

The complaint

Mr S complains about the quality of a used car that was supplied through a hire purchase agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (Alphera).

What happened

In March 2022, Mr S acquired a used car through a hire purchase agreement with Alphera. The car was about six years old and had travelled 70,364 miles when it was supplied to Mr S. The cash price of the car was £20,450. Mr S made an advanced payment of £3,000 so the total amount financed on the agreement was £17,450 payable over 43 monthly repayments.

Mr S said that the engine management light (EML) illuminated on the same day he collected the car. After some back and forth with the warranty provider Mr S said he took his car to a franchised dealer where the Diesel Particulate Filter (DPF) and Nitrogen Oxide (NOX) system was replaced. However, Mr S said the EML came on again and after some further going back and forth with the franchised dealer they confirmed the DPF, and NOX system needed replacing again. Mr S said the warranty wouldn't pay for it because it had already been replaced.

In April 2023 Mr S complained to Alphera about the issues because he felt it was taking too long to repair his car. However, Mr S said Alphera took no action because the repairing garage was waiting for the relevant parts to carry out the repair.

Mr S said he's having to use public transport and taxis to get around and that he's concerned to take his family in the car. Mr S wants compensation for the inconvenience and a refund for the time he spent without having use of it. Mr S said he'd like to reject the car if it can't be repaired soon.

In July 2023 Alphera issued their final response to Mr S' complaint. They said the delays to the repairs were the responsibility of the manufacturer and were out of their control, so they didn't uphold the complaint.

Unhappy with their decision, Mr S brought his complaint to our service for investigation.

One of our investigators recommended the complaint should be upheld. The investigator concluded that the car was displaying the issues from the point of supply and that Mr S should be able to reject the car with refunds of monthly repayments where the car couldn't be used and some compensation for the inconvenience.

Mr S accepted this recommendation. However, Alphera didn't provide a response to the view so the case has been referred to an ombudsman for a final 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr S complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr S' complaint about Alphera. Alphera is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that Alphera supplied Mr S with a used vehicle that had travelled 70,364 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be signs of wear and tear due to its usage which may impact its overall quality and reliability, so there'd be an increased likelihood of unforeseen problems surfacing sooner than in a new vehicle.

Having said that, the car was priced at £20,450 which isn't insignificant. So, I think it's fair to say that a reasonable person would expect it could offer a reasonable duration without any major issues, for example, if it's been maintained and serviced.

A vehicle's emissions control system is a set of components designed to reduce the amount of harmful pollutants it emits. The components typically include, but aren't limited to catalytic converters, NOX sensors, EGR valves and DPFs.

I'm persuaded from the information provided that there was a fault relating to the car's emissions control system. This is apparent from the invoice dated 13 May 2022 confirming a new catalyst and sensor was fitted, and that the EGR cooler was renewed. The dealership also confirmed that the DPF was replaced in May 2022, and that a replacement NOX sensor was required from December 2022.

Having considered the car had a fault within its emissions control system, I've considered whether it was of satisfactory quality when it was supplied to Mr S.

In their file submission, Alphaera said the case was rejected because the fault with the NOX sensor and DPF occurred over six months into the agreement, and so they felt the onus was on Mr S to prove the fault was present or developing at the point of supply. They also said as the dealership were awaiting the parts to repair the issues, it was outside of their control.

Mr S has been able to provide us with an invoice dated 13 May 2022 which confirms the catalyst and sensor was supplied and fitted along with a replacement EGR cooler. This was approximately two months after the car was supplied to Mr S. This is further supported by an email from Alphaera, confirming that authorisation was given by the broker, in May 2022 to recharge the cost of repairs for the three components.

In addition, Mr S provided a copy invoice for works that were carried out on the car in January 2022, prior to him being supplied the car. The invoice confirmed that a NOX sensor was fitted.

Both parties are in agreement that the current issues relate to delays for the order of a NOX sensor and DPF. And it's these delays which appear to have prompted Mr S to request a rejection of the car.

Although Alphaera has said in its final response that the issues occurred more than 6 months after the car was supplied. I'm satisfied from the evidence provided that the problems with the emissions control system was present before Mr S was supplied the car.

Based on the evidence provided I'm satisfied there are underlying issues within the emissions control system of which each of the components repaired or replaced form a part of. So, I'm also satisfied that the car wasn't of satisfactory quality when it was supplied to Mr S.

Putting things right

Under the CRA if goods are not of satisfactory quality they do not conform to the contract. Section 19 of the CRA sets out certain remedies available to the consumer for goods that do not conform. One of those remedies is the final right to reject the goods. And in the circumstances, I'm satisfied that this is the fairest option.

Mr S has been waiting for a repair for over a year. I think this was an unreasonable amount of time for Mr S to have to wait. The CRA says that repairs to goods should be carried out within a reasonable time and without causing significant inconvenience. I think it's fair to say the time taken has been unreasonable and has caused Mr S a significant amount of inconvenience.

I acknowledge that In November 2023 Mr S informed the investigator that the dealership had advised him the parts for the car had been received, so they were in a position to repair it. Mr S however has confirmed that he still wanted to reject the car. In the circumstances and considering the number of issues related to the emission system, I don't think it's unreasonable that Mr S should be afforded the opportunity to reject the car. I think it's evident that this situation has been going on for an unreasonable length of time. So, I'll be instructing Alphaera to facilitate a rejection for Mr S.

Alphaera should end the agreement, refund to Mr S his deposit and his monthly payments of when he was unable to use the car.

I acknowledge Mr S' use of the car was intermittent. However, Mr S confirmed the mileage in October 2023 was 73,441, and more recently in February 2024, he provided a screenshot of

the mileage which was at 74,537. This means Mr S travelled a total distance of around 4,173 miles in the 23 months he had the car, which I think in all the circumstances is significantly low.

As Mr S has had some use of the car, albeit intermittent, I'm in agreement with the investigator that Mr S should pay for the usage he's had. So, in consideration of the average use of vehicles and that Mr S didn't have the opportunity to fully enjoy it, I'm satisfied that three and a half monthly repayments fairly recognises this.

Mr S was affected by the issues with the car from when he was supplied it, and it continued for many months. This has impacted the usage Mr S has had of the car. Mr S has described having to travel to garages on occasions, using public transport and taxis to get him and his family about. I also think it's fair to say there were a number of opportunities for the car to be repaired, and the issues to be sorted out. And I think this would also have impacted Mr S and added to his distress.

I'm persuaded from the information on file that Mr S would have experienced a significant amount of distress and inconvenience. So, in the circumstances I'm satisfied that Alphera should pay Mr S £500 in compensation for this.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to:

- collect the car at no additional cost to Mr S
- end the hire purchase agreement entered into by Mr S and remove it from his credit file
- refund the deposit Mr S paid (if any part of this deposit is made up of funds paid through a dealer contribution, Alphera is entitled to retain that proportion of the deposit)
- refund all rentals paid by Mr S, less three and half month's rentals, as explained in my decision to account for usage
- pay Mr S £500 in compensation for the distress and inconvenience caused

BMW Financial Services (GB) Limited trading as ALPHERA Financial Services should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If BMW Financial Services (GB) Limited trading as ALPHERA Financial Services considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr S how much it's taken off. It should also give Mr S 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 S to accept or reject my decision before 11 March 2024.

Benjamin John
Ombudsman