

The complaint

Mr L complains about the quality of a car that was supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alpheria Financial Services ("Alpheria").

What happened

In January 2021 Mr L took out a hire purchase agreement with Alpheria for a used car. The car was just over three years old and had travelled approximately 57,500 miles. The cash price was £24,630. Under the terms of the agreement, this was repayable in 48 monthly instalments of £444.62, followed by an optional final payment of £8,575 if Mr L decided to keep the car.

Mr L has told us he was unable to drive the car much due to COVID-19 restrictions. He says he also underwent surgery in February 2021, which meant he couldn't drive for around eight weeks.

Mr L says that, on 6 June 2021, after covering around 1,100 miles, a warning light appeared on the dashboard. He says the car began to lose power and release blue smoke.

Mr L says he drove the car to the nearest manufacturer's garage, but they didn't have any availability until a week later. After booking the car in at this garage, he was told they didn't have the necessary equipment to look into the issue. Mr L arranged for the car to be recovered to another garage further away from his home. That garage couldn't look at the car until 30 June 2021.

Mr L has told us that it took the garage a total of ten weeks to complete diagnostic testing, which identified faults with the Diesel Particulate Filter (DPF) and the Selective Catalytic Reduction converter (SRC). Mr L says he was also told the car hadn't been serviced, even though there was a service stamp in the service log.

Mr L paid a total of £9,158.45 to complete the service and repairs on the car. After it had been repaired, Mr L decided to sell the car. He says his family live some distance away and he was worried the car might break down on the journey.

Mr L raised a complaint with Alpheria on 6 November 2021. They responded saying they were unable to uphold the complaint because Mr L had paid for repairs and sold the car before giving them an opportunity to investigate his concerns about it. They offered Mr L £3,000 towards the repair cost as a gesture of goodwill, with no admission of liability. Dissatisfied with Alpheria's response, Mr L brought his complaint to us.

Our investigator didn't think the car had been of satisfactory quality when it was supplied to Mr L, so he thought Alpheria should cover the cost of the repair. He noted that Mr L hadn't been able to use the car between June and September 2021 due to it not being of satisfactory quality. So, he said Mr L should also receive a refund of the payments he'd made during this time.

The investigator said that, although the service log had been stamped, he thought the service either hadn't been completed or components were missed. So, he said Alphaera should reimburse Mr L the cost of the service. He also thought they should refund Mr L the cost of having the car transported to the garage, on production of a valid receipt for this.

The investigator felt Alphaera should pay Mr L £100 compensation for the distress and inconvenience he'd been caused due to the faults with the car. And he said Alphaera should remove any adverse information about this agreement from Mr L's credit file.

Alphaera disagreed. They said they didn't think it was fair that Mr L should ask for a refund after having the repairs carried out. They said the Consumer Rights Act 2015 (CRA) states they should be allowed one opportunity to repair a fault - and Mr L hadn't advised them of the issues he was having. They said they also hadn't authorised the repair, as legal owner of the car at the time.

Alphaera increased their offer to 50% of the cost of the repair, along with the rest of the recompense the investigator had recommended. As they didn't agree with our investigator's view, the case has come to me for a decision.

My provisional decision

I issued a provisional decision, in which I said:

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

Mr L's complaint is about a car supplied under a hire purchase agreement. Entering into consumer credit contracts like this as a lender is a regulated activity. So, I'm satisfied I can look into Mr L's concerns about Alphaera.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there's an implied term that the quality of those goods is satisfactory.

The standard that's applied is whether a reasonable person would consider the quality of the goods to be satisfactory, taking into account the way they were described, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the relevant circumstances a court would take into account might include things like its age, mileage, and history.

In this case, I bear in mind that the car was just over three years old and had travelled approximately 57,500 miles when it was supplied to Mr L. It cost £24,630, which is significantly less than it would've cost when it was new. I don't think a reasonable person would have the same standards for this car as they would a newer one with less mileage.

