

The complaint

Mr H complains about a car supplied under a hire purchase agreement, provided by BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ('BMWFS').

What happened

Around October 2024 Mr H acquired a used car under a hire purchase agreement with BMWFS. The car is listed with a cash price of £12,580, was around five years old and had covered around 56,059 miles. Mr H paid a deposit of £2,000.

Unfortunately, Mr H says the car developed issues. He says an engine management light ('EML') appeared in relation to the exhaust. He said he expected the car to achieve 47-52 mpg but was only getting around 30-32 mpg. He said the windscreen heater is faulty and a rear panel rattles on uneven ground. He says a door seal leaked leading to internal condensation. And he says he did an HPI check and found the car had previously been involved in an accident.

Mr H also said he believes the car is only worth about £7,500 and says he was charged too much for it.

Mr H complained to the dealer in November 2024 and asked to return the car. The dealer said he couldn't reject it and also explained the car was "*HPI cleared*". The dealer said it would assist with Mr H repairing the car under warranty.

Mr H was unhappy with this and said as he'd raised the complaint within 31 days it shouldn't be down to him to get the car repaired. The dealer responded and said it had the right to repair the car.

The dealer then explained to Mr H that he raised the issues 30 days after handover but said it couldn't proceed with any further action as he hadn't provided evidence of any faults and refused to engage with the warranty company.

Mr H complained to BMWFS later in November 2024. In January 2025, it explained it was still investigating and gave him referral rights to our service.

In March 2025 BMWFS issued its final response. This said, in summary, that Mr H had explained to BMWFS in late January 2025 that repairs had now been completed on the car. And BMWFS said the cost of the car was clear on the agreement.

Mr H remained unhappy and referred the complaint to our service. He said he had reluctantly had the car repaired and a new lambda sensor was installed. But, Mr H said no other issues were investigated. And he said while the EML went off following the repair, the mpg the car was achieving didn't improve as he expected.

Our investigator issued a view and did not uphold the complaint. She said, in summary, that it wasn't unreasonable for the dealer and BMWFS to ask for evidence of faults. She said while Mr H had provided a photo of an EML, he hadn't provided any further evidence at the

time. And she explained Mr H hadn't provided our service with any further evidence of the faults or the repair. She explained mpg could be affected by a number of factors, and she hadn't seen evidence there was anything wrong with the car.

Our investigator said she hadn't seen the car was misrepresented as it had a clear HPI check. And she said she hadn't seen Mr H had raised the issue of the car's price with BMWFS.

Mr H responded and disagreed. In summary, he said the car had the issues he described. He said he had acquired the car to use as a taxi, but couldn't acquire a private hire license due to the state of the car. And he said it was unfair he was being charged £16,000 for it. He also said the car now needed further repairs. And he said he had only used the car for around 2,000 miles.

Mr H sent an invoice showing a lambda sensor was replaced under warranty on 23 January 2025. This showed the car had covered 56,638 miles.

Our investigator then issued a further view. This said, in summary, that she didn't think any further action was needed by BMWFS as a repair had been completed. She said she didn't think Mr H had a right to reject the car as the dealer asked him for evidence of a fault when he complained, that he didn't provide.

Mr H explained he didn't get the car repaired until after BMWFS should've responded to the complaint.

As Mr H remained unhappy, the complaint was passed to me to decide. I sent both parties a provisional decision on 27 August 2025. My findings from this decision were as follows:

Mr H complains about a car supplied under a hire purchase agreement. Entering into regulated contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr H's complaint against BMWFS.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. It's worth setting out that all parties in this complaint have referred to the Consumer Rights Act 2015 ('CRA'). However, I'm satisfied in this case that this is not the relevant legislation to consider. I say this as Mr H has told our service on multiple occasions that the reason he entered into the contract was to use the car for private hire.

This means I'm satisfied he entered into the agreement wholly or predominately for business purposes. Because of the amount of credit provided, I'm satisfied the agreement was still regulated and so this doesn't affect our service's ability to look into the complaint. But it does mean that it is the Supply of Goods (Implied Terms) Act 1973 ('SGA') that I need to have in mind here.

Similarly to the CRA, the SGA also sets out that under a contract to supply goods, there is an implied term that the goods should be of 'satisfactory quality'.

Satisfactory quality is what a reasonable person would expect, taking into account any relevant circumstances. I'm satisfied a court would consider relevant circumstances, amongst others, to include the car's age, price, mileage and description.

So, in this case I'll consider that the car was used, around five years old, had covered around 56,000 miles and cost around £12,500. This means I think a reasonable person would not have the same expectations as for a newer, less road worn car. But, I think they would still expect it to be in reasonable condition and be free from anything other than minor

faults.

