

The complaint

Mr K complains that a car that was supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services, wasn't of satisfactory quality.

What happened

A used car was supplied to Mr K under a hire purchase agreement with Alphera Financial Services that he signed in November 2023. The price of the car was £36,500, Mr K made an advance payment of £2,000, he agreed to make 59 monthly payments of £572.09 to Alphera Financial Services and there was an optional final payment of £13,531.56.

There were some issues with the car: the oil warning light came on on the day that Mr K collected the car so the dealer added oil; the following day Mr K contacted the dealer about an issue with the car's brakes and the dealer agreed to replace the brake discs; Mr K took the car to another garage in February 2024 and it said that the front brake discs needed to be replaced, the lane assist system needed to be recalibrated and a mileage blocker had been discovered.

Mr K complained to Alphera Financial Services and said that he wanted to reject the car. It asked him to take the car to a manufacturer's dealer. The car was inspected in April 2024 and the manufacturer's dealer said that the front brake pads were worn and not braking correctly and a mileage blocker had been fitted to the car. Mr K complained to this service in June 2024.

Alphera Financial Services sent a detailed response to Mr K's complaint in August 2024 which responded to a number of issues that had been raised by Mr K. It said that there was no evidence to demonstrate that the car wasn't of satisfactory quality, or that it was mis-sold, so it didn't uphold his request to reject the car but it offered him £300 compensation to recognise its delay in dealing with his complaint.

Mr K's complaint was then looked at by one of this service's investigators who, having considered everything thought that it should be upheld. He didn't think that the car was of satisfactory quality when it was supplied and he thought that Mr K should be allowed to reject it. He recommended that Alphera Financial Services should: end the agreement; collect the car; refund Mr K's deposit of £2,000 and all monthly payments he'd made under the agreement (with interest); pay him the £300 that it had already offered him due to the distress and inconvenience he's experienced; and remove any adverse information related to the agreement from Mr K's credit file.

Alphera Financial Services said that it and the dealer had requested that it be ascertained when the mileage blocker was fitted so that it could come to a resolution. Mr K says that he's about £2,300 out of pocket which includes cancellation of insurance, road tax, car detailing and taxi fares and wants to wait for the outcome of rejection before discussing them. As Alphera Financial Services hasn't accepted the investigator's recommendation, I've been asked to issue a decision on this complaint.

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.

Alphera Financial Services, as the supplier of the car, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr K. Whether or not it was of satisfactory quality at that time will depend on a number of factors, including the age and mileage of the car and the price that was paid for it. The car that was supplied to Mr K was less than four years old, had been driven for 33,133 miles and had a price of £36,500. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

There doesn't seem to be any dispute that there were issues with the car soon after it was supplied to Mr K. An oil warning light came on and the dealer added oil. More significantly there was an issue with the car's brakes. A garage performed a vehicle health check in November 2023 which recorded the car's mileage as 33,202 miles and said that the front brake pads were scorched and required replacement, the front brake discs were worn and required replacement and the rear pads were worn and required replacement. It also said that it had recalibrated the lane assist system. The dealer agreed to replace the brake discs but issues with the brakes continued so Mr K took the car to another garage in December 2023. It provided Mr K with a quotation which recorded the car's mileage as 33,611 miles and says:

"We found new brake pads which looked like have been bedded in fitted on worn brake disc which was lipped and scoured. Upon road testing we found braking from 50/60 mph vibration through pedal and feeling soft, not sharp as how these vehicle intending to brake. Advised customer on replacing brake discs and pads. Advised customer not to drive as brakes don't feel right".

Mr K paid £60 for another garage to inspect the car in February 2024 and its mileage was recorded at that time as 33,793 miles. The inspection report said that the lane assist system was faulty, a mileage blocker had been installed, and the front brake discs required replacement. A manufacturer's dealer inspected the car in April 2024 and the health check recorded the car's mileage as 33,793 and said:

"Rear brake discs have slight lip. Disc condition is ok and within manufacturer wear tolerances. Brakes are squeaking, may be due to aftermarket rear pads. Unsure if front pads are genuine or not".

I consider that the on-going issues with the car's brakes causes the car not to have been of satisfactory quality when it was supplied to Mr K. The dealer attempted to remedy that issue by replacing the brake discs but the issues have continued and have been confirmed by two garages and a manufacturer's dealer. In these circumstances, I consider that it would be fair and reasonable for Alphera Financial Services to allow Mr K to reject the car and that it should take the actions described below.

Alphera Financial Services says that it should be ascertained when the mileage blocker was fitted, but I don't consider that doing so would make a difference to the outcome of Mr K's complaint. I consider that the issues with the car's brakes caused it not to have been of satisfactory quality when it was supplied to Mr K and whether or not the mileage blocker had been fitted before the car was supplied to Mr K won't change that.

Putting things right

I find that it would be fair and reasonable for Alphera Financial Services to end the hire purchase and arrange for the car to be collected from Mr K, both at no further cost to him. The hire purchase agreement shows that Mr K made an advance payment of £2,000 for the car. I find that it would also be fair and reasonable for Alphera Financial Services to refund the advance payment to Mr K, with interest.

The car's mileage when it was supplied to Mr K was 33,133 miles and its mileage when it was inspected in April 2024 was 33,793 miles, but a mileage blocker has been fitted to the car so I don't consider the recorded mileage to be a reliable record of the actual mileage driven. The car's MOT expired in July 2024 and Mr K says he wasn't able to drive the car and he estimates that his personal use of the car was only about 150 miles (with the rest of the mileage being accounted for by trips to garages to have the brakes repaired). The investigator said that although Mr K had been able to use the car, due to the low number of miles he'd been able to travel in it, he didn't think that it was fair for Alphera Financial Services to retain any monthly payments. I agree with the investigator and consider that it would be fair and reasonable for Alphera Financial Services to refund to Mr K all of the monthly payments that he's made under the agreement, with interest.

Alphera Financial Services offered to pay £300 compensation to Mr K to recognise its delay in dealing with his complaint. I find that it would now be fair and reasonable for it to pay that compensation to him. I've seen no evidence to show that Alphera Financial Services has recorded any adverse information about the hire purchase agreement on Mr K's credit file. But if it has recorded any such information, I find that it would be fair and reasonable for it to remove that information.

My final decision

My decision is that I uphold Mr K's complaint and I order BMW Financial Services (GB) Limited, trading as Alphera Financial Services, to:

1. End the hire purchase agreement and arrange for the car to be collected from Mr K – both at no cost to him.
2. Refund to Mr K the advance payment that he made for the car.
3. Refund to M K the monthly payments that he's made under the hire purchase agreement.
4. Pay interest on the amounts at 2 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
5. Remove any adverse information about the hire purchase agreement that it's recorded on Mr K's credit file.
6. Pay £300 compensation to Mr K.

HM Revenue & Customs requires Alphera Financial Services to deduct tax from the interest payment referred to above. Alphera Financial Services must give Mr K a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 February 2025.

Jarrold Hastings
Ombudsman