

## The complaint

Mr P complains about the quality of a used car supplied by BMW Financial Services (GB) Limited (trading as Alphera Financial Services).

## What happened

On 29 September 2021, Mr P took out a hire purchase agreement (HPA) with Alphera for the supply of a three year old car with just over 8,800 miles on the clock. The car cost about £72,000 and Mr P paid a £1,000 deposit. Alphera provided credit for the balance which was repayable over five years at just over £1,000 a month, with an optional final payment of about £22,000 if Mr P wanted to keep the car.

Mr P collected the car on 9 October 2021 and noticed a number of issues straightaway. He contacted the supplying dealer (that I'll call L) and reported that mouldings and panels were coming away, bits of the door were scraped, the boot was beeping and not closing and the suspension was creaking and clattering. L agreed to carry out repairs and Mr P took the car back a week or so later. As L is located some distance away, he returned home by train. When he went to collect the car shortly after he found the paintwork still wasn't right – it was bubbled and matt, not gloss and panels were peeling - and the suspension fault wasn't resolved. L agreed to rectify things and provided Mr P with a courtesy vehicle until his car was returned, around the start of November 2021.

About a month later a service light came on and Mr P took the car to a local dealer for the brand (that I'll call S). S said an oil service was required and Mr P paid about £180 for that. He was disappointed this was necessary so soon, as L told him the car was serviced just before supply, and the oil service didn't resolve things – the light kept coming on. In early 2022 S checked the car again and told Mr P four new tyres were needed as tread was worn and the car had the wrong sized alloys fitted which might have caused the suspension issues. Mr P paid about £1,300 for replacement tyres and he's unhappy these were needed so soon, as L told him the car was fitted with new tyres at the point of supply. He queries how the car passed an MOT with minimal tyre tread and other issues with safety related parts present - such as anti-roll bar bushings/sway bar bushings.

In May 2022 the car went into limp mode and S told Mr P part of the turbo needed replacing and it would take about three months before this was available. S was unable to provide a courtesy car but Mr P's car was considered safe to drive so he continued to use it. Mr P says fuel consumption was severely affected however. The car was returning about half the miles per gallon (MPG) which he reasonably expected and he was filling up at a cost of £135 every three days or so. And it would go into limp mode regularly - meaning he had to pull over, switch the engine off and wait for a time before he could resume his journey.

In September 2022 the new part arrived and S had the car for about 20 days because the first part was faulty and had to be replaced. S supplied a courtesy car during this time but (as with previous replacement vehicles) this wasn't the same model as Mr P's car and he feels it is unfair that he was paying over £1,000 a month to drive smaller, cheaper vehicles.

In November more faults appeared and the car went back to S for 77 days. S supplied a courtesy vehicle during this time. When Mr P went to collect his car, at the end of January

2023, fault lights illuminated almost immediately. S ran some diagnostic tests which revealed multiple faults and Mr P refused to accept the car back. With the help of a firm of solicitors (that I'll call X) he complained to Alphera.

In February 2023 Alphera agreed that the car wasn't sufficiently durable and Mr P should be allowed to reject it – acknowledging he experienced problems within the first 30 days, various parts had to be replaced and the car still had faults. Alphera agreed to end the HPA and refund Mr P's deposit plus monthly payments made from the date of the offer to resolve things. Alphera considered Mr P had fair use of the car however – given he'd exceeded the annual mileage limit set out in the HPA pro rata - and didn't offer any further refunds or compensation.

Mr P didn't think that was fair. He said his circumstances changed after he took out the finance meaning he had to drive further than anticipated. He states that he'd have either paid the excess miles at the end of the HCP - or the lender would probably have waived any excess mileage charges if he took out finance for another vehicle (which is what's happened in the past). In any event, he considers the HPA doesn't allow for such charges to be applied "pro rata", a significant proportion of the excess miles were accrued taking the car back and forth for investigations and repairs and Alphera hasn't taken account of his additional travel costs such as train fares. Mr P wants Alphera to refund monthly payments for his lost and/or impaired use and reimburse his out of pocket expenses - including costs associated with excessive fuel consumption, GAP insurance, an oil service, replacement tyres, two resprays and removing the vehicle tracker.

