

The complaint

Mr V is unhappy that a car supplied to him under a hire purchase personal contract purchase (PCP) agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (AFS) was of an unsatisfactory quality.

When I refer to what Mr V has said and what AFS have said, it should also be taken to include things said on their behalf.

What happened

In September 2023, Mr V was supplied with a used car through a hire purchase personal contract purchase (PCP) agreement with AFS. Mr V paid an advance payment of £4,500.00 and the agreement was for £31,500.00 over 48 months, with 47 monthly payments of £497.56 and a final payment of £18,689.00. At the time of supply, the car was around three years old. The mileage recorded on the MOT completed in June 2023, before Mr V acquired the car, was 29,615 miles

In May 2024 the car broke down and wouldn't switch on. Mr V says he had significant charging problems for the two weeks prior to the break down and believes the issue is with the battery. He says that on the day of the breakdown the car wasn't switching on or charging at all, and that prior to that the battery had been taking over 24 hours to charge compared with the usual 12 to 13 hours. He also said the red light on the battery charging port was intermittently flashing red for around a week before the breakdown, as well as a drive system malfunction error showing on the dashboard and the red battery icon showing red.

Mr V says around 90 minutes after the break down he was able to start the car and drove to a dealership associated with the car's manufacturer (who were not the supplying dealership), as the car was due a service there the next day. The car has remained with this dealer, and I will call them the repairing dealer.

Mr V was given a courtesy car, and the repairing dealer repaired a valve which they had initially diagnosed as the problem. But the drive system malfunction light remained on, and Mr V was told they needed a battery specialist to come in to diagnose the problem.

In July Mr V was told that the problem was an electronic drive unit function system issue with faulty electrical components affecting the transmission, and a general wear and tear issue. The repairing dealer said this was why the car would not switch on or charge properly and was why it was losing the charge rapidly. Mr V did not accept this explanation and told them he was concerned that in two months they had not attempted to charge the car battery. He has explained he could tell this as it showed on the car 'app' that the battery charge had remained at 14% charge throughout. He felt this indicated the battery had not been tested at all. He also did not accept the description of 'general wear and tear' as he felt it would not have taken two months to diagnose a general wear and tear issue.

Mr V was concerned that the repairing dealer had not addressed the issue of the battery taking over 24 hours to charge, had not attempted to charge it or take the car for a test drive and felt this was to avoid them having to replace the battery.

Mr V says the repairing dealer has not acknowledged the issues with the battery but identified what Mr V describes as secondary issues providing him with a quote for almost £6,000 to replace a motor and drive transmission unit. Mr V says these parts have failed prematurely due to faults with the battery, and that those faults have not been addressed by the repairing dealer.

Mr V says the manufacturer has refused to honour the battery warranty. This is confirmed in correspondence from the manufacturer who have shown they require a full digital service history report to be complete in order for the warranty to be valid. A service due before Mr V acquired the car is not recorded which has invalidated the warranty.

Mr V complained to AFS, and in their first Final Response Letter in August 2024 AFS informed Mr V that as 10 months had elapsed since he had acquired the car, they would need an independent report on the car showing the fault was present or developing when he acquired it in order to uphold his complaint. Mr V arranged an independent inspection which took place in August 2024. After AFS had received a copy of the report they then issued a second Final Response Letter and said that as:

‘the fault was not considered to be present or developing at the point of sale’

they would not be offering any support to resolve the situation and concluded that all issues were due wear and tear and usage.

Mr V was unhappy with this response, and he referred his complaint to the Financial Ombudsman Service for investigation. Mr V says he wants to reject the car and that as he has maintained his monthly payments whilst not having use of the car, he has been placed under significant financial pressure.

In October 2024 Mr V informed our investigator that the car manufacturer and AFS had proposed a settlement which consisted of each of them covering 50% of the repair costs, as well as compensation for his time without a vehicle, up to the point the offer was made, plus a refund of the cost of the independent report. However, Mr V did not wish to accept this. He was concerned the proposed repairs did not address the issues with the battery that he had experienced, or the issues identified in the independent report.

Our investigator found that the car was not sufficiently durable and so was not of satisfactory quality. Our investigator also noted the length of time the car had been off the road since the first repair had taken place and found this would mean any further repair would not be within reasonable time or without significant inconvenience to Mr V. Based on this our investigator upheld Mr V’s complaint and said he should be allowed to reject the car.

