

The complaint

Mr H complains about the quality of a car he has been financing through an agreement with BMW Financial Services (GB) Limited, trading as ALPHERA Financial Services (who I'll call 'Alphera').

What happened

Mr H took receipt of a used car on 14 March 2024. The car was a little under four years old and had already completed 18,370 miles. He financed the deal through a hire purchase agreement with Alphera.

On 13 March 2024 he contacted the supplying dealership and told them he was having problems with the car. He said a message had appeared saying 'rear axle steering malfunction visit workshop'. He also told them that the car was misfiring.

The car was taken to a garage who completed a diagnostic on 15 April 2024. That diagnostic showed several fault codes.

The car was collected by the dealership who subsequently noted that Mr H had fitted an immobiliser. It was that immobiliser that was preventing the car starting. They removed the immobiliser and were able to start the car, but they noted it was misfiring because the spark plugs had been fitted too loosely and two of them were damaged.

When Mr H complained to Alphera they didn't uphold his complaint. They subsequently explained that they believed the spark plugs had been tampered with as they were correctly fitted before the car was supplied to Mr H. They also explained that the starting issue was due to Mr H having an immobiliser fitted.

Our investigator noted that Mr H had reported faults with the car before the immobiliser was fitted and he didn't think Alphera had been reasonable not to allow Mr H to reject the car.

Alphera disagreed. They said that spark plugs don't back themselves off and they insisted that the faults presented were because of tampering. They asked for a final decision by an ombudsman.

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 know it will disappoint Alphera, but I think this car was of unsatisfactory quality and that they should now allow Mr H to reject it. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

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 H acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Alphera, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr H. The car here was a little under four years old and had already completed about 18,370 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

I'm persuaded that this car wasn't of satisfactory quality when it was supplied to Mr H. I say that because Mr H reported problems with it before the immobiliser was fitted and the diagnostic report he provided shows there were pre-existing fault codes. Alphera have suggested this is due to some tampering with the spark plugs. I've not been provided with any reasonable reason why Mr H would have sought to tamper with spark plugs in the days leading up to him reporting problems with the car. He'd told the dealership the car was misfiring before he took it for a diagnostic test, so that process can't have been the cause of the problem. The diagnostic showed several fault codes, and I don't think I've been provided with a reasonable explanation from Alphera to explain those issues. Mr H had also reported an 'axle steering malfunction' the cause of which has never been explained. I understand that ~~On~~the car was MOT'd prior to supply and I've seen and considered the pre-delivery inspection but on balance, given the very short time Mr H had been in charge of the car, I think it's more likely than not that it was faulty when supplied. I don't think a reasonable person would consider a car of this age and mileage to be of satisfactory quality if it was misfiring so soon after it was supplied and I think the car was, therefore, of unsatisfactory quality.

Alphera have suggested Mr H had the car wrapped before it was returned. I've asked him about that, and he says that wasn't the case. I can see that the colour was reported on the advert as 'Blue Magno paint' and that seems to be the colour of the car that is shown in the images of it being loaded onto the transporter to be returned to the dealership. And, regardless, even if the car was wrapped, I'm not persuaded I have evidence to suggest that has an impact on the resolution of this case. I've not, for instance, been provided with evidence of a drop in resale value.

Under the relevant legislation the consumer generally has 30 days to reject goods that are of unsatisfactory quality. The 30 days here would run from the day after Mr H took possession of the car on 14 March 2024, so 30 days would expire at the end of 13 April 2024. I'm persuaded that Mr H reported a problem in that time frame and as I'm persuaded that the fault/s mean the car was of unsatisfactory quality I think it would be fair to order rejection and not the repair of the car. I can't see that Alphera have argued that point. Emails I've seen between them, and the dealership demonstrate they accept it. But even if I'm wrong about

that, Mr H has been without the car since 29 April 2024 and it seems there has been ample opportunity for the car to be repaired, so regardless of Mr H's short term right to reject the car, rejection would be the fairest resolution here.

Putting things right

Alphera should allow Mr H to reject the car and end the agreement. It seems the car has been left at the dealership but if there are any collection charges or if storage charges have been incurred, Alphera should pay them.

Alphera will need to refund any deposit Mr H has paid and they should add interest to that refund as Mr H has been deprived of the money.

Mr H had use of the car for about a month before it broke down. It's fair he should, therefore, pay one monthly instalment towards this agreement but as he's not used the car since, all other instalments that he's paid should be refunded to him, with interest as he's been deprived of the money. If any instalments were due but haven't been paid, they should be waived.

Mr H has experienced some distress and inconvenience here. He's had to refer his complaint to this service when I think it could have been resolved earlier and he's not had a car in the interim but has been paying a considerable amount each month towards his agreement. He's explained that he has a newborn baby and I've read about the difficulties he's faced transporting his family. In the circumstances, I think Alphera should pay him £250 in compensation.

Because the car was of unsatisfactory quality Mr H has had no benefit from the immobiliser he had fitted. Alphera should, therefore, refund the cost of that immobiliser and it's fitting if Mr H can provide proof of payment.

Mr H has asked for his insurance and road tax to be refunded but I'd expect him to have mitigated those costs. He returned the car very early into the agreement and didn't want to collect it so I think he could have cancelled his insurance and SORN the car off the road. I'm not asking Alphera to refund those charges.

My final decision

For the reasons I've given above, I uphold this complaint and tell BMW Financial Services (GB) Limited to:

- Allow Mr H to reject the car and end the finance agreement.
- Collect the car, if necessary, and at no cost to Mr H. If there are storage costs that have been incurred Mr H should not be asked to pay them.
- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund all but the first finance instalment in respect of loss of use and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund the cost to supply and fit (and, if applicable, to remove) the immobiliser if Mr H can provide proof of payment. Add 8% simple interest* per year from the date of payment to the date of settlement.

- Pay Mr H £250 to compensate him for the distress and inconvenience he's experienced.
- Remove any adverse reports they may have made to Mr H's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 May 2025.

Phillip McMahon
Ombudsman