

The complaint

Mrs R complains about the quality of a car supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services ("Alphera").

What happened

In March 2022 Mrs R took out a hire purchase agreement with Alphera for a used car. The car was just over three years old and had travelled approximately 57,000 miles. The cash price was £13,749. Under the terms of the finance agreement, Mrs R was to pay 48 monthly payments of £248.86 followed by an optional final repayment of £5,644.73.

Mrs R says a fault light came on within a few days of having the car. She says she took it back to the supplying dealer on several occasions during the first six months due to ongoing problems with warning lights appearing on the dashboard.

Mrs R has provided copies of paperwork the dealer gave her. This shows they sent the car to a manufacturer's garage in April 2022 to be regenerated, and again in July 2022 for the DPF system to be replaced. Mrs R says she was provided with a courtesy car to use in the meantime.

Mrs R told us that the car broke down on 7 October 2022 and wouldn't start. She says the dealer arranged for a manufacturer's garage to diagnose what was wrong with it - and gave her a courtesy car just for the day this was carried out. She says the dealer then told her it would cost between £2,000-£3,000 to repair the car, and that they wouldn't be prepared to pay for this.

On 13 October 2022 Mrs R complained to Alphera that she wanted to reject the car due to the ongoing problems with it. Alphera issued their final response on 9 February 2023, agreeing that the car wasn't of satisfactory quality. They offered the following, at no cost to Mrs R:

- The car to be repaired,
- The replacement engine to come with a 12-month warranty,
- The car to be serviced and an MOT completed before it was returned.

Mrs R says she agreed to go ahead with this but continued to complain to Alphera that she hadn't been provided with a courtesy car. On 16 February 2023 Alphera agreed to refund four months' payments to reflect the fact that she hadn't had a car to use. Mrs R says the dealer eventually provided her with a courtesy car on 3 March 2023. But she says this was a much smaller car with very little boot space.

Mrs R says she collected the car from the dealer on 13 April 2023. But she says she had to take it back again the following day due to a problem with the coolant. She says she was again provided with a much smaller courtesy car whilst repair work continued.

After looking into what had happened, our investigator said he thought the original offer of a repair had been fair. But as the car had failed again the day after Mrs R collected it, he thought she should be given the right to reject it, bringing the agreement to an end.

The investigator noted that Alphera had issued a payment to Mrs R on 16 February 2023 to reflect her loss of use of the car up to that point. He thought they should ensure Mrs R received a refund of all payments she'd made for the period up to 2 March 2023, and that they should add interest to the refunded amounts.

Although a courtesy car was provided on 2 March 2023, the investigator didn't think this was to the same specification as the car Mrs R was paying for. So, he said Alphera should refund 20% of the monthly payments she'd made since that date.

The investigator said Alphera should remove any adverse information that had been recorded on Mrs R's credit file about the agreement. And he thought they should pay Mrs R £500 compensation for the distress and inconvenience she'd been caused.

Mrs R accepted our investigator's view. Alphera didn't respond, so the case was escalated for an ombudsman to make a final decision as to how the complaint should be resolved.

Whilst waiting for the case to be allocated to an ombudsman, Mrs R gave us an update. She told us the dealer had got in touch with her on 27 June 2023 to say the repairs had been completed. She says she collected the car because she needed something with enough space to carry her young children, their car seats, pram, and trike – but she still wanted to reject it.

My provisional decision

After reviewing the evidence, I issued a provisional decision saying:

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

The agreement Mrs R entered into was a hire purchase agreement, so I'm satisfied that I can consider a complaint about it. Under this type of agreement Alphera is also the supplier of the car, so they're responsible for a complaint about its quality.

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. It goes on to explain that things like freedom from minor defects and durability can be aspects of the quality of goods.

Was the car of satisfactory quality?

I've seen copies of the dealer's invoices relating to diagnostic and repair work carried out on the car within the first few months. These invoices show it was regenerated in April 2022 because the exhaust light was flashing. And in July 2022 the DPF system was replaced due to the exhaust warning showing again.

I haven't seen any evidence showing what caused the engine to fail less than three months later. I've seen a copy of an invoice dated 12 October 2022 for diagnostic work carried out by the manufacturer's garage, which records the car to have covered 62,237 miles by that point. It says:

"Found cam belt twisted, possibly snapped... Found 2 x rockers not seated correctly on valves, possible valve damage. Also found timing belt idler worn and hanging off."

In their final response letter, Alphera accepted that this issue meant the car wasn't of the standard Mrs R was entitled to expect under the CRA. As I've seen no evidence to suggest otherwise, I agree that this engine failure was most likely to have been due to the car not having been of satisfactory quality when it was supplied. I think Mrs R was reasonably entitled to expect more than seven months' and 5,000 miles' use of the car before the engine failed.

Did Alphera do enough to put things right?