What I need to consider in this case is whether I think Mr H's car was of satisfactory quality or not. Mr H has raised various issues so I'll consider these in turn.

Lambda sensor:

I'm satisfied Mr H's car had a fault with the lambda sensor that required it to be replaced. I say this as I've seen a copy of an invoice for the repair under warranty dated 23 January 2025. This showed the car had covered 56,638 miles

I've also seen photos Mr H provided to the dealer when he complained a few weeks after getting the car. These show an EML illuminated on the dash. I've not seen any other explanation for this, so I think it's most likely the sensor issue was causing the EML.

Because I think the EML was linked to this issue, this appeared at the most only around four weeks after Mr H got the car. He'd only covered around 600 miles at the point of repair. And I've considered the car failed an MOT test shortly before Mr H acquired it on three emissions checks, which could well be linked.

Considering all of this, I'm satisfied this fault was present or developing when Mr H acquired the car. And I'm satisfied a reasonable person would consider this meant the car was not of satisfactory quality when supplied.

Fuel efficiency:

Mr H says he expected the car to achieve a much higher mpg than it showed when he drove it.

I've carefully thought about this. And I appreciate Mr H has shown a photo of the dash showing the lower figures he mentioned in his complaint. But, I have no other evidence here.

The mpg achieved by the car will vary based on a very large number of conditions, including but not limited to driving style, driving conditions, journey type, weather, tyres, tyre pressure, vehicle load etc.

Thinking about all of this, I haven't seen the car wasn't performing as it should in terms of fuel efficiency nor that a fault was present. It follows I don't think this meant the car was of unsatisfactory quality.

Heater and door seal:

Mr H says the windscreen heater wasn't clearing properly on the passenger side. And he said a seal was letting moisture in.

Mr H provided photos and a video that appear to show ice on the inside of the car. But again, there isn't further evidence available and there is a limit to what Mr H provided can show.

I've carefully thought about this. But I haven't seen enough to persuade me there was a fault here.

Rattle:

Mr H says a panel of the car from the rear makes a rattling noise on uneven ground. But I've been provided with no evidence of this.

While I've considered what Mr H said, I'm not persuaded there is a fault here.

Accident damage:

Mr H says he believes the car has been in an accident and repaired.

Mr H provided a screenshot showing a website. This has two graphics of a car, one with a red bonnet and one with an orange rear wing. But this contains no other details. And text has been blurred out on the graphic for the date, 'category' and 'type'.

BMWFS provided an HPI check showing "Insurance Write Off (Damage) Clear"

Again there is a lack of evidence here. But I'm not persuaded the car had accident damage that meant it was of unsatisfactory quality when supplied.

Value of car:

Mr H is unhappy with the price he was charged for the car and believes it should have cost less. Our investigator said this part of the complaint couldn't be considered as Mr H hadn't raised this with BMWFS. But respectfully I disagree – this is mentioned in the final response it sent.

That being said, it is not my place to decide whether the car was good value or not.

I have considered if the car was misrepresented to Mr H. I would consider a misrepresentation to have occurred if Mr H was told a 'false statement of fact' about the car that persuaded him to enter into the contract when he otherwise would not have.

I have considered if the price was made clear to Mr H. I can see this was set out on the credit agreement that Mr H signed and on other documents. And I can't see Mr H was told anything different about the cost of the car. This means I can't see the car was misrepresented to him or didn't match a description.

Mr H has also raised concerns about the interest being charged. But I can see the interest rate, APR, total charge for credit and total payable was set out on the agreement. So again, I can't see Mr H was given any incorrect information about this.

Summary and putting things right:

In summary, I find Mr H's car was of unsatisfactory quality when supplied due to the lambda sensor/EML. I haven't seen enough evidence to persuade me the car had the other faults or accident damage Mr H complained about. And I can't see BMWFS needs to take any action in relation to the cost of the car nor interest.

I've then gone on to consider what should be done to put things right. Mr H has been very clear he wants to reject the car. So I've considered if this would be reasonable.

Here I do need to consider the differences between the CRA and the SGA. The SGA does give Mr H a right to reject the car if it was of unsatisfactory quality. But it does not specifically contain the same 'short term right to reject' as set out by the CRA. That being said, I still have had in mind what the later legislation sets out when considering what's fair and reasonable.

I've considered what happened when Mr H initially complained. I can see he made the dealer aware of the faults within 30 days after he acquired the car and asked to reject it. And

he provided photos showing the EML was on.

