

## The complaint

Mr H complains that a car supplied to him under a hire purchase agreement with BMW Financial Services(GB) Limited trading as ALPHERA Financial Services (AFS) is of unsatisfactory quality.

## What happened

In March 2023 Mr H entered into a hire purchase agreement with AFS to purchase a used car. The car was around five years old and had travelled around 57,783 miles. The cash price of the car was £21,200.00 with an advance payment of £1,000.00 being paid. The total amount repayable on the agreement was £28,400.48 payable over 49 months. This was made up of a first repayment of £408.01 being due, to be followed by 47 monthly repayments of £408.01 with an optional final repayment of £7,816.00.

Mr H explained that almost six months after taking delivery of the vehicle, it broke down and needed recovery by the AA. The AA commented on what they thought had caused the faults and recovered the vehicle.

The car was seen by a repairer to diagnose the issues and in October the repairer provided an estimate showing the work that needed carrying out. This involved replacing the turbocharger, an oil feed pipe, an oil return pipe, an engine filter and engine oil. This work was then carried out under warranty at no cost to Mr H. I can also see an advisory was recommended to regenerate the diesel particulate filter (DPF). The work did take some time, with the breakdown occurring in September 2023, and the repairs being carried out in November 2023.

Mr H explained he had to call the AA again shortly after the repair as the engine management light came on. The AA diagnosed some fault codes and suggested taking the vehicle to a repairer for full assessment.

Mr H had now complained to AFS about the issues he was having. He was unhappy with the issues and that he was without a car for some time, needing to use hire cars to stay mobile. AFS explained that as he was raising this outside the first six months of the agreement, he'd need to provide evidence the issues were present or developing at the point of sale. Following this, Mr H contacted AFS to explain a repairer had looked at the most recent issues that the AA were called out for, and they couldn't sort these as they were a specialist issue. Mr H explains he was told by the garage these issues were linked to the previous turbocharger problem and were likely there for a while.

I can see from contact notes that it appeared Mr H was becoming frustrated with the lack of responses to his complaint and situation, and as such he proceeded to have his vehicle repaired. This was through a different third-party repairer, and there is an invoice showing costs related to the DPF and exhaust gas recirculation (EGR).

Mr H again contacted AFS as he was unhappy with the mounting costs of the vehicle repairs. AFS did not provide a final response, and as such Mr H brought his complaint to this service where it was passed to one of our investigators.

The investigator upheld the complaint. He explained he was persuaded the initial turbocharger issue had happened within six months of Mr H taking ownership of the vehicle, and that the follow up issues were linked to the previous turbocharger issue. As such, the investigator's outcome was that the vehicle was not of satisfactory quality when it was supplied. As the vehicle had been repaired, and Mr H confirmed there were no new or outstanding issues with the vehicle, the investigator decided that rejection of the vehicle wasn't a fair option here. Instead, the Investigator thought that AFS should pay for the evidenced costs Mr H had incurred in repairing the vehicle from the linked faults, and to cover the hire car costs. The investigator also thought AFS should pay Mr H £250 for distress and inconvenience caused.

Mr H has agreed with this as a fair outcome, however AFS have not responded. As such, I've been asked to review the complaint to make 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.

Mr H acquired a car under a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr H's complaint about AFS. AFS is also the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply of the car and its 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.

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.

In this case, Mr H acquired a car that was around five years old and had travelled around 57,783 miles. As this was a used car with this mileage and age, it's reasonable to expect parts may already have suffered more wear and tear when compared to a new car or one that is less travelled. There's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn.

I've reviewed the available evidence about the issues Mr H experienced with the car. Based on what I've seen, I'm satisfied that there was a fault with the car. I say this because neither AFS nor Mr H dispute the vehicle had an issue with the turbocharger. I've also seen AA callout reports confirming faults, and invoices from repairers in relation to work carried out. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

The information suggests Mr H took delivery of the vehicle on 23 March 2023 and that the first complained about breakdown happened on 17 September 2023. This was within the first

six months of the agreement starting, and as such there can be a greater onus on AFS to show that any faults were likely not present or developing at the point of sale, ensuring the vehicle was of satisfactory quality when it was supplied.

I can see that the AA recovery report suggest some things that could be wrong with the vehicle, but explains they are an emergency breakdown service and this is not equivalent to the service carried out by mechanics working in a fully equipped workshop. It goes on to say they can only test for and discover so much in a breakdown situation. And to make sure to check any symptoms identified or possible faults suggested by a chosen repairer.

The vehicle was taken to a repairer, and they decided that there was a need to replace the turbocharger. So, I think it is more reliable to rely on the repairer's opinion of the issue, and how to rectify this than the AA recovery diagnosis. As such I'm satisfied there was an issue with the turbocharger that happened within the first six months of the agreement, and I have nothing to show me that this was not present or developing at the point of sale.

Having said this, the turbocharger was replaced at no cost to Mr H, alongside some other parts needed so I don't think this issue is particularly in dispute, however is important for context. I can also see that there is an advisory listed as needing to regenerate the DPF. These repairs would have been a fair way to resolve things at the time. However, Mr H explains he quickly encountered more issues.

