

The complaint

Mrs B complained about the quality of a car provided on finance by BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (Alphera).

What happened

Alphera supplied Mrs B with a used car on a hire purchase agreement in June 2021. The cash price of the car was around £21,000 and it had covered around 15,000 miles since first registration in September 2016. The hire purchase agreement required payments of around £270 for 48 months followed by a final payment of around £8,600. Mrs B paid a deposit of around £4,000.

Shortly after acquiring the car Mrs B said that there were issues which the broker, who I'll call C, arranged to help with. She said there was a mechanical knocking noise; a problem with the air conditioning; and a battery issue. The car was taken to a main dealer garage in July 2021. She said she was given a hire car and assumed the car was fixed when it was returned to her at the end of August 2021.

Mrs B said that she serviced the car in June 2023. She said that all was well until August 2023 when a yellow warning light came on the dashboard, immediately stating an engine filter was full. The car switched to reduced performance and smoke started billowing from both exhausts as she stopped the car. A breakdown engineer was called, and the car was recovered to a main dealer garage at a cost of £240. The garage inspected the car at a cost of £225 for the diagnostic.

The garage told Mrs B that it needed a replacement engine, and an estimate was between £16,000 and £30,000. It said that it couldn't pinpoint the exact reason the car had failed – but lack of servicing would cause this to happen. It accepted it had looked at the car earlier for a steering bolt recall and a noise where something was secured. The garage also told Mrs B that as the service history was incomplete the manufacturer had no liability for part of the costs.

The garage went on to say that the car had only been serviced once in 2018 and the lack of oil change in this time may have contributed to the catastrophic failure at around 37,000 miles.

Mrs B said that she wasn't aware there was no service history, the sales documentation indicated that the car had been serviced in March 2021. It was her intention to acquire a reliable car that she could use for her children, and she could drive safely for years. Mrs B said that she only uses the car for taking her children to school, her journey to work seven miles away and an annual trip to the coast.

Alphera said that their responsibility as a finance provider was to ensure that the goods were satisfactory quality at the point of sale. They said that any fault found outside of the first six months is not assumed to be present or developing at the point of sale.

Alphera said that as Mrs B had the car for more than two years it was her responsibility to show that the faults were present or developing at the point of sale. Alphera said that the diagnostic didn't show when the faults developed. They went on to say that purchasing a car that hasn't been serviced in line with manufacturer guidelines was at her own risk. Unhappy with this response Mrs B referred her complaint to our service.

Mrs B said that she suspected the car had a well-known Diesel Particulate Filter (DPF) issue which affected the type of engine in the car. She said that she didn't get any warning signs indicating that regeneration had not occurred, and she conceded that she usually did make short urban journeys. She said that her previous car was also a diesel engine and she drove this for more than eight years without a single problem.

An investigator here looked into what happened. She said that there was evidence that confirmed the turbo failed prematurely so she thought the engine and turbo wasn't sufficiently durable. The investigator recommended to end the agreement and hand the car back plus a refund of the deposit and monthly payments since Mrs B stopped using the car in August 2023. The investigator said that 8% interest was payable on the refunds and that Alphera should pay £300 in compensation for the inconvenience of having been supplied a car that was not of satisfactory quality.

Mrs B broadly agreed with the outcome, but she also asked for the costs of the diagnostic report and the costs of recovering the car to be considered. She also asked for the compensation to be increased given the ongoing impact on her, and other costs such as insurance and recovering personal items to be considered.

Alphera didn't respond to the investigator's opinion, so the complaint was passed to me to make a decision. I asked Alphera for their comments and they recently let me know that they agree with the investigator's opinion.

I issued a provisional decision which said:

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Alphera is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Our investigator set out Alphera's responsibility for supplying a car that was of satisfactory quality and why she thought the car wasn't sufficiently durable. Alphera didn't initially respond to our investigator's view and have only accepted the outcome very recently.

Given their agreement it isn't unreasonable to assume they agree that the car wasn't of satisfactory quality but for the avoidance of doubt I'll briefly set out my thoughts here.

The car was supplied with relatively low mileage, it was less than five years old and had a recent service. While I'd like to have seen more evidence, Mrs B highlighted there were faults at the point of supply which may have made the car of unsatisfactory quality, and it seems a repair was agreed. The repairs seem to have worked. There is evidence that the car was serviced by Mrs B. It also looks like it was serviced prior to her acquiring it and, again, in 2018.

The diagnostic shows that the turbo has failed at around 37,000 miles which, based on the circumstances I've set out above, on balance, I think is premature and leads me to the conclusion the car wasn't sufficiently durable.

I've thought about the appropriate remedy and even if Alphera should be allowed a repair attempt it wouldn't be proportionate in these circumstances. So I think rejection of the car is

fair.