AFS didn’t agree with the investigator. They provided a report completed by the repairing dealer which showed the repairs they had offered in October may resolve the problem, though this report was caveated that five hours further testing would be needed and also reiterated that if the battery was at fault this would be replaced under warranty.

Because AFS didn’t agree, this matter has been passed to me to make a final decision.

My initial conclusions are set out in my provisional decision. In it I said I thought Mr V’s complaint should be upheld but I reached a slightly different conclusion to our investigator about how it should be settled, and I explained my reasoning as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons.

These are:

- The issues and risks directly related to the battery noted in the independent report, which indicated failings so significant that the tester found the car unsafe to start.*
- The report completed by the repairing dealer which identified failings in other parts which may contribute to the battery failing, but did not exclude faults with the battery.*
- The length of time taken to offer further repairs.*
- The first repair did not resolve the problems with the car.*

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 most likely 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. Mr V was supplied with a car under a hire purchase personal contract purchase (PCP) agreement. This is a regulated Consumer credit agreement which means we can investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr V entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances.

I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr V took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it would be fair and reasonable to ask AFS to put this right.

The car was around three years old when Mr V acquired it and had completed approximately 29,000 miles and I think a reasonable person would expect a car of this age and mileage to be free from significant defects for a considerable time. I have used the mileage recorded on the MOT as there is a discrepancy in the recorded mileage on the credit agreement, which was lower than that recorded for the earlier MOT.

I considered if there was a fault with the car. I've considered evidence provided by both sides and the independent report and it is not in dispute that there is a fault with the car as

this is recorded in both the independent and repairing dealer's reports. But just because there are or were faults found with the car, does not automatically mean that the car was not of satisfactory quality at the point of supply. So, I've gone on to consider if the car was of satisfactory quality when it was supplied to Mr V.

I will first consider the issues with the battery. Mr V reported problems charging the battery at home in the two weeks before the breakdown and says it was taking considerably longer than before to charge and that warning lights were appearing. As Mr V had the car for eight months before reporting a fault AFS required Mr V to provide an independent report before they would fully consider his complaint. This he did at a cost of £480.

The independent report that AFS had requested reported battery management system issues, four fault codes relating to insulation warnings in the hybrid/high voltage on-board electrical system and two fault codes relating to the hybrid/high voltage battery module. Because of this the report said the examining engineers did not start the engine or complete any road testing due to the high-voltage insulation issue which could potentially lead to thermal incidents, and concluded that it was:

'unsafe to road test the vehicle or even energise the main hybrid battery'.

The report recommended these faults:

'require attention as soon as possible to prevent any shorts and further issues. This may suggest a defect with a high-performance, high-voltage/hybrid battery and /or the wiring...'

and provided supporting rationale for their decision that their findings made it too dangerous to start the car, describing the importance of insulators to ensure the safe operation of high-voltage components, stating the quality and durability of insulators are paramount as any degradation or failure of those materials could lead to dangerous situations including electrical fires, system failures and electric shocks.

The report goes on to explain that several factors can contribute to the degradation of insulators in electric cars, including environmental conditions such as extreme temperatures, humidity and exposure to chemicals. But it says that it also could be due to manufacturing defects or poor design. The report continued to say if the materials used are not of high quality or if there are flaws in the production process the insulators may not perform as intended, which can be particularly concerning in high-stress areas of the vehicle, such as near the battery or in the power electrics unit, where any failure could have catastrophic consequences.

The report concluded:

'There does appear to be a fault with the hybrid/high-voltage battery and the insulation which may have broken down, requiring extensive investigation and repairs... Although the specific cause of the issue has not been fully established, generally speaking, these types of conditions are progressive in development. However, the vehicle has covered 18,000 miles since the point of sale and from a strictly engineering perspective we are unable to confirm these conditions were present at point of sale'.

From this report I am satisfied there is a fault with the battery and insulators and can understand Mr V's concerns and why he wishes to reject the car. I am not persuaded by AFS's argument that the report states the faults were not present when Mr V acquired the car. The report describes the faults as 'generally progressive', so developing over time, but goes on to say that given the mileage completed cannot state whether the faults were

present when Mr V acquired the car or not. So, the report doesn't say the faults were not present, or that they were. It is inconclusive.