Alphera have provided a copy of their records, which I've reviewed. I've seen that, when Mrs R first complained to them about the ongoing problems with the car, she told Alphera that she'd prefer to reject it. As she'd already given the dealer more than one opportunity to resolve the issues with the car by that point, I'm satisfied that she was entitled to exercise the right to reject.

Alphera's records show they spoke to Mrs R before formalising the offer set out in their final response letter. I think that approach was fair and reasonable. Alphera's records show Mrs R emailed her acceptance of this proposal on 1 February 2023 - and they acknowledged receipt of her acceptance that same day.

As Mrs R had asked Alphera to repair the car, the CRA makes it clear that they must do so within a reasonable time and without significant inconvenience to her. Alphera's records show Mrs R called them four times in February 2023 for an update as to when the car would be returned to her. I've seen that she repeatedly told them she'd been without a car since it broke down, over four months earlier.

Alphera's records show Mrs R chased them again on 3 March 2023, saying she'd had to wait 40 minutes for an ambulance to take her mum to hospital because she had no car. Mrs R told us she was given a courtesy car later that day, after contacting the dealer direct.

I don't think Alphera did enough here. By this point I think it was clear that they were in breach of their obligation to repair the car within a reasonable time and without significant inconvenience to Mrs R. So, I think she was entitled to exercise her final right to reject it.

Mrs R has told us that she collected the car from the dealer on 13 April 2023. But she says she had to return it the next day because there was still a problem with it. She's told us that she eventually collected it again on 28 June 2023.

Mrs R told us that, on both occasions, she only agreed to pick the car up because she needed something big enough to transport her young children. She says she still wants to exercise her right to reject it due to all the problems she's had with it. I'm satisfied that she had - and still has - the right to do so.

This means Alphera should make arrangements to collect the car and bring the agreement to an end. As Mrs R has continued using the car since it was repaired, I think it's important for me to draw her attention to the term of the agreement that requires her to return it to Alphera in good condition. Her monthly rental payments will continue to be payable until the date the car is collected.

Mrs R told us that she had no car at all from 7 October 2022 until 3 March 2023. She says she had a very small courtesy car from 3 March 2023 and 28 June 2023. She says she didn't have the use of a car with the same amount of space in the boot until 28 June 2023.

I think Mrs R should pay for the use she's had of this car before 7 October 2022 and after 28 June 2023. But if Alpheria haven't already done so, they should refund the monthly payments Mrs R made for the period between 7 October 2022 and 3 March 2023. And they should refund 20% of the payments she's made for the period between 3 March 2023 and 28 June 2023, to reflect the fact that she didn't have the use of a comparable car at that time.

I think being supplied with a car that wasn't of satisfactory quality has caused Mrs R significant inconvenience, which has gone on for many months. She told Alpheria that she didn't have a car at all for five months, which disrupted her work as well as causing practical difficulties with transporting her young children, their car seats, pram, and trike.

And it's clear to me that she's been caused considerable distress and upset due to the problems with this car. I've seen evidence showing she repeatedly chased Alpheria to try to get this situation resolved. She told us that having no car at all – and then a car that was too small for her needs – caused her a huge amount of stress and anxiety which she's found incredibly draining.

So, I think Alpheria should pay Mrs R £500 compensation for the distress and inconvenience she's been caused.

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

- Arrange to collect the car, on a date to be agreed with Mrs R and at no cost to her.*
- End the agreement, with effect from the date on which the car is collected.*
- Refund all monthly payments Mrs R has made for the period between 7 October 2022 and 3 March 2023, if this hasn't been done already.*
- Refund 20% of the monthly payments Mrs R has made for the period between 3 March 2023 and 28 June 2023.*
- Pay Mrs R interest on each of the above amounts to be refunded, calculated from the date of payment until the date of settlement at 8% simple per year.*
- Pay Mrs R £500 for the distress and inconvenience she's been caused.*
- Remove any adverse information that's been recorded on Mrs R's credit file about this agreement.*

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

I invited both parties to send me any further information or comments they'd like me to consider. Mrs R said she was happy with the proposed outcome and had nothing further to add. Alpheria didn't respond.

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.

As no new information or comments has been provided in response to my provisional decision, I see no reason to change my mind.

My final decision

For the reasons I explained in my provisional decision, I uphold this complaint and direct BMW Financial Services (GB) Limited, trading as Alphera Financial Services to:

- Arrange to collect the car, on a date to be agreed with Mrs R and at no cost to her.
- End the agreement, with effect from the date on which the car is collected.
- Refund all monthly payments Mrs R has made for the period between 7 October 2022 and 3 March 2023, if this hasn't been done already.
- Refund 20% of the monthly payments Mrs R has made for the period between 3 March 2023 and 28 June 2023.
- Pay Mrs R interest on each of the above amounts to be refunded, calculated from the date of payment until the date of settlement at 8% simple per year.
- Pay Mrs R £500 for the distress and inconvenience she's been caused.
- Remove any adverse information that's been recorded on Mrs R's credit file about this agreement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 28 October 2023.

Corinne Brown
Ombudsman