Putting things right

Mrs B hasn't had use of the car since the fault occurred, and a courtesy car hasn't been provided, but she has told me that she has maintained her repayments. I don't think it's fair that Mrs B should have to pay for a car she's been unable to use, so I'm asking Alphera to refund all monthly payments made from September 2023. If any adverse information has been reported to the credit reference agencies it should be removed.

Mrs B has also incurred additional costs due to the car being faulty. She has provided evidence of paying £225 for a diagnostic. I think Alphera should refund this amount plus simple interest from the date of payment to the date of settlement because I think this cost came about as a result of the breach of contract.

Mrs B has said she completed a Statutory Off Road Notification (SORN) in order to reduce her insurance costs. I think it would be fair for Alphera to repay the cost of insurance from the date the car broke down. Mrs B will need to provide evidence of the cost of insurance and any rebate she might have received once she completed the SORN.

However, Alphera is not responsible for the financial loss of third parties – only Mrs B. Unfortunately I don't have any evidence that Mrs B has paid for the recovery of the car so I don't intend to award this.

Mrs B has said that she has been unable to recover personal items as the car is at a garage some distance from her home. Mrs B will need to go to recover any possessions before the car is collected, and she will need to make her own arrangements to do that. I'm minded this will cause more inconvenience, so I intend to increase the compensation to allow for this.

Finally I've considered the amount of compensation that our investigator awarded. Mrs B has explained that she mitigated her losses by borrowing a car, but that car wasn't the ideal size for using on her usual annual holiday. She also highlighted the ongoing inconvenience of keeping up with the repayments during a cost-of-living crisis.

No amount of money can change what's happened. But the compensation recommended by our investigator is in line with what's awarded where the impact of the mistake has caused considerable distress, upset and worry – and/or significant inconvenience that needs a lot of extra effort to sort out. So I think the compensation that's been recommended seems suitable in the circumstances because I agree it's had that sort of impact on Mrs B.

Considering all the circumstances, and the other refunds that I've set out plus out of pocket interest, I think the compensation seems broadly fair. But I'm increasing it slightly to take into account the ongoing inconvenience and having to recover personal items. So I'm also intending to direct Alphera to pay £400 in compensation.

My provisional decision

My provisional decision is that I'm intending to uphold the complaint and direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to:

- *End the agreement with nothing further to pay.*
- *Collect the car at no cost from Mrs B.*
- *Refund the £4,025 deposit contribution**
- *Refund the monthly payments from September 2023**
- *Reimburse Mrs B for the cost of the diagnostic**

- **Pay 8% simple annual interest on any payments and refunds from the date of payment to the date of settlement.*
- *Reimburse the cost of insuring the car from 21 August 2023 less any pro-rata refunds on cancellation/SORN, subject to suitable evidence*
- *Pay £400 compensation for the inconvenience caused*
- *Remove any adverse information reported to the credit reference agencies.*

** If BMW Financial Services (GB) Limited trading as ALPHERA Financial Services considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mrs B how much it's taken off. It should also give Mrs B a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate.*

Alphera responded and said that they agreed with the investigator's opinion, our investigator pointed out that a provisional decision had been issued, but I haven't received a further response. Mrs B agreed with the provisional decision. She reiterated that the matter had been incredibly stressful and how it had taken a toll on her.

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'm very sympathetic to Mrs B's situation and the circumstances she found herself in. Mrs B has provided suitable evidence of the costs that I set out in my provisional decision. She has provided evidence of the cost of the diagnostic at £225 paid on 4 September 2023, and the cost of insurance from September 2023 as £406.96. I'm satisfied with the evidence she has provided.

As I don't consider I've been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances.

Therefore, my final decision is the same for the reasons set out in my provisional decision.

My final decision

My final decision is that I uphold the complaint and direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to:

- End the agreement with nothing further to pay.
- Collect the car at no cost from Mrs B.
- Refund the £4,025 deposit contribution*
- Refund the monthly payments from September 2023*
- Reimburse Mrs B for the cost of the diagnostic £225 paid on 4 September 2023*
- **Pay 8% simple annual interest on any payments and refunds from the date of payment to the date of settlement.*
- Reimburse the cost of insuring the car from 21 August 2023 less any pro-rata refunds on cancellation/SORN £406.96
- Pay £400 compensation for the inconvenience caused
- Remove any adverse information reported to the credit reference agencies from September 2023.

** If BMW Financial Services (GB) Limited trading as ALPHERA Financial Services considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mrs B how much it's taken off. It should also give Mrs B a tax*

deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 18 November 2024.

Caroline Kirby
Ombudsman