

The complaint

Mr Q complains about the quality of a used car he acquired through a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alphera ('Alphera'). Mr Q says the car isn't of satisfactory quality. He says there were issues with the car very early on and it has now been deemed not road worthy. He says Alphera has not handled this issue, and the complaint, correctly.

What happened

Our Investigator thought the complaint should be upheld. Alphera disagreed with the Investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Mr Q's complaint should not be upheld. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision:

Mr Q's complaint is about the quality of a car he acquired in April 2024. The car was used, and it was first registered in September 2021. So, it was three years old when Mr Q received it. I understand the car had covered 10,201 miles.

Mr Q acquired the car using a hire purchase agreement that was started in April 2024. The vehicle had a retail price of £79,995. Mr Q paid a £7,995 deposit meaning £72,000 was financed. This agreement was to be repaid through 48 monthly instalments; there were 47 monthly instalments of £1,226.77 and then a final instalment of £37,509. If Mr Q made repayments in line with the credit agreement, he would need to repay a total of £103,162.19.

Below is a summary of the issues complained about by Mr Q and the investigation and repair work that has been carried out, alongside what has happened in respect of the complaint.

There has been a significant amount of correspondence in this complaint about the car and the agreement. I have read this, but I won't refer to it all here or talk about all the issues that have been raised. This is partly to avoid providing too much detail about Mr Q's circumstances to protect his privacy, and partly as I don't need to refer to all of it to reach my decision. So, I'll just talk about what is needed for me to decide if Alphera has acted fairly in relation to the quality of the car.

After he received the car Mr Q said he noticed a loss of power and so he took it to a manufacturer's dealership in April 2024. The dealership looked at the car and said that the coolant pump was faulty and that all the jacking blocks were missing. The repair cost was quoted at £208.28. In response to our Investigators opinion Alphera supplied information that shows these issues were repaired at the time and under warranty.

But then, still in April 2024, Mr Q told the car dealer he purchased the car from that he wanted to reject it. The dealer initially didn't agree to this.

Mr Q then took the car to an independent garage (or garages), and he's provided videos of the outcomes of some inspections which took place in May 2024. These show various instances of what is said to be damage to the car possibly by a previous impact. I've seen some of the videos and

documentation which indicate that some of the rear panels may have been misaligned and there is other damage possibly commensurate with an accident.

The dealer initially didn't agree that the car wasn't of satisfactory quality at this time and didn't agree to it being returned. However, following some discussions, in June 2024 the dealer agreed that Mr Q could reject the vehicle. This would happen on 10 June 2024, and the finance would be unwound when the car was returned.

The dealer said it would deduct some amounts to account for Mr Q's use of the car. The dealer thinks that as Mr Q has been able to drive it then this is reasonable, and it has noted that he had driven the car a significant distance. And the dealer thinks that it should be able to inspect the car for any damage caused during the period of Mr Q's ownership.

I've seen some correspondence between the credit broker, the car dealer and Alphera, from June 2024 concerning the return of the car where it is noted the car has covered 2,133 miles at this point. And that the initial diagnostic, about the coolant problems, is not backed up by the second video reports which allege the car has accident damage.

Mr Q didn't return the car as he didn't agree with any deduction for the use of it. It's unclear where the car was at this time although Mr Q has indicated that it was stored at a garage. He's not provided evidence of this.

The agreement was defaulted in July 2024, and terminated in August 2024, due to non-payment of it. At the time of bringing the complaint to the Financial Ombudsman Service Mr Q confirmed that the mileage of the car was 13,861.

I understand the car is now in the possession of a third party. I have been given some information about this process, but not all of it. I don't intend to reproduce any of this here as it isn't relevant to my considerations about the quality of the car.

Mr Q complained to Alphera in May 2024 saying that the car had a faulty coolant pump that was causing low engine pressure. Alphera considered this complaint, and it didn't uphold it. It said that it had been agreed that Mr Q could reject the car. But he didn't return it to the dealer and has used it excessively since this time. So, it didn't think Mr Q should still be able to reject the car. And it would require an inspection to determine if the car was faulty.

Mr Q didn't agree with this and brought his complaint to the Financial Ombudsman Service. Our Investigator upheld Mr Q's complaint. She said that it was established that the car was faulty due to the coolant problems, and so it was likely that it wasn't of satisfactory quality. And so, Mr Q should be able to reject the car. She thought most of the payments Mr Q made should be refunded to him.

Alphera didn't agree with the Investigator and asked that the complaint was considered by an Ombudsman. Because Alphera didn't agree, this matter has been passed to me to make a final decision.

What I've provisionally decided – and why

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

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Alphera as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that 'the quality of the goods is satisfactory'.

To be considered 'satisfactory', the goods would 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 car's history.

The quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of this.

This car was about three years old when Mr Q acquired it and it had travelled around 10,000 miles. I think a reasonable person would accept that such a vehicle could have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a new vehicle.

But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset. So even though the vehicle wasn't new Mr Q should have been able to use it for a reasonable period before it needed significant work.

Was there a fault with the car and did this mean it wasn't of satisfactory quality

Our Investigator thought that the car was faulty, and so not of satisfactory quality, as there was evidence that a manufacturers dealership had found a problem with the coolant system.

