether it's reasonable to expect this type of damage, given the car's age and mileage.

The car was around three years old, when Mr W acquired it. It had travelled approximately 16,728 miles and had a cash price of £9,625. When Mr W handed back the car in September 2020, it was approximately seven years old and had travelled around 52,459 miles. So, I've taken all of this into consideration when reviewing the damage inspection report which was done when the car was collected. And in deciding whether Alphaera have acted fairly in relation to each charge, I've taken into consideration the terms and conditions

of the hire purchase agreement, BVRLA's guidelines, as well as the age and mileage of the car when it was returned.

#### Scuffs, scratches and other paint blemishes

The BVRLA guidance sets out that surface scratches of 25mm or less, where the primer or bare metal is not showing are acceptable, provided they can be polished out and provided that there is a maximum of up to four surface scratches on one panel. From the report I can see that the scratches on the right-hand front wing, and on the front bumper, are both very deep and through the primer so they can't be polished out.

#### Upholstery and trim

The BVRLA guidance says that the upholstery and trim must be clean with no burns, scratches, tears, dents or staining. From the report I can see that there is a deep cut in the right-hand front seat cover.

I think most likely all three of the above damages are more than fair wear and tear considering the circumstances. So, I'm satisfied it's fair and reasonable for Alpheria to charge for these damages a total of £180 (£106+£45+£29). And the actual charges themselves don't seem unreasonable.

Alpheria also thinks that Mr W should be charged for the scratches on the right-hand front alloy (£33), the left-hand rear quarter panel (£106) and the rear bumper (£106). The size of all three scratches are just outside of BVRLA guidance considers acceptable. But having looked closely at the pictures I think the marks on there can be considered fair wear and tear, taking into consideration the age and mileage of the car. Mr W's car was seven years old and had covered around 52,459 miles when he handed it back, so I would expect the level of what is considered fair wear and tear to be greater than if Mr W had taken out finance on a brand new car. Also like I mentioned above, the BVRLA guidance is just that – guidance, and it is generally intended for new cars that have been returned at the end of their first finance agreement. So, it is used mainly to consider damage to cars that are a few years old. And yes it can also be used for older cars, such as the one in question, but the age of a car and the number of miles it has covered need to be taken into consideration when deciding what would be deemed fair wear and tear.

In addition, Mr W has told our service that Alpheria told him that they couldn't see a scratch on the right-hand front door, so they removed this £106 charge. I think this was reasonable as I also don't see a scratch, which is greater than 25mm through the top coat on that door.

I know Mr W is also unhappy with the overall service he received from Alpheria and their agents. In summary, he told us that the long process has put immense stress on him and his family and affected his mental health. He is unhappy that he was not given the inspection report to sign, and he said that there were long periods when he didn't hear from Alpheria. He said this made him think that there was no damage that he was responsible for. He has also told us that he is unhappy with the service he received from the collecting agents as they failed to attend on the agreed date first time around, so he lost an extra day off work. He also feels that the agent that collected his car put him and his family at risk because he wasn't wearing any PPE.

I've taken all of the above into consideration when thinking about the amount of compensation Alpheria should pay Mr W. But in this case, I will, and can only consider the impact this had on Mr W. Also due to government guidelines around Covid-19 I don't think it was unfair for Alpheria, and businesses operating on their behalf, such as the agent collecting the car, to adapt the way they work. So, I can't say that it was unreasonable that safety measures were taken to protect the inspector by refraining from having the inspection report signed. But I also understand that Mr W was caused a lot of distress and

inconvenience, so I've considered what impact this had on him. I know that Alpheria already apologised for some of the above and offered to pay Mr W £50 compensation, but I don't think that is enough to fairly reflect everything that has happened. I think Alpheria should increase their compensation by a further £100 to fairly reflect the distress and inconvenience that has been caused to Mr W.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Mr W's complaint and direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to:

1. Pay Mr W a total compensation of £150 for the distress and inconvenience caused;  
and
2. Reduce the outstanding amount due, for damages to the car, from £425 to £180.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 April 2022.

Mike Kozbial  
**Ombudsman**