

The complaint

Miss T complains about the quality of a used car she acquired through a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alpheria Financial Services ('Alphera'). Miss T says the car was not fit for purpose from the start, and she was unable to use it after a short time.

What happened

Miss T's complaint is about the quality of used car she acquired in February 2023. The car was used, and it was first registered on 15 December 2017. So, it was over five years old when Miss T received it, and it had covered 63,822 miles.

The hire purchase agreement was started in February 2023. The vehicle had a retail price of £19,850. Miss T paid a £1,613 deposit meaning £18,237 was financed. This agreement was to be repaid through 48 monthly instalments of £362.72, and then a final (optional) instalment of £7,407. If Miss T made repayments in line with the credit agreement, she would need to repay a total of £26,430.56.

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

Miss T noticed that the car had an oil leak in May 2023, and she took it to the dealership to find out what the problem was. The garage that looked at the car at this time confirmed that it had an oil leak from the gearbox and a loose, and noisy, timing belt. There was also some wear and tear related issues. Miss T was told the car was safe to drive while the dealership and the warranty company investigated what repairs should be completed.

On 25 July 2023, the car broke down. It was looked at again by a garage. The report completed in August 2023 said that the car now needed a new engine and there may still be a transmission problem. Again, there was some general wear and tear issues that needed looking at such as tyre wear. The car had travelled 67,283 miles at this point.

I've been provided with all the correspondence that took place between Alphera, the supplying dealership and the warranty provider. It's fair to say that there was a significant delay at this point as all these parties didn't entirely agree on the best way forward and who should pay for the car repairs.

Miss T wasn't provided with a courtesy car until 31 October 2023. The car was returned to her in November 2023. The engine had been replaced but the transmission problem had not been looked at.

Miss T has complained to Alphera saying that the car was not fit for purpose and she would like it repaired or to return the car.

Alphera considered this complaint and upheld it. The final response dated 13 March 2024 said that it has assumed that the faults were present at the time of supply and said it would

look into the current repairs that were taking place. It offered £500 for the distress and inconvenience the faults with the car had caused.

Miss T didn't agree with this and brought her complaint to the Financial Ombudsman Service. She didn't think the offer of £500 was appropriate as she paid over £1,100 for the finance when she didn't have use of a car. She said that she didn't want the car back.

Our Investigator upheld Miss T's complaint. He said that there were faults with the car and these were likely to be present, or developing, at the time of sale. So, the car wasn't of satisfactory quality. Whilst Alphera had attempted to repair the car this hadn't taken place in a timely manner and Miss T was left without transport for a significant time. So, she should be allowed to reject the car and receive compensation for the problems she had faced with it.

Alphera didn't respond to our Investigator. Because agreement wasn't reached, this matter has been passed to me to make a 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.

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 to have been good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase – 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 – taking into account 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 take into account might include things like the age and mileage at the time of sale and the car's history.

The CRA 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 the quality of goods.

This car was over five years old when Miss T acquired it and it had travelled around 64,000 miles. The cash price was about £20,000. I think a reasonable person would accept that such a vehicle would probably 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, Miss T should have been able to use it for a reasonable period before it needed significant work.

It's been established, and I don't think that it's now in dispute, that the car was faulty. Miss T said that the car had transmission and engine problems relatively soon after she acquired it. She's said from the start that it was very noisy but she assumed this may be normal for the type of car. But in May 2023 a garage noted the car had significant engine and transmission problems. And Alphera has also recognised that the car had these faults.

These were the problems that ultimately led to the car breaking down around six months after Miss T had acquired it. And so, I also agree that the car that was supplied to Miss T was not likely to be of satisfactory quality as it wasn't durable. It was sold with the problems that manifested later either present or developing. And again, I don't think Alphera now disagrees with this, it has accepted that the car was not of satisfactory quality and its final response does indicate that it accepts it needs to put this right.

So, what I need to consider is whether Alphera has done enough to put things right for Miss T. Alphera was able to repair the vehicle under the CRA, but section 23 of the CRA, part (2), also says that the repair should be carried out *'within a reasonable time and without significant inconvenience to the consumer'*.

Both the significant faults with the engine and the transmission faults were confirmed in May 2023. Miss T had only driven 1,565 miles during her ownership at this time. But even though the car broke down in July 2023, the engine was not replaced until November 2023. And the car still had faults with the transmission at this point. I understand the transmission was not repaired until February 2024. I think this is far outside of what can be considered a reasonable time.

And Miss T didn't have access to a car between 25 July 2023, to when she was provided with a courtesy car on 30 October 2023. So, she wasn't kept mobile over this time. This caused her significant inconvenience as she has said.

Added to this, section 24 of the CRA says that a consumer has a final right to reject a car if *'after one repair or one replacement, the goods do not conform to the contract'*. In this case whilst the engine has been fixed the transmission wasn't repaired at the same time. It's reasonable to say that after the car had been repaired once, it still didn't conform to the contract as one of the known faults hadn't been repaired. So Alphera should have assisted Miss T to reject the car for this reason as well.

All of the above leads me to conclude that Miss T should now be allowed to reject the car and compensation should be paid on this basis. Again, Alphera didn't comment on our Investigator's opinion that this was the case, so I won't comment further. I've looked below at what appropriate compensation should be.

Firstly, Alphera should end the finance contract and collect the car at no further cost to Miss T.

Miss T wasn't kept mobile between the car breaking down on 25 July 2023 and the provision of a courtesy car on 30 October 2023. So, I think it's fair that she should get a full refund of the repayments made during this period.

When the car was returned to Miss T in November 2023 it still needed what could be a significant repair. The car had already broken down and I'm sure it would have been an ongoing worry to Miss T that it may do this again. As she has said, she has now lost faith in the car being reliable. And it wasn't clear for a long period of time when the car would be fully repaired. So, I agree she should receive a refund of 5% of the repayments she made between 30 November 2023 and 11 February 2024.

Miss T has said she felt stressed during the three months she wasn't kept mobile and this was exacerbated given the nature of her work. She was also paying for a car she didn't have access to. And this has been a very long running issue for her, and she has had to have the car looked at and repaired a number of times. All of which would have been an inconvenience to her. Overall, having considered the impact of this situation on Miss T, I think the offer of £500 compensation for this is reasonable.

Putting things right

I uphold this complaint and Alphera should now:

- End the agreement with nothing further to pay.
- Have the car collected at no further cost to Miss T.
- Refund Miss T's £1,613 advance payment contribution.
- Refund Miss T all the repayments she made from 25 July 2023 to 30 October 2023
- Refund 5% of the repayments she made between 30 November 2023 and 11 February 2024.
- Add 8% simple yearly interest* on all refunded amounts from the date of payment until the date of settlement.
- Pay £500 for any trouble and upset that's been caused to Miss T, If Alphera has already paid this it doesn't need to pay it again.
- Remove any adverse information from Miss T's credit file in relation to the agreement.

If Alphera considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of this award, it should tell Miss T how much it's taken off. It should also give Miss T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Miss T's complaint. BMW Financial Services (GB) Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 14 February 2025.

Andy Burlinson
Ombudsman