But I have to consider not only whether the faults were present when Mr V acquired the car but also whether the car is sufficiently durable to make it of satisfactory quality. And I do not believe a car around four years of age and having completed less than 50,000 miles that has developed these faults to be sufficiently durable.

Turning to the more detailed diagnostic report subsequently provided by the repairing dealer which confirms the fault codes identified in the independent report and goes on to suggest replacing the front axle power electronics as a possible remedy. But this report does not provide evidence that there is not also fault with the battery or insulators and states a further five hours of investigation work is necessary to establish if that is the case.

So, I am not persuaded that the solution proposed by AFS and the repairing dealer would resolve the faults on the car. In addition, although the warranty itself is not under consideration here, it has been suggested that if a fault were to be found with the battery, this would be replaced under warranty. But that has already been refused by the manufacturer and so this solution, suggested by AFS, that Mr V can use the warranty if their proposed repairs do not resolve the faults with the car, is also not a viable option.

Looking now at the repair that has taken place, and the length of time Mr V has waited for repair. Where goods are not of satisfactory quality Section 23 of the CRA says a Mr V has 30 days from the date of purchase to reject faulty goods, after this, they have a right to ask the trader to repair the goods or replace them. And if the goods are still faulty after one attempt at repair or if repair is not completed in reasonable time and without significant inconvenience, they have a final right to reject goods or receive a price reduction up to the full value of the goods.

As the fault was raised outside of the 30 days since it was supplied to Mr V, he did not have the right to immediately reject the car and it was reasonable for the trader to undertake a repair first, which I'll refer to as the single chance of repair.

I have found the car was not sufficiently durable to be of satisfactory quality and so Mr V was entitled to a repair. A valve was repaired but this did not resolve the issues. There is no certainty that the further repairs that have been proposed would resolve the problem and as these were not proposed for over four months, and have still not been started, I find this was not within a reasonable time or without significant inconvenience to Mr V, and so Mr V should be allowed to reject the car.

I have seen that Mr V has explained that he has been put to great inconvenience as he has been without his car since May 2024, and that this has caused him considerable financial difficulty, as he has maintained his monthly payments for the car but has also had to pay for a hire car. I have also noted that Mr V has shown that he has only hired a car when he has had to and has engaged with AFS to try and achieve an early resolution, but his proposals were declined by AFS.

I have also noted that the repairing dealer carried out a service and MOT with some other repairs, however as the car has remained with the repairing dealer since these were carried out Mr V has had no benefit from them.

Putting things right

The car has been off the road and undrivable since May 2024. Mr V was supplied with a courtesy car until the end of July 2024. As such, since then he has been paying for goods he

was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as AFS failed to keep Mr V mobile, I am satisfied they should refund the monthly instalments he has made from 1 August 2024. This is slightly different to the view given by our investigator who had not discounted the period Mr V was provided with a hire car.

In addition, Mr V has had to pay for hire cars to enable him to continue working, which he would not have had to do had he been provided with a car of satisfactory quality. Our investigator gave the view that AFS should pay any amount Mr V has paid for hire cars that is greater than the amount of his monthly instalment. However, I note from the receipts he has submitted that although newer, the hire cars have been of a more basic make and model than the car Mr V acquired and which, if acquired on a similar contract to that which he took out, would likely have a monthly payment of just over two thirds of the amount he was paying.

As Mr V has not had the benefit of enjoying the type and model of car he acquired while using hire cars it seems only fair he should be compensated for this and reimbursed appropriately, this differs to the view already given which deducted the full amount of the current monthly payment. So, AFS should refund Mr V's hire car costs over £350 per month. Mr V has provided a breakdown of his hire costs for August 2024 to April 2025 inclusive, though he had no costs in September 2024. The total hire costs for this period of eight months is £10,539.55, less £350 per month gives a total amount due of £7,739.55. Mr V has provided projected costs for May 2025 of £1,665.00 which, less £350, will be a further £1,315.00, the final amount to be confirmed at the date of settlement. I invite Mr V to provide the full set of receipts for costs incurred to date before I reach my final decision, whilst acknowledging there may be further hire costs incurred before the date of settlement in which case evidence of these should be provided to AFS.

Although the above breakdown is different to that given by our investigator the total amount for monthly payments and hire costs is not significantly changed.