Our investigator explained she thought the dealer asked Mr H to provide a diagnostic to show faults were present, which he didn't provide. But having reviewed the emails with the dealer, I don't agree this was the case.

When Mr H complained and asked to reject the car, the dealer responded and said he didn't have the right to reject the car as it was after a 14 day cooling off period. It said he would only have the right to reject if "the fault you have was fixed and then re-occurred within the initial 6 months". To be clear, this complaint isn't about the dealer. But I still think it's worth explaining to all parties that this is not what is reflected in either the CRA or the SGA. So Mr H was given incorrect information about his right to reject.

The dealer went on to explain Mr H's only option was to get the car repaired under warranty. I can't see that it asked Mr H to give it further information, offered to inspect the car nor explain he may have the right to reject. Mr H questioned this and was again told he could not reject the car and could only have a repair.

BMWFS did ask Mr H to provide a diagnostic, but the earliest I've seen this was on 21 January 2025. This was around three months after Mr H acquired the car and around eight weeks after Mr H complained to BMWFS.

I've then considered that Mr H had the car repaired. But under the circumstances I can see why he did this. He explained he was at risk of losing his job if he couldn't drive. Driving the car with an EML illuminated could've potentially caused further damage. And he only repaired the car a significant time after the dealer had told him he could not reject it multiple times.

Thinking about this, while it might have been reasonable for the dealer and BMWFS to gather further evidence about the faults, neither proactively attempted to do this. BMWFS only asked Mr H to give further information a significant time after Mr H had, incorrectly, already been told he had no right to reject the car on multiple occasions. I'm satisfied there was evidence of a fault when Mr H asked to reject the car, as he provided photos showing an EML – and any further investigation would've shown the issue with the Lambda sensor.

Thinking about all of this, I find Mr H had a right to reject the car when he attempted to do so. I find he should've been allowed to do this at the time. And under the specific circumstances here, I find it is reasonable he is still allowed to do so.

I've then gone on to consider what else would be reasonable to put things right.

Mr H has explained he has only used the car for essential journeys due to him wanting to reject it. And I can see an MOT was passed a week ago at the time of writing, where the mileage was recorded as 57,925. So, the car has done less than 2,000 miles since Mr H acquired it. However, it's very difficult to know what the use of the car would've been had there not been an issue – for instance the agreement contains no mileage allowance on which the expected use could be estimated.

All of that being said, I am satisfied on balance it's likely Mr H used the car far less than he might have expected. So, while I think it's reasonable for BMWFS to retain some payments for usage, I think it should reimburse him 50% of these from the point I've first seen evidence of the fault, which is when he complained to the dealer. I will reconsider this figure in my final decision if either party provides evidence to show a different amount would be reasonable.

I'm also satisfied Mr H has suffered from distress and inconvenience because of what

happened. I think it must have been stressful when the car developed the fault. He has clearly found it frustrating that he wasn't allowed to reject the car when he exercised this right. And he's had to take time out to organise repairs and contact the parties involved.

Thinking about this, I find BMWFS should pay him £300 to reflect what happened.

I gave both parties two weeks to respond with any further comments or evidence.

BMWFS didn't get in touch.

Mr H replied and said he was happy with the outcome. But he explained he thought a higher amount should be paid to reflect the distress and inconvenience caused and gave some reasons to consider.

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 carefully thought about what Mr H said in response to the provisional decision. In summary, he explained the situation had damaged his livelihood, and had a serious impact on his mental health.

I want to reassure Mr H I've carefully thought about everything he said, and I was sorry to read about the situation. But, thinking about things in the round, I still think the amount BMWFS should pay that I set out in my provisional decision is fair and reasonable.

I've considered all of the other information on the case again. Having done so, I still think this complaint should be upheld for the same reasons explained above.

My final decision

My final decision is that I uphold this complaint. I instruct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to put things right by doing the following:

- end the finance agreement ensuring Mr H is not liable for monthly rentals after the point of collection (it should refund them any overpayment for these if applicable);
- take the car back (if that has not been done already) without charging for collection;
- reimburse Mr H's deposit of £2,000*
- reimburse 50% of all repayments from 22 November 2024 to when the car is collected * **;
- Pay Mr H £300 to reflect the distress and inconvenience caused and;
- Remove any adverse information from Mr H's credit file in relation to this agreement

*These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If BMWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the

tax from HM Revenue and Customs if appropriate.

** I'm aware Mr H stopped making payments towards the agreement. For periods where payment wasn't made, BMWFS should reduce the arrears to reflect this amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 October 2025.

John Bower
Ombudsman