

The complaint

Mr C complains that the car he acquired financed through a hire purchase agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services, wasn't of satisfactory quality.

What happened

The details of this complaint are well known to both parties and have been set out by the investigator, so I won't repeat them here. Instead I'll focus on giving the reasons for my 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.

Having done so I agree with the conclusions reached by the investigator for the reasons I've outlined below.

- Mr C's agreement is a regulated consumer credit agreement, and our service can consider complaints against it. As the supplier of the car Alphera is responsible for the quality of the car and the Consumer Rights Act 2015 (CRA) implies terms into the agreement requiring the car to be of satisfactory quality.
- Exactly what is satisfactory quality will depend on the specific circumstances. In this instance the complaint relates to a car. When considering whether the car is of satisfactory quality the car's age and mileage at the time it was supplied are key considerations. Alphera was required to ensure the car was of satisfactory quality at the time it was supplied but it wouldn't be responsible for any wear and tear items that develop over time that might reasonably be expected on a used car. Mr C's car was just two years old and had travelled 20,000 miles. So it would be reasonable to expect some wear and tear in its mechanical components.
- Mr C signed the agreement and collected the car on 17 November 2022. Mr C said within days the vehicle developed a fault and he requested to reject the vehicle. He commissioned an independent inspection. The inspector outlined several faults relating to the engine mechanics and misalignment of various parts of the body work. I've seen a copy of this inspection (Report One).
- Report One details the following faults:
 - Shuddering tailgate operation
 - Misaligned tailgate
 - Broken and misaligned adjustment arms on tailgate spoiler
 - Driver's door misaligned
 - Rattling noise from drive door when closed
 - Driver's door glass scratched from contact with inner window seal

- Passenger side sill cover fixings visible as incorrectly fitted
 - A knocking noise upon acceleration (possibly related to nearside front driveshaft)
- In conclusion the inspector considered the faults identified to have not developed solely in the period since purchase and would need to be considered by the selling agent. He said the repairs identified were the results of previously unsuccessful repairs and he anticipated were most likely prior to purchase. He said *"the issues under investigation are not considered simply wear and tear."*
- Report One is dated 1 December 2022 which means the faults in the vehicle were present within the first 30 days of Mr C acquiring the car. Despite this report's conclusions the dealership concluded the car was of satisfactory quality and denied Mr C's right to reject. The inspection was carried out by an independent third party and I've seen no reason to dispute its technical findings.
- Report One also outlined some cosmetic faults. This damage is not in dispute and is not considered a subject of this complaint.
- When Mr C brought his complaint to Alphera it chose to dismiss the findings of Report One and arranged with the dealer for the vehicle to be inspected again, (Report Two).
- This second inspection was carried out on 29 March 2023. By this time the vehicle had been returned to the dealership and appeared to be no longer in Mr C's control. In the 'dealer comments' section of Report Two it says:
 - *"Vehicle supplied in November 2022 and customer has raised a complaint of cosmetic issues. Vehicle has already been assessed ...and determined cosmetic issues were caused as a result of a collision pre-sale. Dealer have however disputed this and therefore we require you to complete an inspection to confirm whether the issues are as a result of a collision pre-sale. The highlighted issues are front bumper alignment specifically on the right side of the vehicle, driver's door, boot not closing properly."*
- In the inspector comments section it says
 - *"The inspection carried out was of the external body work panels only and not safety or mechanical components."*
- The inspection was carried out by an independent party. And as with Report One I've no reason to dispute the technical findings of Report Two. But the parameters for the second inspection were different to the first one. It's not clear to me the basis on which Alphera dismissed the findings of Report One. Or why the second inspection only looked at cosmetic issues despite Mr C raising mechanical issues and issues related to misalignment of the bodywork. I also don't agree with the premise that misalignment and the boot not closing properly are cosmetic in nature. In response to our investigator's view Alphera provided some further evidence and comments regarding Report One from the dealer.
- The dealer said *"we call into question the accuracy of this report as they failed to provide any photographs or videos as we have, they also state that these "issues" were present when it is clear there has been an impact on the only mechanical issue and the rest are cosmetic which are not consistent with pictures. I'll mention again if you check on the (Internet) reviews of this company it is clear the buyer pays for the*

outcome of the report rather than doing an unbiased report."

- The second inspection was carried out a few months after the first and at least a month after the dealer had collected the car from Mr C. So it's possible, though I don't know, that some of the issues had been rectified prior to the second inspection. And Report Two makes clear that that inspection was only looking at cosmetic issues. I'm not able to comment on internet reviews of a company. I can only say that the company Mr C used for Report One is well known in the industry for independent inspections and as I mentioned above I've seen no reason to dispute the technical findings.
- In relation to the noise the dealer said "*the noise is damaged driveshaft the video shows the impact on the wheel which is consistent of a pothole or curb, which cause the damage.*"
- It may well be that this damage was caused by a pothole or curb, but it doesn't follow automatically that this was caused by Mr C in the short time he had the car. It was noticed within a few days of Mr C acquiring the car and he did seek independent evidence of the condition of the vehicle. Report One identified multiple issues with the car as I listed above which were not cosmetic in nature.
- The dealer also said the collection driver had made comments concerning Mr C's personal motive for asking to return the car. It said the driver was willing to provide a written statement.
- We are an informal resolution service. I'm not disputing comments the driver may have said but I don't think there's a need for a written statement concerning remarks Mr C may have made months after he requested to reject the car.
- I'm also not disputing the technical findings of Report Two nor the integrity of the report itself, but the scope of the inspection was too narrow. It also remains unclear to me why the findings of Report One were dismissed by both the dealer and Alpha.
- I am persuaded by the technical evidence in Report One which was provided within a few days of Mr C acquiring the car. I'm persuaded that those findings confirm the problems with the car were not related to fair wear and tear and that it wasn't of satisfactory quality at the point of purchase. So I'm satisfied Mr C should have been allowed to reject the car as was his right.

Putting things right

To put things right BMW Financial Services (GB) Limited, trading as Alpha Financial Services, must

1. End the agreement with nothing further to pay.
2. Collect the vehicle at no further cost to Mr C, should it be in his possession.
3. Refund the deposit paid, including 8% simple interest from date of payment until date of settlement.
4. Refund the cash value of the part exchanged vehicles including 8% simple interest from date of payment until date of settlement.
5. Refund all monthly payments paid from the date of the agreement, 14 November 2022, to the date of settlement, including 8% simple interest from date of payment until date of settlement.
6. Refund any tax or insurance payments made by Mr C (on production of proof of

- payment), including 8% simple interest from date of payment until date of settlement.
7. Pay distress and inconvenience of £200 for the distress caused to Mr C.

My final decision

My final decision is that I don't uphold this complaint and BMW Financial Services (GB) Limited, trading as Alphera Financial Services must put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 February 2024.

Maxine Sutton
Ombudsman