Mr V has been asked to pay for the service, MOT and repairs that have been completed but as he has had no use of the car since these were carried out, I think it is only fair that AFS should pay these costs which should be made direct to the repairing dealer. The repairing dealer has provided an invoice for a total of £1,966.71.

Mr V has paid for the independent report that was requested by AFS, and I think it is only fair that AFS should reimburse these costs.

It is clear that Mr V has been inconvenienced by having to arrange for the car to be repaired, and by this repair being unsuccessful. And he was further inconvenienced by being left without a car and having to repeatedly arrange hire cars, but the greatest distress and inconvenience has been meeting the cost of both the monthly instalments for the car he had acquired as well as substantial hire car costs. I think, Mr V would not have to do this, had AFS supplied him with a car that was of a satisfactory quality, and I am sorry he has had this experience. So, I think AFS should pay him £400 in compensation to reflect the distress and inconvenience caused.

I note that Mr V has repeated his concerns about the level of distress and inconvenience he has experienced and asked if this could be increased. However, as overall my provisional decision has slightly increased the overall payment he will receive, I do not think it would be appropriate to also increase the compensation for distress and inconvenience.

Therefore, AFS should:

- *end the agreement with nothing more to pay*
- *collect the car at no cost to Mr V*
- *remove any adverse entries relating to this agreement from Mr V's credit file*
- *refund the £4,500 deposit Mr V paid*
- *refund the monthly instalments Mr V has made from 1 August 2024 to until the date of settlement*
- *refund hire car costs greater than £350 per month for each month Mr V has hired a car (there were no hire car costs for September 2024) until the date of settlement, Mr V to provide receipts for all costs*
- *refund £480 for the independent report (Mr V to provide evidence of cost)*
- *apply 8% simple yearly interest on the refunds, calculated from the date Mr V made the payment to the date of the refund[†]*
- *pay outstanding costs for MOT, service and repairs of £1,996.71 (payment to be made direct to the repairing dealer)*
- *pay Mr V an additional £400 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

[†]If AFS considers that tax should be deducted from the interest element of my award, they should provide Mr V with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

I asked both parties to provide me with any additional comments or information they would like me to consider by 13 June 2025.

AFS did not respond to my provisional decision.

MR V said that whilst he agreed with the provisional decision, he has been paying the £1,996.71 service and MOT bill himself by monthly instalments via a bumper payment plan. I therefore contacted AFS informing them of this and my intention to amend my final decision to require them to refund all payments Mr V has already made towards this bill to him with interest, with any outstanding balance to be paid direct to the garage. And I extended the time for responses to the 20 June 2025.

I also informed Mr V of my intention to make this change to which he agreed.

AFS have not made any response and as such I have taken that to mean they have no further comments or information to put forward for consideration.

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 also considered again my provisional findings.

As AFS haven't responded, I'm taking this to mean they don't object to my provisional decision.

In view of this I've no reason to depart from the findings I've already in my provisional decision and for the same reasons but with the amended requirement for AFS to refund to MR V the monthly payments he has already made towards the £1,996.71 bill for service and MOT with interest with any outstanding balance to be paid direct to the repairing garage.

Putting things right

Mr V acquired a car that was not of satisfactory quality. Therefore, BMW Financial Services (GB) Limited trading as ALPHERA Financial Services should:

- end the agreement with nothing more to pay
- collect the car at no cost to Mr V
- remove any adverse entries relating to this agreement from Mr V's credit file
- refund the £4,500 deposit Mr V paid
- refund the monthly instalments Mr V has made from 1 August 2024 to until the date of settlement
- refund hire car costs greater than £350 per month for each month Mr V has hired a car (there were no hire car costs for September 2024) until the date of settlement, Mr V to provide receipts for all costs
- refund £480 for the independent report (Mr V to provide evidence of cost)
- refund to Mr V all payments he has made towards the £1,996.71 bill for MOT, service and repairs
- apply 8% simple yearly interest on the refunds, calculated from the date Mr V made the payment to the date of the refund[†]
- pay any outstanding costs for the bill for £1,996.71 for MOT, service and repairs direct to the repairing dealer
- pay Mr V an additional £400 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If AFS considers that tax should be deducted from the interest element of my award, they should provide Mr V with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

My final decision

For the reasons explained, I uphold Mr V's complaint about BMW Financial Services (GB) Limited trading as ALPHERA Financial Services, and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 25 July 2025.

Jo McHenry
Ombudsman