I don't think a buyer would expect the car to be in perfect condition - I think they'd probably expect some parts of the car to have suffered a bit of wear and tear. But I do think they'd still expect it to be free from anything other than minor faults when it was supplied - and to be able to drive the car for a reasonable amount of time without major issues.

Was the car of satisfactory quality when it was supplied to Mr L?

(i) Servicing

Mr L has told us that the car was sold to him on the understanding that it had been fully serviced - and that the service booklet had been stamped to show a service had been carried out.

I've seen no supporting evidence to confirm what the dealer said to Mr L, or what the service booklet showed. I've seen evidence from the garage that carried out the repairs indicating the car hadn't had a recent service, and that Mr L paid for this to be done.

Servicing is a routine maintenance expense, which is to be expected with any vehicle. In the absence of supporting evidence showing Mr L was promised a particular level of servicing had previously been carried out, I'm not persuaded that Alphera are liable for the cost of servicing the car.

(ii) Failure of the DPF and SCR

It isn't disputed that faults were found with this car. I've seen a copy of the invoice Mr L was given for the car's visit to the garage on 30 June 2021, which says:

"Removed DPF unit & found exit melted"

"Unable to inspect SCR CAT – removed and confirmed due to internal failure – collapsed inside."

The invoice records the car's mileage to have been 58,293, so I can see Mr L had only had around 1,000 miles' use of the car by the time this problem occurred. I've also seen a copy of an email from the garage dated 22 October 2021, giving further information about their diagnosis of the fault. It says:

"...because the SCR CAT was damaged/melted this blocked the exhaust gas flow causing excessive heat increase at the DPF exit in turn melting the DPF."

"..in our opinion the damage is long term as the vehicle wouldn't of tried to do that many DPF regenerations in 1100 miles."

Having thought about the evidence from the garage that diagnosed the problem - and the amount of use Mr L had had from the car up to that point - I find it most likely that this issue was either already present or developing when Alphera supplied it.

I consider this to be a significant fault, because I've seen evidence showing a warning light came on, the car began to lose power and release blue smoke. So, I don't consider the car to have been of satisfactory quality when it was supplied to Mr L.

Putting things right

(i) Cost of repairs

The CRA says that, where the goods supplied aren't of satisfactory quality, the consumer has the right to require the business to carry out a repair. Alphera say it wouldn't be fair for them to cover the full cost of the repair carried out by the garage Mr L had chosen, because he hadn't made Alphera aware of the issues with the car or given them an opportunity to help him. I've considered this point.

I'm satisfied that the car wasn't of satisfactory quality and that repair was a suitable option for putting things right. Alphera have offered to contribute 50% towards the cost of the repair.

But I've seen no supporting evidence to show how this figure was arrived at, or why Alpera consider this to be a fair proportion of the repair invoice for them to have to pay.

In the absence of more specific evidence about this, I'm not persuaded that it would be unfair for Alpera to cover the amount Mr L paid for the repair. So, I think they should reimburse him the repair costs shown on the invoice dated 16 September 2021.

Alpera have accepted the rest of our investigator's recommendations. For completeness, I'll deal with these very briefly.

(ii) Recovery cost and loss of use of the car

Alpera agree that Mr L should be reimbursed for the cost of transporting the car to the garage, and that he should receive a refund of the payments he made during the period in which he was unable to use the car. I think that's fair.

I think Mr L was unable to use the car between 6 June and 16 September 2021. I say this because Mr L has told us that the problem occurred on 6 June 2021, but it took some time to book the car in to a garage that could diagnose the problem. Mr L says it took the garage around 10 weeks to find the fault. I've seen that the invoice is dated 16 September 2021. So, I think it most likely that this was the date the repair was completed.

(iii) Distress and inconvenience

I can see Mr L has suffered some distress and inconvenience due to the problems with the car. He had to find a garage with the correct diagnostic equipment and arrange for the car to be recovered there. Alpera had agreed to pay Mr L £100 compensation for the distress and inconvenience he's been caused, which I think is fair.

Mr L says this whole process has made him feel ill, to the point that he had to part-exchange the car because he no longer felt safe in it. He's described the despair he felt when faced with a repair bill of over £9,100 for a car that he'd hoped would be the car of his dreams.