Our investigator didn't uphold the complaint as he considered Alphera's offer was fair overall. He said (in summary):-

- Mr P was without the use of his car at times but he likely had fair use of the vehicle as he was able to travel more than the contractual annual allowance of 6,000 and Alphera waived excess mileage charges of around £1,000;
- GAP insurance wasn't paid for under the HPA so he couldn't hold Alphera liable for this cost and Mr P could contact his GAP cover provider for a refund;
- it looked as if L paid for resprays so Mr P wasn't out of pocket for that cost;
- Mr P sent an extract from paperwork S provided which refers to the wrong size alloys and low tread but this wasn't sufficiently detailed and didn't say which car the information related to;
- there are no tyre advisories on the MOT carried out around the point of supply and he didn't think there was enough evidence to reasonably conclude that the tyres were likely to have been faulty at that stage;
- Mr P reported that oil dilution was at 9% and an oil service was needed (just months after supply) to prevent damage but it was unclear what caused this and he wasn't persuaded he could fairly hold Alphera responsible; and
- he couldn't reasonably find Mr P spent more on fuel due to a fault present when the car was supplied, on the evidence provided.

Mr P asked for an ombudsman to review the matter. He feels the investigator was biased and he should be entitled to a further refund, He says (in summary) he was supplied with a car with substandard tyres and bodywork and numerous faults and it's unfair that use of a courtesy car provided by a third party absolves Alphera from responsibility for the loss of use of his vehicle. In addition, he was paying about £1,000 a month for a luxury vehicle and the replacements were not to the same standard. In terms of the MPG, he thinks telemetry readings supplied directly from the vehicle verified by S, an authorised dealer, support his losses. And he considers the tyres should not have deteriorated so soon – which must have been due to having incorrect wheels fitted causing excessive degradation.

Having considered the available evidence, I was minded to uphold this complaint and I thought it was fair to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. I issued a provisional decision on 21 November 2023. I've set out below (in italics) what I decided provisionally - and why. This forms part of my final decision.

### **My provisional decision**

*Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Alphera supplied this car to Mr P under a HPA and I'm looking at Alphera's obligations arising out of that finance agreement in this decision. I'm required to take relevant law into account and I'm satisfied that includes the Consumer Rights Act 2015 (CRA) here. Under the CRA, Alphera was required to ensure that this car was of satisfactory quality at the point of supply. Alphera has accepted the car wasn't of satisfactory quality when Mr P got it and, based on the evidence I've seen, I agree. So, the issue for me to decide is whether I consider Alphera has offered fair redress in the circumstances.*

*Alphera has accepted that Mr P should be entitled to reject the car and end the HPA - which seems reasonable. I understand the car was collected at no additional cost to Mr P earlier this year and the deposit he paid under the HPA was refunded. I think that goes some way to putting things right but I'm minded to find there are other issues that need to be addressed in order to fairly compensate Mr P.*

#### **Lost/impaired use**

*I understand Alphera offered to refund any monthly payments made (in full) from the date resolution was offered – in February 2023 - and it later refunded one monthly payment. I realise Mr P feels he should have more monthly payments refunded for loss of use because of the time the car was off the road for repairs and investigations. He reported that he was without the use of his car for 130 days – as it was off the road for 142 days and a courtesy car was only provided by Alphera an/or L for 12 of those.*

*Under the CRA, where a consumer is entitled to reject a car on quality grounds (as Alphera has accepted is the case here) they may be entitled to a refund of what's been paid. This amount can be reduced however to reflect the use the consumer had of the vehicle. And, in the usual course of events, we'd consider monthly finance payments made are a fair charge for that - if the consumer had full use of the vehicle.*

*I've thought about what happened here and whether the faults present at the outset had a material and significant impact on Mr P's usage. There seems to be no dispute that the car went back for repairs (to both L and S) a number of times and Mr P says Alphera/L only provided a replacement vehicle on one occasion - for 12 days in October 2021. He considers he should have all of the monthly payments made refunded for the remainder of the time – about 140 days – the car was off the road.*

*I'm afraid I don't think it's as simple as that however. I say this because Mr P confirmed that S supplied him with alternative transport while his car was in for repairs. I appreciate the courtesy vehicles S provided weren't identical to Mr P's car and they weren't provided by either Alphera or L. But, a consumer in Mr P's situation is obliged to mitigate their losses. And I think it was reasonable for Mr P to keep mobile in the alternative transport he was offered.*

I've given some thought to what Mr P says about the amount he paid under the finance agreement for his car - as compared to the cost of the alternatives S provided. Mr P hasn't supplied us with any documentary evidence about the alternative transport so I'm unable to make any firm findings about the cost of that. In any event, working out what's fair in these circumstances isn't a scientific exercise. I accept it was probably frustrating and inconvenient for Mr P to be without his own vehicle while it was off the road for repairs for several months. And I've considered this in the compensation amount I'm minded to award below. I'm satisfied however that Mr P was kept mobile throughout and I'm not persuaded I can reasonably require Alphera to refund any further monthly payments in this respect.

