

## The complaint

Mr T 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 Alphera Financial Services (“Alphera”).

## What happened

In July 2021 Mr T took out a hire purchase agreement with Alphera for a used car. At the time the car was just over three and a half years old and had travelled approximately 51,050 miles. The cash price was £16,895.

On 28 May 2022 Mr T had to have the car recovered to a local garage. Three days later he complained to Alphera that the car had developed a major fault which meant it wasn't driveable. He said the rear differential had broken, which would be very expensive to fix.

Alphera asked the garage to provide a diagnostic report and to confirm whether the fault was present or developing when the car was supplied. The garage confirmed:

*“Current fault with the vehicle is the rear differential.*

*Cause is unknown, but failure of some sort of “internal” bearing/gear or housing which cannot be seen unless completely opened up for further inspection.*

*Unable to answer if fault was present at time of sale.”*

Mr T told Alphera that he'd also been having problems with the stop/start function not working properly, the nearside wing mirror not folding in or out completely, and the offside rear door not opening from the inside.

Alphera issued their final response to Mr T on 16 June 2022. They said they hadn't upheld his complaint because they hadn't seen evidence to show the faults were present or developing when they supplied the car.

Dissatisfied with this response, Mr T brought his complaint to us. He provided evidence showing he'd paid £625 for a replacement rear differential on 22 July 2022. And he provided a copy of an invoice dated 18 August 2022, showing a labour cost of £500 plus VAT for the repair to be carried out.

Our investigator said she hadn't seen evidence to confirm there were other faults with the car, so she'd focused on Mr T's main complaint about the rear differential. She said she didn't think the car had been of satisfactory quality when it was supplied to Mr T because it hadn't been reasonably durable. So, she thought it would be fair for Alphera to reimburse Mr T £1,225 to cover the costs he'd incurred in having the problem repaired.

The investigator said Alphera should refund the payments Mr T had made for the period between 28 May and 10 August 2022, when he wasn't able to use the car. And she thought Mr T should receive £150 compensation for the distress and inconvenience he'd been caused.

Alphera agreed to refund the payments Mr T had made for the period in which he hadn't been able to use the car and £150 compensation. But they said that, as the fault had come to light after more than six months, the onus was on Mr T to prove the issue was present or developing at the point of sale. They felt that, as he hadn't provided evidence of this, Mr T was responsible for the repair.

As Alphera didn't agree with our investigator's view, the case has come 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.

Mr T'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 this complaint.

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 the goods is satisfactory. It explains that durability can be aspects of the quality of goods - as well as things like fitness for purpose, appearance and finish, freedom from minor defects and safety.

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. 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 and a half years old and had covered around 51,050 miles when it was supplied to Mr T. It cost £16,895, which is significantly less than it would've cost when it was new.

I don't think a buyer would expect the car to be in perfect condition - I think they'd probably expect some parts 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.

It isn't disputed that Mr T experienced a major issue with the car's rear differential. I'm satisfied that this was a significant fault because Mr T has told us that he wasn't able to use the car again until it was repaired. I've seen no supporting evidence of any other faults with the car, so I haven't considered those.

I've seen evidence confirming the car was recovered to a garage on 28 May 2022 due to the rear differential having failed. The point for me to consider is whether this meant the car wasn't of satisfactory quality when Alphera supplied it to Mr T in July 2021.

I've seen a copy of the repair invoice dated 18 August 2022, which records the car's mileage to have been 64,446 at that time. So, I can see that the car had travelled over 13,000 miles during the 10-month period since it was supplied.

Alphera feel strongly that, as Mr T had the car for more than six months before the fault came to light, the CRA places the onus on him to prove the issue was either already present or developing when they supplied it.

Alphera stress that the fault wasn't reported until 10 months after the car was supplied to Mr T, and he hasn't provided evidence showing it was already present or developing at the outset. I've given careful thought to the points they've raised.

The CRA says the quality of goods includes their state and condition. But as I've explained, it goes on to make it clear that durability is also an aspect of the quality of goods.

I remind myself that this car cost £16,895. The evidence from the garage shows it had only travelled around 64,446 miles when the rear differential was noted to have suffered "*failure of some sort of "internal" bearing/gear or housing*". I'm satisfied that a reasonable person would expect the rear differential to last significantly longer than this.

Mr T has provided copies of invoices for the last three services that were carried out, after the car had covered 30,295 miles, 42,969 miles and 51,090 miles. I've seen nothing to suggest the rear differential failed due to mistreatment of the car.

For these reasons, I don't consider the car to have been sufficiently durable. I don't consider any further evidence to be necessary here. It follows that I find the car wasn't of satisfactory quality when it was supplied to Mr T.

### **Putting things right**

Mr T has provided copies of invoices showing he paid £625 for a replacement rear differential on 22 July 2022, and £500 plus VAT on 18 August 2022 for the repair to be carried out. I think Alphera should reimburse him for these costs.

Mr T has told us that he wasn't able to use the car until it was repaired. The MOT history shows the car passed an MOT test on 10 August 2022, so I take this to be the point at which it was driveable again. I think it's fair for Alphera to refund the payments Mr T made for the period between 28 May 2022 and 10 August 2022, to reflect his loss of use of the car.

I think Mr T was caused distress and inconvenience because he was supplied with a car that wasn't of satisfactory quality. He's had to arrange to have it recovered to a garage to find out what was wrong with it, as well as arranging for it to be repaired. He's told us that he was concerned about not having access to a car in the event of an emergency, as his son has diabetes. I think Alphera should pay Mr T £150 compensation for this.

### **My final decision**

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

- Reimburse Mr T £625 for the replacement part he purchased on 22 July 2022.
- Reimburse Mr T £500 plus VAT for the labour cost he incurred on 18 August 2022.
- Refund the payments Mr T has made under the agreement for the period between 28 May 2022 and 10 August 2022.
- Pay interest on each of the above payments, calculated from the date of payment until the date of settlement at 8% simple per year.
- Pay Mr T £150 for the distress and inconvenience he's been caused.

If Alphera consider tax should be deducted from the interest element of the award, they should tell Mr T how much they've taken off. They should also give him 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 T to accept or reject my decision before 7 April 2023.

Corinne Brown  
**Ombudsman**