Mr H needed to call out the AA again after the vehicle was returned to him in November 2023. The callout report explains a number of issues and fault codes and mentions the particulate filter. It is recommended to take the vehicle to a repairer for full assessment. During November and December, I can see Mr H has been raising these issues with AFS, but found responses hard to come by. Eventually, he takes the vehicle in to a repairer of his own accord.

It is here that the repairer produces an estimate for work needed on the DPF and EGR. I acknowledge AFS's position that the faults are not linked, and this second fault happened outside of the six first six months of the agreement, and so there would usually be a greater onus on the consumer needing to show evidence the fault was likely present or developing at the point of sale.

However, I'm persuaded by all the information I have, that the faults are linked. I say this because as part of the initial repair, the repairer notes an issue with the DPF. Shortly after Mr R received the car back, he's had to call out the AA, and it's noted in their report a potential issue with the particulate filter, this is then backed up by the repairer's estimate following this.

Alongside this, research suggests the turbocharger and DPF of a vehicle such as this one, can be directly linked in terms of if one of either fails, it can contribute to damage the other to the point of repair or replacement being needed. The DPF is a filter to catch pollutants, and through driving this is at risk of becoming clogged. However, the DPF can normally be regenerated, burning off particles through regular driving of longer distances at higher speeds, however if the turbocharger is failing, potentially causing the engine to act abnormally, producing more particles than normal, a reasonable person could expect that the DPF could suffer greater strain and risk of failure, encountering more particles due to the engine not performing properly.

Similarly, research also suggests the turbocharger performance and EGR can be directly related. A failing turbocharger can directly impact the EGR system in ways such as destabilising the normal balance of pressure in the system, causing the EGR's performance to suffer, leading to issues like excessive carbon build up and eventual failure.

The information available persuades me the issues are consequential and that the problem with the turbocharger likely directly impacted on the issues with the DPF and EGR. I don't have any information that persuades me of the opposite. Mr H had travelled around 7,000 miles in the time he had the vehicle before the issues, and I can see the vehicle was most recently serviced in March 2023. I can't see a lack of servicing has contributed to the issue, or that Mr H has travelled an amount of miles that I'd consider unreasonable in this time. A DPF failure can also result from driving style or through regular wear and tear, but I have nothing that convinces me this is the case here.

In this instance, I don't have any information that persuades me anything else is more likely to have happened, and as such I'm persuaded the vehicle was not of satisfactory quality at the point of sale and that the DPF and EGR issues encountered shortly after the problem with the turbocharger were consequential for the reasons explained above.

### **Putting things right**

As I've concluded that the car was not of satisfactory quality when it was supplied, I think it's reasonable AFS should put things right.

In this case, I don't think it would be fair for rejection of the vehicle to be an option. I say this because the faults the vehicle had suffered some time ago, have been repaired and Mr H confirms the vehicle is currently running as it should with no further issues.

However, Mr H has incurred expenses due to the vehicle not being of satisfactory quality when it was supplied, and as such it is fair that AFS cover these.

Mr H was without use of his vehicle for some time, but also confirmed he'd hired a vehicle to keep himself mobile when needed. Because of this, I think that it's fair AFS keep the monthly repayments Mr H made to his agreement whilst the car was unusable, but that AFS cover the evidenced hire car costs incurred. I can see Mr H hasn't hired vehicles that a reasonable person might consider unreasonable, and I think Mr H has mitigated his hire car costs by only hiring a vehicle when necessary. It is fair these hire car costs are covered as detailed in the car hire documents sent in by Mr H dated 26 October 2023, 21 November 2023 and 25 November 2023 as long as they have been incurred by Mr H. Mr H will need to evidence the actual cost incurred for these to be reimbursed by AFS, as some of these are estimates and two of them appear to relate to the same vehicle with some overlap of hire dates.

Having looked at the repair costs paid by Mr H to rectify the DPF and EGR issues, it is fair AFS cover these as these have only occurred due to Mr H being supplied with a vehicle that was not of satisfactory quality. So, AFS should cover the evidenced cost for these repairs.

Mr H also explained the effect the events complained about were having on him, and how difficult he found this time. I acknowledge the distress Mr H suffered, and the inconvenience of having a vehicle that had issues go wrong within a short space of time and having to resolve these. I agree with the investigator that it is fair AFS pay Mr H £250 to reflect the distress and inconvenience caused.

### **My final decision**

For the reasons explained, I uphold Mr H's complaint and instruct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to do the following:

- Repay Mr H's evidenced hire car costs as detailed above.
- Repay Mr H's evidenced repair cost related to the DPF and Turbocharger issue.
- Pay 8% simple yearly interest\* on the above, to be calculated from when Mr H made the payment to the date of the refund.
- Pay Mr H a total of £250 for the distress and inconvenience caused.

\*HM Revenue & Customs requires BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to deduct tax from the interest amount. BMW Financial Services(GB) Limited trading as ALPHERA Financial Services should give Mr H a certificate showing how much tax it has deducted if he asks for one. Mr H can reclaim the tax from HM Revenue & customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 July 2025.

Jack Evans  
**Ombudsman**