

The complaint

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

What happened

In June 2021, Miss J was supplied with a used car through a hire purchase agreement with BMW. She paid an advance payment of £100, and the agreement was for £9,450 over 59 months; with monthly payments of £196.87. At the time of supply, the car was around seven years old, and had done 78,375 miles (according to the MOT record for 18 June 2021).

Miss J first complained there were faults with the car, relating to the radio, steering, and battery, in August 2021. The car was repaired by the supplying dealership. Miss J then drove and maintained the car, which included replacing tyres, wheel nuts, and refilling the air-con gas, until July 2022. At which point she had it inspected for a rattling noise.

Miss J received a quote for £1,263.60 for the repair work, which was needed because the front differential had been incorrectly fitted when a new gearbox had been fitted to the car in April 2021 – before it was supplied to Miss J. The incorrect fitting had resulting in the differential housing cracking, and the bolts eventually working loose. Miss J paid to have the car repaired.

In February 2023, Miss J received a further quote as the rear differential had now failed. She complained to BMW, but they didn't uphold her complaint as they said she hadn't proved to them the issues with the car were present when it was supplied to her. Miss J wasn't happy with this response, and she brought her complaint to us for investigation.

Our investigator said that the damage to the differentials would most likely have been caused when the gearbox was fitted in April 2021. As this was just before the car was supplied to Miss J, the investigator said the issues with the car were developing at the point of supply, and this made the car not of a satisfactory quality. So, the investigator said BMW needed to do something to put things right.

The investigator said that BMW should cover the costs of repair to both the front and rear differential, as well as covering the £99 costs of the hire car Miss J took when the front differential was being repaired, plus statutory interest. She also said that BMW should pay Miss J £300 for the distress and inconvenience she'd been caused.

Miss J agreed with the investigator, but BMW didn't. They said that, as the issues with the differential didn't occur until Miss J had had the car for around 18-months, she was required to prove to them that the faults were present or developing when the car was supplied to her, which she didn't do. They also said that the repairs to the front differential were carried out without their consent.

I issued a provisional view on 12 October 2023, where I explained my intention to uphold the complaint. In that view I said:

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. Miss J 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, BMW 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 BMW can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Miss J to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss J 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 BMW to put this right.

I've seen that Miss J had the car inspected by an independent garage on 27 July 2022. The report from the garage says "we have found the front Diff has possibly been bolted up incorrectly when the gearbox was fitted ... because this has possibly been bolted up incorrectly when the gearbox was done it has caused it to crack ... I would also like to point out that the bolts are loose [and] missing." They also provided photographic evidence of the crack, the missing and loose bolts, and of a date written on the gearbox showing that it was fitted on 5 April 2021.

I've seen that Miss J rented a car from 30 July to 1 August 2022, to keep her mobile while the front differential was being repaired. The cost of this repair was £1,263.60 including VAT.

I've also seen an estimate dated 9 February 2023 for the replacement of the rear differential at the total cost (parts and labour) of £2,936.75.

When a gearbox is fitted, then it's likely that work would be required on the differentials. As it's my understanding that the car supplied to Miss J was a four wheel drive, then I'd expect both front and rear differentials to be affected. What's more, where a component has been incorrectly fitted due to the over- or under-tightening of bolts, I'd wouldn't expect the damage to occur immediately. Components would crack, and bolts would work loose, over time, under the stresses and strains of normal driving. So, I don't consider the failure of the differentials 18-months to 2-years after the gearbox was fitted to be so unusual as to be completely unconnected.

I've seen that the supplying dealership, and therefore BMW, didn't accept the independent garage's report of 27 July 2022 to be "sufficient to prove the that [sic] faults were present at the point of sale." However, for the reasons stated above, I'm satisfied that it does. And, if the dealership / BMW weren't happy with this proof, then they were able to obtain their own independent report. But they chose not to do this.

As such, I'm satisfied that the faults with both the front and rear differentials relate to work that was undertaken shortly before the car was supplied to Miss J. Which means the faults with the car were present or developing at the point of supply, and the car was therefore of an unsatisfactory quality when it was supplied to Miss J. So, under the requirements of the CRA, BMW need to do something to put things right.