I can appreciate how disappointing this experience must have been for Mr L. But I do think some of the distress and inconvenience he's suffered might have been avoided if he'd complained to the dealer or finance company when the issues first arose - and given them an opportunity to put things right for him. So, I'm not persuaded that a higher award is appropriate here.

For the reasons I've explained, I intend to uphold this complaint and direct BMW Financial Services (GB) Limited trading as Alpera Financial Services to:

- Reimburse Mr L the cost of recovering the car to the garage, on production of a valid receipt or invoice.*
- Reimburse Mr L the cost of the repairs shown in the invoice dated 16 September 2021.*
- Refund the payments Mr L made for the period between 6 June and 16 September 2021, when he was unable to use the car.*
- Interest should be added to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.*
- Remove any adverse information about this agreement from Mr L's credit file.*
- Pay Mr L £100 for the distress and inconvenience he's been caused due to being supplied with a car that wasn't of satisfactory quality.*

I invited both parties to send me any further information or comments they'd like me to consider before issuing my final decision.

Responses to my provisional decision

Mr L sent a copy of the receipt for the cost of having the car recovered to the garage. He said he had no further evidence or information to add.

Alphera said they felt they were being punished for an issue that they were never given an opportunity to resolve. They highlighted the fact that my provisional decision recognised that some of the distress and inconvenience Mr L had suffered might have been avoided if he'd complained to the dealer or finance company when the issue first arose and given them the opportunity to put things right for him.

Alphera said they didn't feel they were innocent here, as they understood that a reasonable person wouldn't expect a car to fail and to be faced with a huge repair bill. But they felt Mr L should also accept a level of responsibility for not allowing the lender and dealer an opportunity to support him. They said they may have been able to get a cheaper repair done and also provide a courtesy car while repairs were taking place. Alphera said they felt their offer of 50% of the repairs recognised that both parties shared some of the blame for what went wrong here.

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'm grateful to both parties for taking the time to respond to my provisional decision. But I've seen no new evidence to persuade me that I should change my mind.

I appreciate Alphera feel very strongly that they should have been given an opportunity to put things right when Mr L discovered the fault with the car. They say they may have been able to get a cheaper repair. But I've seen no supporting evidence of this. In the absence of specific evidence showing Alphera would have paid less if they'd been able to arrange the repair themselves, I remain of the view that it wouldn't be unfair for Alphera to reimburse the amount Mr L paid.

I don't consider my finding as to the repair cost to be inconsistent with my approach to the amount of compensation Mr L should receive for the distress and inconvenience he's suffered.

Mr L has told us that having to pay out over £9,100, after recently retiring due to ill health, caused him a huge amount of stress and anxiety. He says this caused him to feel physically unwell. But as I explained in my provisional decision, when thinking about the amount of compensation that's appropriate here I think it's relevant to bear in mind that some of this stress and anxiety may have been avoided if Mr L had complained to Alphera sooner.

I do think Mr L suffered some distress and inconvenience due to the car breaking down and needing to be recovered to a garage for repair. And I consider £100 compensation to be fair for this.

My final decision

For the reasons I've explained, I uphold this complaint and direct BMW Financial Services (GB) Limited trading as Alphera Financial Services to:

- Reimburse Mr L the cost of recovering the car to the garage.
- Reimburse Mr L the cost of the repairs shown in the invoice dated 16 September 2021.
- Refund the payments Mr L made for the period between 6 June and 16 September 2021, when he was unable to use the car.
- Interest should be added to each of the refunded payments, calculated from the date of each payment until the date of settlement at 8% simple per year.
- Remove any adverse information about this agreement from Mr L's credit file.
- Pay Mr L £100 for the distress and inconvenience he's been caused due to being supplied with a car that wasn't of satisfactory quality.

If Alphaera consider tax should be deducted from the interest element of the award, they should tell Mr L how much they've taken off. They should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 December 2022.

Corinne Brown
Ombudsman