It looks as if S was unable to provide a courtesy vehicle however when the service light illuminated again and the car went in for repairs in July 2022 - due to restricted performance and a knocking noise from the steering column. S identified he steering knock was a UJ joint and there was a fault with "the turbo B shutoff valve". The relevant part was ordered but delivery was delayed by three months and Mr P continued to drive his car until September. He says it achieved a significantly reduced MPG during this period and went into limp mode at times. I've seen evidence from S that states Mr P drove the car with a warning light on doing roughly 12 mpg and I note S also suggests that the manufacturer agreed to contribute towards excess fuel costs. I haven't got any more evidence around that however.

On the evidence before me at present, I can't work out what (if any) financial losses Mr P may have incurred in terms of excess fuel use. I'm satisfied, on balance, that driving the car at this time would probably have been somewhat unnerving and frustrating – Mr P describes it going into limp mode regularly meaning he had to pull over and re-start the engine before he could carry on with his journey. On balance, I think it's likely Mr P's use of the vehicle was impaired between July and September 2022 and I'm minded to find Alphera should refund 10% of three monthly payments to reflect that.

#### Excess mileage charges

I can see why the investigator thought the miles accrued pro rata in excess of the annual mileage limit meant Alphera had, in effect, waived excess mileage charges of around £1,000 - and he considered it was reasonable to take this into account when looking at the fairness of the offer overall. I don't think that's quite right however and I'll explain why below.

I'm satisfied that Alphera made it clear in correspondence that it wouldn't seek to charge for excess miles in this situation. I think that's a reasonable approach in these particular circumstances - where it's not through any act or omission on Mr P's part that the car is going back earlier than either party anticipated at the start of the HPA. Alphera accepts the car should be rejected because it wasn't of satisfactory quality at the outset and excess mileage charges were never applied. It follows, I can't reasonably take the associated cost into account as having been waived by Alphera as a goodwill or compensatory gesture.

#### Tyres and oil service

I appreciate Mr P feels strongly that he shouldn't have had to pay for an oil service and new tyres so soon after acquiring this car. For me to reasonably hold Alphera liable for these costs however I'd have to be satisfied they're likely to result from faults that were probably present at the point of sale. I note S acknowledges the oil service was premature but it goes on to say this can happen "when the vehicle is doing short runs". And I've don't have enough evidence to fairly find this issue arose due to point of supply faults.

As regards the tyres and alloys, S says the car was booked in for a service light on again in February with clicking noises from the steering wheel, and a loose undertray. S carried out a visual health check that identified multiple concerns including "excessive movement in both front and rear arc bar bushes, heavy corrosion to front brake discs, transmission under tray damaged, rear wiper smearing and all tyres requiring replacement, LHR tyre had a large

*bulge and all other tyres under legal limit, also identified that the car was fitted with the incorrect tyre sizes as the spare was a different size and model alloy to the 4 alloys fitted to the car”.*

*I understand S thought this might be the cause of the suspension issues but I can't see that a firm conclusion was reached about that. It looks as if the service light was reset and bushes and the undertray were repaired. I understand these repairs (as well as the subsequent turbo repairs) were covered by a “used approved” warranty the car came with, so Mr P wasn't out of pocket. I haven't seen the terms of that warranty but I don't think tyres and oil services are likely to be included in the usual course of events. I might have expected these issues to fall within the relevant cover however if S considered they were linked to the other faults – such as the turbo problem. I've seen nothing to show that's the case – there's no suggestion, for example, that S tried to recover the associated costs under the warranty. And I'm not presently persuaded that I can reasonably hold Alphera responsible for the costs of new tyres or the oil service.*

#### *Additional costs*

*Mr P told us he had to pay twice to have the car resprayed in places because of peeling paintwork. I'm satisfied this was one of the issues L accepted early on and I think it's likely there were problems with the paintwork at the point of supply. If Mr P is able to supply paperwork which shows that the paintwork repairs undertaken by L had to be repainted/re-finished, I'd be minded to find it fair that Alphera should reimburse the reasonable cost of putting this right.*

*I've also thought about the GAP insurance that Mr P paid for. I understand that Mr P contacted the cover provider (as suggested by our investigator) and he's now received a refund pro rata. I think that's fair in the circumstances. It's what I'd have been minded to hold Alphera liable for (if Mr P's policy had been non-refundable) as he didn't get the full benefit of this cover because the car supplied by Alphera was faulty at the outset. And I can't reasonably require Alphera to provide a further refund in this regard.*