But after her opinion, Alphaera provided evidence that showed this problem was repaired at the time at no cost to Mr Q. And this is supported by the information Mr Q supplied himself, the inspection report and video, which shows that the work was approved and would be completed. It seems to me this was a relatively minor problem that was rectified without significant work. So, I don't think this made the car of unsatisfactory quality or that Mr Q should be able to reject it for this reason.

Mr Q has also provided some video evidence of what he says is damage to the car. I have looked at these, but I don't think they are conclusive that the car wasn't of satisfactory quality when it was supplied.

Firstly, it's not clear where or under what conditions these inspections took place. There is no evidence that shows the who undertook the inspections and if they were a VAT registered garage or similar body. It's very difficult to put much weight on evidence when I can't be certain of its provenance.

Added to this, even if I were to accept a reliable inspection had showed some bodywork imperfections, these could have been visible at the time of sale and reflected in the price. And it isn't unusual for a used car to have some form of bodywork wear and tear. This does happen over time in any car. I don't think there is enough in the videos for me to say the car wasn't of satisfactory quality at the time of sale in any event.

It would be usual for an independent report to be completed to consider any damage in more detail, and give an opinion about, for example, whether it was accident damage that has been poorly repaired. And whether the car was likely to have been of satisfactory quality at the time of sale. But from what I understand about the situation with the car this won't now be possible. So, I don't think it has been, or can be, shown that the car wasn't of satisfactory quality at the time of supply.

And overriding all of this is what happened after Mr Q said that the car wasn't of satisfactory quality. The dealer offered to take back the car and unwind the finance agreement, but it did want Mr Q to pay for usage of it and for any damage. As a starting point this is reasonable as I don't think Mr Q should have had use of the car without cost. The hire purchase agreement does say that damage should be paid for, within certain industry standard guidelines. Mr Q would have needed to pay these costs in any event. Thinking about what I've just said I don't think it was reasonable to not return the car due to him being concerned he may have damaged it when he did this.

It's not clear why Mr Q continued to drive the car, or why he continued to use it, whilst saying it was not fit for purpose. And it makes it difficult now to say a loss has been suffered due to the quality of the car as Mr Q's complaint is that the car was not of satisfactory quality, but he was seemingly able to use it normally.

What the dealer and Alphera were prepared to do in June 2024 was a reasonable way to resolve this situation. But Mr Q chose not to accept this and the events since this time persuade me that it wouldn't be right for this to happen now.

Overall, I don't think it's reasonable to say that the car wasn't of satisfactory quality at the point of sale. I don't think that Alphera should be responsible for paying any compensation.

Developments

Alphera, and Mr Q, received my provisional decision. Alphera agreed with what I said.

Mr Q, didn't agree with my provisional decision and provided a detailed and lengthy response. He said that, in summary:

- The manufacturer verified safety defects with the car within 30 days. He said the main things were the coolant system failure and a drivetrain leakage. Mr Q says he was advised by the manufacturer not to drive the car due to the risk of mechanical failure; these were not 'minor' problems.
- Mr Q asked to reject the car within 30 days. He says this was accepted by the dealership and it agreed to unwind the contract.
- Alphera, or the dealership, didn't provide a safe means to return the vehicle. It ignored his request to return the car safely, but then said he needed to make a two hour journey, with under 24 hours' notice, to return it. The delays in the car being returned were due to Alphera and the dealer.
- The car was not taken from Mr Q's possession for any '*repair works*' and only taken to garages to evidence faults. No repairs were completed.
- The condition of the bodywork was not in line with the age and mileage and value of the vehicle.

As Mr Q hasn't agreed I've gone on to issue my 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.

As I've outlined above Mr Q has responded in detail to my provisional decision, but he has acknowledged the evidence and arguments he discussed have already been provided to the Financial Ombudsman. I think it's reasonable to say I had already considered these, and so I've reached the same conclusions I reached before, for the same reasons.

As before, I have considered all the evidence and arguments provided, but I'm not going to provide detailed responses to all the issues raised for the same reasons I gave in my provisional decision.

As I said in my provisional decision, Alphera has provided an invoice of a repair that was made to the coolant system, this coincides with the time that Mr Q says that he brought this issue to the dealerships attention. Mr Q says this repair didn't happen and the car remained

in a dangerous condition due to this, and other, faults.

But it is established that Mr Q continued to use the car after this point and the information I have, some of which Mr Q supplied himself, shows that he drove it for around 3,000 miles. Even accepting that the evidence may not be complete, and both parties to the complaints version of what happened here differ, it's difficult for me to say that the car was not of satisfactory quality, or unsafe, given that Mr Q was clearly still able to use it.

As has been established the dealership, at one point, did agree that Mr Q could return the car and unwind the contract. But he didn't accept this at the time. I still think that if Mr Q wanted to accept this arrangement he could have returned the car, I don't think he needed a 'safe' way to do this. I don't think the delays in Mr Q returning the car were solely due to the dealership or Alpheria. The correspondence I've seen doesn't show this.

But, overall and as before, I don't think there is enough here for me to say that the car wasn't of satisfactory quality. And even if there was, as Mr Q continued to use the car, it's still not clear how to establish whether a loss was suffered. Again, I accept that this may be because a proper inspection of the car hasn't been made, particularly in regard to the allegations about the bodywork. And an inspection this now isn't possible. But it still means that I don't think I can reasonably uphold this complaint.

My final decision

I do not uphold this complaint, and I make no award.

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

Andy Burlinson
Ombudsman