

The complaint

Mrs S 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 August 2024, Mrs S entered into a hire purchase agreement with AFS to purchase a brand new car. The cash price of the car was £20,043.00 with an advance payment of £3,000.00 being paid. The total amount repayable on the agreement was £24,163.16 payable by 47 monthly repayments of £244.60 with an optional final repayment of £9,666.96.

Mrs S explained that soon after acquiring the vehicle, she'd encountered a fault on startup that meant the car couldn't be put into gear to move it. Two warning lights came up on the dashboard each time followed by a message stating HV battery shut off. Mrs S explained this happened more than once, and she was trying to get in contact with the dealership about it but wasn't receiving any return phone calls. Mrs S added that she eventually got through to the dealership towards the end of September 2024, and was told the earliest they could look at the car would be 14 October 2024. Mrs S explained that the fault had intermittently returned before 14 October 2024 and the forward collision warning was unavailable.

The car was investigated, and there is no recorded evidence of the fault being able to be replicated whilst it was looked at.

Mrs S supplied videos and pictures of the warnings, the starting procedure and the fault in action. As this was ongoing, Mrs S complained to AFS. As part of investigating the complaint, AFS obtained comments from the dealership, who confirmed they couldn't replicate the fault, and believed it could be driver error. AFS did not uphold Mrs S' complaint. In its final response, AFS explained that no fault has been found and the issues raised are user error. Mrs S disagreed with this, and brought her complaint to this service where it was passed to one of our investigators.

The investigator upheld the complaint. They explained that there was a fault with the vehicle as evidenced by Mrs S, and that this fault meant the car was of unsatisfactory quality. As a result, the investigator stated that AFS should repay the difference between the part-exchange value Mrs S received for her car and the settlement figure required on the finance agreement, alongside a refund of her deposit and a 10% refund of monthly payments made towards the agreement to reflect the impaired usage of the vehicle.

Mrs S accepted the outcome, however AFS didn't agree due to the comments from the dealership and their concerns over the video evidence supplied by Mrs S. As such, I've been asked to review the complaint to make a 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.

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.

Mrs S 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 Mrs 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, Mrs S acquired a car that was brand-new. As this was a brand-new car, it's reasonable to expect the level of quality to be higher than a used, more road-worn car. It would be reasonable to suggest Mrs S would expect to be able to use this free from significant defects, for a considerable period of time.

I've reviewed the available evidence about the issues Mrs S 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 I've seen video evidence that I'm persuaded shows an intermittent fault. I've also seen dated photographs of warning lights on the dashboard that relate to the issue seen in the video evidence. I've also considered Mrs S' testimony alongside the information supplied by the dealership and AFS. Having considered the car had a fault, I've considered whether it was of satisfactory quality at the time of supply.

Having considered all of the available information I'm persuaded there is an intermittent fault with Mrs S' vehicle, and this does make the car of unsatisfactory quality when it was supplied. I'll explain why below.

There appears to be a disagreement over if Mrs S is following the correct starting procedure, meaning the fault would actually be user error. The dealership were unable to replicate the fault and as such consider Mrs S may not be starting the vehicle correctly. Mrs S has stated she was shown how to use the vehicle pre-sale and has been driving automatic cars for over 40 years so has experience in how to operate cars.

I've also seen video evidence showing Mrs S with her foot on the brake, and then attempting to put the car into drive, however the car remains in neutral with the warning message HV battery shut off. Mrs S has also sent video evidence of what happens when no foot is applied to the brake when attempting to start the vehicle.

AFS have raised questions about the validity of the footage, as Mrs S cannot be seen to keep her foot on the brake, whilst also filming the rest of the startup procedure. Whilst it is valid to raise questions, I don't find it most likely considering all of the available information, that Mrs S has gone to such lengths over a significant time period to try to

create a fault that isn't there. Mrs S' testimony and actions remain consistent with what I think a reasonable person may have taken in a similar situation.

Mrs S raised the issues when they were happening, and wanted this investigating and repaired by the dealership. Mrs S was consistent in raising the issues and what was happening, and supplying photographic and video evidence to show the issues happening or how she was starting the vehicle.

Alongside this, Mrs S was concerned about the safety and reliability of the vehicle, and was trying to have this rectified or rejected. When it didn't appear that this would be forthcoming, and with safety concerns as well as the reliability issues Mrs S was encountering, she decided she needed to part-exchange the vehicle, taking a financial loss. I'm not persuaded a reasonable person would take this action when considered alongside the testimony and evidence provided, unless they had good reason to do so. In this case Mrs S has taken this action as she cannot rely on the vehicle and has serious concerns over its safety.

All of this information persuades me that although the dealership couldn't replicate the fault when they had it, there was an intermittent fault, and this fault should not appear on a brand-new car. Because of this, it made the vehicle of unsatisfactory quality when it was supplied. Ideally Mrs S would not have part-exchanged the vehicle, however I acknowledge why she felt she needed to take this action.

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. As Mrs S no longer has the vehicle, repair or rejection is not an outcome that can be actioned.

Considering all of the information I'm persuaded a fair outcome is for AFS to pay the difference between the evidenced part-exchange value Mrs S achieved on the car and the settlement figure paid to settle her finance agreement.

AFS should also refund Mrs S' advance payment, however AFS is entitled to retain any amount made up of dealer contributions if applicable.

It is fair that Mrs S pays for her usage of the car, albeit this appears to be less than she'd hoped to achieve. So it isn't fair for Mrs S to receive a full refund of her monthly payments, as there were times she was able to use the vehicle. Having said this, I'm persuaded there were times Mrs S encountered impaired usage of the vehicle, as shown in the video evidence submitted and the mileage recorded. I agree with the investigator that a 10% refund of each monthly payment Mrs S paid towards her agreement is a fair way to acknowledge the impaired usage she encountered.

I also considered if a payment for distress and inconvenience was relevant in this case. Having thought about this, I also agree that it is fair AFS pay Mrs S £250.00 for distress and inconvenience caused. Mrs S has supplied testimony explaining the impact this situation has had on her, the concern she suffered as well as trying to prove the issue with her vehicle alongside having it fixed. I'm persuaded Mrs S would have suffered distress and inconvenience over this time and £250.00 is fair to reflect the level of impact this had.

My final decision

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

- Refund the difference between the part-exchange value and settlement figure as outlined above.
- Refund the advance payment as outlined above.
- Reimburse Mrs S a portion of her monthly payments as outlined above.
- Pay 8% simple yearly interest* on the above, to be calculated from when Mrs S made the payments to the date of the refund.
- Pay Mrs S 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 Mrs S a certificate showing how much tax it has deducted if she asks for one. Mrs S can reclaim the tax from HM Revenue & customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 26 September 2025.

Jack Evans
Ombudsman