*Mr P says he had a personalised number plate and a tracker fitted and he had to pay to remove these when he handed the car back. I think Alphera should refund the reasonable cost of this as Mr P wouldn't have had to incur these costs (at this stage) if the car was of satisfactory quality when it was supplied – and he'd have to pay for these to be transferred to any new vehicle. Likewise, if Mr P incurred an administration fee for cancelling his car insurance after he handed the car back, I'm minded to find Alphera should refund that fee as well, for broadly the same reasons.*

*It looks as if Mr P incurred some travel costs getting the car back to L when faults appeared early on. He says he had to take the train home from dropping the car off and then back to L to collect it in October 2021. I'm satisfied he wouldn't have had to incur those costs either if Alphera hadn't supplied a faulty vehicle at the outset. And I'm minded to find it fair Mr P should have the reasonable cost of this travel refunded.*

*All of the refunds referred to above are subject to Mr P providing documentary proof that the relevant expense was incurred. I consider Alphera should also pay interest on any refunds made (including the deposit) at 8% simple a year from the date of payment to the date of settlement.*

#### *Distress and inconvenience*

*Weighing everything up, I think Mr P also probably, and not unreasonably, expected have a period of relatively fault free driving when he acquired this car. Instead he experienced numerous issues and had to arrange to take it back to L and S for repairs several times. I think this probably involved a good deal of time contacting L, S and Alphera - on the phone*

*and in writing - to try and resolve things. I'm satisfied being supplied with this faulty car probably caused Mr P to experience a significant amount of frustration, distress and inconvenience and I'm minded to find Alphera should pay £300 compensation for that. I understand Mr P maintained his monthly payments throughout so I don't think I need to consider whether any adverse information has been recorded on his credit file - if I'm wrong about that the parties should let me know in response to this provisional 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.

I invited the parties to consider my provisional findings and let me have any additional comments or new evidence by the 5 December 2023 and I'd look at all the evidence available after that and make my final decision.

Mr P has supplied documentary evidence in respect of two resprays £325 (13 May 2022) and £380 (2 July 2022), £80 for removing his personal number plate and £270 for removing the tracker. The investigator sent copies to Alphera and asked for any comments by 12 December 2023. Alphera hasn't raised any objections to my provisional findings or made any further submissions.

Mr P accepted some of my provisional conclusions but (in summary) he's disappointed that only 10% of three monthly payments will be refunded - when he explained that the car would go into limp mode and it had other issues while he waited for the turbo parts to arrive. He asked me to look again at the fact Alphera didn't provide a replacement car and the replacement vehicles that were supplied by S weren't the same as his car. He'd also like compensation for additional fuel costs. He says fuel consumption was confirmed to have around 12-13mpg (by a master technician for the brand), which is less than half what it should have been, meaning he paid double for fuel when he was filling up twice as often (at least) due to turbo issues.

I have given some thought to everything Mr P has said and sent to us but I'm not persuaded to change my mind. I appreciate replacement vehicles weren't provided by Alphera but I'm satisfied consumers are obliged to mitigate their losses in this situation and I think it was reasonable for Mr P to use the alternative transport that S made available (albeit as a goodwill gesture). I recognise those replacement cars may not have been the same model or specification as Mr P's vehicle but he was kept mobile and I've taken account of any related upset and inconvenience in the £300 compensation payment.

Mr P hasn't supplied any new evidence of additional fuel costs and I'm unable to reasonably require Alphera to provide a further refund in this regard. For the reasons I've set out above, I remain of the view that the refund for lost/impaired use is fair overall and I can't fairly find Alphera should pay more for that. I see no fair and reasonable grounds to depart from my provisional conclusions in all the circumstances and I find Alphera should take the steps set out below to put things right.

### **My final decision**

My decision is I uphold this complaint and I require BMW Financial Services (GB) Limited (trading as Alphera Financial Services) to:-

1. refund 10% of three monthly payments for impaired use;
2. refund £1,055 for the cost of two resprays and removing the personal number plate and the tracker;

3. refund the reasonable cost of train travel and any insurance cancellation fee (as referred to above) if Mr P supplies documentary evidence that these costs were incurred;
3. pay interest on all refunds (including the deposit - unless interest on this refund has been paid already) at 8% simple a year from the date of payment to the date of settlement;
4. Pay Mr P an additional £300 compensation for his associated distress and inconvenience.

If Alphera does not pay the compensation for inconvenience and distress within 28 days of the date on which we tell it that Mr P accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If Alphera considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr P how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 January 2024.

Claire Jackson  
**Ombudsman**