

The complaint

Ms W complains that BMW Financial Services(GB) Limited trading as ALPHERA Financial Services (Alphera) unfairly charged her for damage to a car after she voluntarily terminated a hire purchase agreement.

What happened

I issued a provisional decision setting out what I thought about Ms W's complaint. I've copied the relevant parts of that provisional decision below – and they form part of this final decision.

In December 2021, Ms W was supplied with a used car through a hire purchase agreement through Alphera. The cash price of the car was £32,950. She made an advance payment of £4,950, and the agreement was for £28,000 over 48 months; with 47 monthly payments of £415.94 and an optional final payment of £14,161.66 if she wanted to purchase the car. The car was around four years old, with a mileage of 41,000.

In July 2024, Ms W made a payment of £1,902.22 to voluntarily terminate the agreement before the end of its term. Alphera arranged to collect and inspect the car. When the car was returned, it was around seven years old with a mileage of 48,472. Some damage was noted during the inspection. Alphera told Ms W it would charge a total of £431 for the damage that went beyond fair wear and tear. It provided the following breakdown of the charges:

- *Wheel RHF (right hand front) scratched - £68*
- *Front bumper scratched - £45*
- *Wing LHF (left hand front) scratched - £106*
- *Door LHR (left hand rear) scratched - £106*
- *Quarter panel LHR scratched - £106*

Ms W didn't think most of the charges were reasonable. She accepted there was damage to the wheel, bumper and left wing, and that she would be charged for these. But she didn't think the other damage was present during the inspection. She said there were petals on the car which the inspector had mistaken for damage. She was concerned that the inspector had stated in their report that she wasn't present for the inspection, when she in fact was. She asked Alphera to provide proof that it had paid to repair the damaged areas – and said it wasn't fair to charge her if it didn't.

Alphera didn't agree it had made an error, and was satisfied from the photos taken by the inspector that the damage charges were applied correctly in line with the fair wear and tear guidelines set by the British Vehicle Rental and Leasing Association (BVRLA). Ms W referred her complaint to this service. One of our Investigators considered the complaint and upheld it. They thought Alphera had fairly charged Ms W for the damage to the LHR door. But they didn't think the photos showed damage to the LHR quarter panel, and recommended that Alphera refund that charge with interest.

Ms W accepted the Investigator's recommendations, but Alphera didn't. It said the photos

clearly showed damage to the quarter panel. They didn't agree with the Investigator's conclusions, and asked for the complaint to be referred to an Ombudsman for a final decision. So, it's been passed to me to decide.

What I've provisionally 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.

If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is more likely than not to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Ms W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we can investigate complaints about it.

The terms of the agreement state:

"if the Vehicle is not returned in good repair and condition (allowing for fair wear and tear), we will charge you a set cost for each item of damage we would have to repair to return the Vehicle to the state we expected it to be in (we use recognised industry standards to determine this). These charges reflect the cost to us in carrying out the works needed. (...) If we end this agreement, we may, at our sole discretion, sell the Vehicle without repairing it in which case you will have to compensate us for the resulting reduction in the Vehicle's value."

Ms W has asked Alphera to prove that it actually paid to repair the damage. But I don't think Alphera needs to show this – as it's reasonable to assume that damage to a car will have an impact on its sale price, even if it didn't arrange to repair the damage itself. Under the terms of the agreement, it's within Alphera's discretion whether it decides to repair the damage. So, I don't find it unreasonable that Alphera applied charges for damage present when the car was returned – as long as it can show that the damage went beyond fair wear and tear.

I've considered whether Alphera applied the charges fairly – taking into account the conclusions reached by the inspector, as well as photos provided by both parties. The BVRLA sets industry guidance on what is considered fair wear and tear. I've taken this guidance into account.

The BVRLA guidance is generally intended for new cars that have been returned at the end of their first finance agreement – so it's mainly used to assess damage on cars that are a few years old. But it can also be used for older cars, where the age and mileage of the car are taken into account. In this case, the car was already four years old when it was supplied to Ms W – and was nearly seven years old when it was returned to Alphera, with a mileage of 48,472. So, I think it would be reasonable that the car would have more signs of wear and tear than a newer car with a lower mileage would. I've considered this when deciding whether the damage Alphera has charged Ms W for goes beyond fair wear and tear.

Ms W says she accepts there's damage to the bumper, wheel and front left wing – and hasn't disputed those charges. So, I won't comment on those charges in detail. I've considered the remaining charges.

I've first considered Ms W's comments about the inspection itself. She says the inspector

mistook some petals on the car for damage, and that they incorrectly stated on the report that she wasn't present for the inspection. She's provided photos that show she was present when the car was inspected. Although the inspector may have made an error by saying Ms W wasn't present, I don't think this means their photos and conclusions about the damage should be disregarded. There are also no petals visible on the car in any of the photos provided by either party – so I'm satisfied the photos can be relied upon to determine whether there was damage that went beyond fair wear and tear.

In their report, the inspector noted scratches of more than 25mm through the topcoat on the LHR door and LHR quarter panel. The BVRLA guidance includes the following standard for surface scratches:

"Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out."

