

The complaint

Mr A is unhappy that a car supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alphera Financial Services ('Alphera') was of an unsatisfactory quality.

What happened

In November 2022, Mr A was supplied with a used car through a hire purchase agreement with Alphera. He paid an advance payment of £2,000 and the agreement was for £18,250 over 60 months, with monthly payments of £383.08. At the time of supply, the car was around two years and nine months old and had done 45,614 miles.

Mr A started to have problems with the heating system in the car and it was taken back to the dealership for repair on several occasions between March and July 2023. As the repairs weren't completed satisfactory, and the heating fault remained, Mr A returned the car to the dealership on 27 July 2023.

Mr A initially complained to Alphera about the problems with the car. They responded to his complaint on 1 June 2023 saying that, as the dealership had agreed to repair the car, they didn't think they needed to do anything more. However, as the repairs undertaken by the dealership didn't fix the fault, Mr A brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator was satisfied there was a fault with the car which made it of an unsatisfactory quality when supplied. As multiple repair attempts had failed, the investigator said that Mr A should now be allowed to reject the car. The investigator also said that Alphera should refund one-third of the payment Mr A made for July 2023, to compensate him for the period he was without the use of a car or a courtesy car; that they should refund him all the payments he's made since August 2023, as he didn't have any use of the car during this period; and pay him an additional £250 compensation.

Alphera agreed with the investigator's opinion, and they said they've already collected the car, and refunded Mr A's deposit.

Mr A also agreed that he should be allowed to reject the car. However, he wasn't happy with how long Alphera took to accept the investigator's opinion and he asked for an ombudsman to make a final decision *"as I want to ensure full action is taken against the company for giving me a faulty car."*

Mr A also said that he'd had to rent another car at the cost of £600 a month, as he needed this for his job as a private hire driver. He subsequently supplied evidence of these hire car costs, and he's looking for Alphera to reimburse these.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. 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 A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Alphera are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Alphera can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr A to show it was present when the car was supplied.

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

In this instance, it's not disputed there was a problem with the heating system of the car, nor that this fault was present when the car was supplied to Mr A. Additionally, both parties have agreed that Mr A should be allowed to reject the car, and this process has already started. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what, if anything, I think Alphera should also do to put things right.

Putting things right

Mr A was able to use the car, without any noticeable impairment, between it being supplied to him in November 2022, and 17 July 2023. What's more, for any period the car was being repaired between these dates, Mr A was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage. So, I won't be asking Alphera to refund any of the payments he made up to 17 July 2023.

Mr A returned the car to the dealership on 17 July 2023, for a further repair to the heating system, and the car wasn't returned to him until 24 July 2023. During this repair period, Mr A wasn't provided with a courtesy car. What's more, as this final repair attempt failed, Mr A returned the car to the dealership on 27 July 2023 and didn't have it in his possession since that date, nor was he provided with alternate transport.

As such, Mr A didn't have use of the car, or any alternate transportation, for a period of 12 days in July 2023 and since August 2023. So, he was paying for goods he was unable to

use, and I think it's fair that Alphera should refund Mr A the equivalent of 12-days' worth of the July 2023 payment, plus all the payments he's made from August 2023 onwards.

Mr A has raised the issue of the hire car, as this was needed for him to continue to work as a private hire driver. It's also not disputed that he was using the car supplied to him by Alphera for this private hire work as well, up until July 2023.

When considering the hire car, I need to look at two different elements. Firstly, I need to consider betterment. When looking at what is a fair and reasonable remedy, I look to place the customer back in the position they would've been had the car not been faulty. If I were to ask Alphera to refund the hire car costs, as well as the payments Mr A made, then he would essentially be in a position whereby he had payment free motoring from August 2023 onwards. This is not the position he would've been in had the car not been faulty, and Mr A would've had to make payments to Alphera. As such, to refund both the payments he's made to Alphera, and the hire car costs, would put Mr A in a position of betterment – something it would be unfair to do.

I also need to consider the terms of the agreement Mr A signed. Term 4(j) of this agreement states:

“until the Vehicle is returned to us at the end of the agreement or you become the owner of the Vehicle, you must: not use or permit the Vehicle to be used for motor sports or track days, or for hire or other financial reward (except you may use the Vehicle for driving instruction if you inform us before starting this use).”

I'm satisfied that, by using the car as a private hire taxi, Mr A was using it for 'other financial reward'. I've not seen anything to show me he advised Alphera of this at the outset of the agreement, or that they agreed he was able to use the car for this purpose. As such, I'm satisfied that Mr A breached term 4(j) of the agreement.

Given this breach, I don't think it would be fair to ask Alphera to refund the hire car costs, as Mr A shouldn't have been using the car for private hire purposes. As such, my opinion they should only refund the payments Mr A has made remains unchanged.

Finally, it's clear that Mr A has been inconvenienced by what has happened. The investigator recommended that Alphera compensate Mr A £250 for the distress and inconvenience he's been caused, and Alphera have agreed to pay this. While this amount is at the top end of what I would likely have directed in the circumstances, as the recommendation has been made and accepted, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Alphera should (if they haven't already done so):

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr A;
- remove any adverse entries relating to this agreement from Mr A's credit file;
- refund the deposit Mr A paid (if any part of this deposit is made up of funds paid through a dealer contribution, Alphera is entitled to retain that proportion of the deposit);
- refund the equivalent of 12-days' worth of the payment Mr A made in July 2023;
- refund all the payments Mr A has made from August 2023 to when the agreement ended;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr A made the payments to the date of the refund[†]; and

- pay Mr A an additional £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†If HM Revenue & Customs requires Alphaera to take off tax from this interest, Alphaera must give Mr A a certificate showing how much tax they've taken off if he asks for one.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 April 2024.

Andrew Burford
Ombudsman