I appreciate BMW's arguments that the repairs to the front differential weren't authorised by them. However, I haven't seen anything within the agreement Miss J signed that says BMW must authorise all repairs to the car. What's more, as BMW weren't involved in the complaint at this point, I wouldn't have expected Miss J to contact them for authorisation.

It's also the case that, had this been the end of it, then Miss J wouldn't have raised the issue with BMW at all – she only did so after the linked failure of the rear differential. Having reviewed the costs of repairs to the front differential, I don't think they are so unreasonable that I consider Miss J to have been overcharged for this work. As such, I'm satisfied that BMW should reimburse her for the cost of this work, and for the costs of her hiring a car to keep her mobile while this work was being done.

With regards to the rear differential, this hasn't yet been repaired. And it's resulted in the car being off the road since 1 June 2023, when Miss J declared a SORN. I'd expect BMW to arrange to repair the car, either by covering the costs of repair at the garage Miss J has already had the quote from, or by arranging repair at a garage of their choice, as well as covering all the costs of this (including collection and return of the car).

What's more, as I'm satisfied the car is off the road due to it being of an unsatisfactory quality when it was supplied, and as BMW have failed to keep Miss J mobile, I'm also satisfied that BMW should refund any payment Miss J has made since June 2023 – the date of the SORN.

Finally, it's clear that Miss J has been inconvenienced by what has happened. So, I think BMW should compensate her for this. The investigator recommended BMW pay her £300, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, it's my intention to ask BMW to:

- remove any adverse entries relating to this agreement from Miss J's credit file;*
- arrange for the repair to the rear differential to take place, at no cost to Miss J*;*
- reimburse Miss J £1,263.60 for the repairs to the front differential;*
- reimburse Miss J £99 for the costs of the hire car while the front differential was being repaired;*
- refund the payments Miss J has paid from June 2023 to the date the car is repaired and returned to her;*
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Miss J made the payment to the date of the refund[†]; and*
- pay Miss J an additional £300 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

**If BMW consider the costs of repair to the rear differential to be uneconomical, they can allow Miss J to reject the car instead. In these circumstances, they should end the agreement with nothing more to pay, collect the car at no cost to Miss J, and refund the £100 deposit she paid. This is in addition to the reimbursement of the front differential repair costs, the reimbursement of the hire car costs, the refund of all payments made in or after June 2023, 8% simple yearly interest on all of these refunds/reimbursements (including the deposit), and the £300 compensation for the trouble and inconvenience caused.*

†HM Revenue & Customs requires BMW to take off tax from this interest. BMW must give Miss J a certificate showing how much tax they've taken off if she asks for one.

Responses

Miss J agreed with my provisional view, but BMW didn't respond.

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 BMW haven't said anything to the contrary, I'm taking their comments to mean they don't object to my provisional view.

As such, the comments I've received don't change my view that BMW should cover the costs of the repair to the car they supplied to Miss J. And, given this, I see no compelling reason why I shouldn't now adopt my provisional view as my final decision.

Putting things right

For the reasons already given, BMW should:

- remove any adverse entries relating to this agreement from Miss J's credit file;
- arrange for the repair to the rear differential to take place, at no cost to Miss J*;
- reimburse Miss J £1,263.60 for the repairs to the front differential;
- reimburse Miss J £99 for the costs of the hire car while the front differential was being repaired;
- refund the payments Miss J has paid from June 2023 to the date the car is repaired and returned to her;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Miss J made the payment to the date of the refund†; and
- pay Miss J an additional £300 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

*If BMW consider the costs of repair to the rear differential to be uneconomical, they can allow Miss J to reject the car instead. In these circumstances, they should end the agreement with nothing more to pay, collect the car at no cost to Miss J, and refund the £100 deposit she paid. This is in addition to the reimbursement of the front differential repair costs, the reimbursement of the hire car costs, the refund of all payments made in or after June 2023, 8% simple yearly interest on all of these refunds/reimbursements (including the deposit), and the £300 compensation for the trouble and inconvenience caused.

†HM Revenue & Customs requires BMW to take off tax from this interest. BMW must give Miss J a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss J'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 Miss J to accept or reject my decision before 27 November 2023.

Andrew Burford
Ombudsman