The inspector's photo of the LHR door shows two scratches close together. The photo includes a measuring tool but doesn't clearly show the measurements relied on. I've reviewed the photos provided by Ms W – but the damaged area isn't clearly visible in these. Based on the inspector's photo, it's also not clear whether the scratches are on the LHR door or the LHF door. But there are two scratches, and based on the position of the measuring tool, they appear to be more than 25mm long. So, I'm satisfied this damage goes beyond fair wear and tear. Alpera has applied a charge of £106 for this damage, which I don't find unreasonable.

The photo of the LHR quarter panel is slightly less clear – as some of the surface is obscured by reflections. The photo shows a visible mark that extends both horizontally and vertically. Again, the inspector's measurement tool isn't clear in the photo – but the damage covers a large proportion of the photographed area – so I'm reasonably satisfied it exceeds 25mm. Ms W has provided a photo of the same area of the car from a different angle, and although the photo isn't entirely clear, the same mark is visible in the same area.

As both photos show the same markings, I'm satisfied this is damage to the car rather than a reflection. The location of this photo is also unclear – and I can't say with certainty that the damage is located on the LHR quarter panel rather than a door. But in any case, given the size of the mark I'm satisfied the damage goes beyond fair wear and tear. Again, Alpera has charged Ms W £106 for this, which isn't unreasonable.

I appreciate this will come as a disappointment to Ms W, but I'm satisfied the charges she disputes were applied fairly. So, I don't find that Alpera made an error by applying the charges, and I don't intend to require it to refund them or do anything further.

Responses to my provisional decision

Alpera said it didn't have any further comments to provide in response to my provisional decision. Ms W didn't accept my provisional decision and provided some additional comments. In summary, she said:

- The inspector stating that she wasn't present for the inspection wasn't an error, but was done intentionally because she refused to sign the report.
- Although she hasn't been able to send a copy, she took a video of the petals on the car which were mistaken for damage – she was able to peel these off in front of the inspector.
- The charges are overinflated, and the repairs could be carried out for much cheaper than the amounts quoted by the inspector. For example, a wheel refurbishment could

be arranged for £25.

- My provisional decision doesn't consider the actual costs incurred by Alphera, and it's unfair for her to be charged for work that wasn't carried out.

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'd like to thank Ms W for her comments in response to my provisional decision, which I've carefully considered. I appreciate my provisional decision would have come as a disappointment to her.

I acknowledge Ms W's concerns about the inspector's report, and their conduct during the inspection. I can understand why she feels the inspector's conclusions aren't reliable, as the report incorrectly states that she wasn't present for the inspection. But ultimately, what I need to decide is whether Alphera has shown that the charges it's applied reflect damage to the car that goes beyond fair wear and tear. To decide this, I've weighed up all of the evidence – including the photos provided by both parties. While the inspector's report contained an inaccuracy, I'm satisfied the photos themselves show that there was damage to the car that went beyond fair wear and tear – for the reasons outlined in my provisional decision. So, even if I were to agree that the inspector's conclusions shouldn't be relied on, that wouldn't mean the charges themselves are unfair.

Similarly, while I don't doubt Ms W when she says there were petals on the car that the inspector initially mistook for damage, that doesn't mean the charges Alphera have applied aren't fair. The two instances of damage that I've considered are scratches and markings on the bodywork of the car – and from the photos, it's clear this damage isn't related to any petals that may have been on the car at the time. So, while the inspector may have initially mistaken some petals on the car for damage, I'm satisfied this isn't the case for any of the damage that Ms W currently disputes.

I've also considered Ms W's comments surrounding the amounts Alphera has charged. For the reasons I outlined in my provisional decision, I don't think Alphera needs to show that it arranged to carry out the repairs. Ultimately, the charges are intended to compensate Alphera for the fact that the car was returned with damage that went beyond fair wear and tear. This could represent an actual amount paid to rectify the damage, or could reflect the loss of value to the car.

Ms W says the costs Alphera charged are excessive, and that the repairs could have been carried out at a cheaper rate than the amounts she's been asked to pay. She's said that – for example – a wheel can be refurbished for as little as £25. It's always possible that a customer will be able to obtain a quote cheaper than the amounts they've been invoiced for. That doesn't mean the amounts charged by a lender aren't fair. The terms of the agreement state that Alphera will charge a set cost for each area of damage based on recognised industry standards. I don't think this is an unreasonable approach to take, and I don't think the amounts Alphera have charged are out of line with what I'd normally expect for damage of this nature.

In addition, if Ms W felt repairs could have been carried out at a competitive rate, she had the option of arranging this herself before returning the car. In its guidance, the BVRLA advises customers to arrange repairs for any areas of damage before returning a vehicle, ensuring work is carried out to a professional standard.

Having considered Ms W's additional comments, my conclusions remain the same as

outlined in my provisional decision – for the same reasons. So, I don't uphold Ms W's complaint and I don't require Alphera to do anything further.

My final decision

My final decision is that I don't uphold Ms W's complaint about BMW Financial Services(GB) Limited trading as ALPHERA Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 30 May 2025.

Stephen Billings
Ombudsman