

The complaint

Miss M complains that a car supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (“Alphera”) was misrepresented at the point of sale.

What happened

I issued a provisional decision on this complaint in June 2024. In that decision I explained why I thought the complaint should be upheld and what Alphera should do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

In March 2021, Miss M was supplied with a used car through a hire purchase agreement with Alphera. The agreement was for £13,000 over 60 months, with monthly repayments of £229.07 and an optional final repayment of £4,113.87. At the time it was sold, the car was approaching three and a half years old and was shown as having done 23,377 miles.

In July 2023 Miss M complained to Alphera that the car had been misrepresented when it was sold. She said it had been described as having a full-service history, but the vehicle main dealer said it had no records of services being completed on the car. And she said there was a discrepancy in the mileage between that recorded at a MOT in October 2020, and the mileage shown around the time of sale.

Alphera didn’t agree with Miss M’s complaint. It said the vehicle had only been advertised with a service history – not a full history. And it said that it was likely that the mileage recorded at the MOT in October 2020 was a clerical error. It told Miss M how she could get that error corrected by contacting the DVLA. Unhappy with that response Miss M brought her complaint to us.

Miss M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we’re able to look into complaints about it. And at the time the car was supplied, the selling dealer was acting as Alphera’s representative. Alphera was responsible for how the car was described to Miss M.

Whilst assessing this complaint I have asked Alphera for some additional information that I will discuss later. Despite an extended period of time being allowed, Alphera has failed to respond to those requests. I would hope that I do not need to remind Alphera of its responsibilities under the regulator’s complaint handling rules. But I am setting out here two parts of those rules that I think support the actions I am taking on this complaint.

DISP 3.5.9

The Ombudsman may:

(3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

DISP 3.5.14

If a respondent fails to comply with a time limit, the Ombudsman may:

(1) proceed with consideration of the complaint;

Miss M has said that she doesn't think the mileage shown on the car when it was supplied to her is a fair representation of the car's true mileage. She says that a MOT completed in October 2020 (that she assumes was completed by the previous owner) recorded a mileage of 37,602 miles. But a MOT completed shortly before the car was supplied to her showed a mileage of 23,377 miles.

Miss M has also provided us with an email she was sent by the car dealer around a week before she decided to proceed with the car purchase. That showed a car for sale, with the same registration mark as her car, with a mileage of 37,605 miles and a selling price of £11,600.

The underlying allegation that Miss M is making is of a very serious nature. Here, I want to be clear that, in line with my powers, I am deciding the complaint on the balance of probability rather than against the far higher standard of proof that might be required when considering a criminal matter. And I am not making any findings about the responsibility for any actions that might have resulted in the alteration of the car's mileage – simply that I am persuaded that those changes happened.

As I said earlier, when I started to consider this complaint, I asked Alphaera for further information showing the provenance of the car. I asked for information showing the point at which the car was first acquired by the selling dealer from its original owner, and what the recorded mileage was at that time. I think that would have given a degree of confidence over whether the car's mileage had changed whilst the car was in the dealer's possession. That information hasn't been provided. So in line with DISP 3.5.9 I think it reasonable to draw some adverse conclusions from the lack of a response to my enquiries.

Miss M has provided us with a copy of an email sent to her by the selling dealer on 12 March. That email shows her car with a mileage of 37,605 miles. I think the quoted mileage is important. It is similar to that recorded at the MOT in October 2020. But, and I think most importantly here, the mileage is not identical. Had it been so, it might have been possible to make an argument that the incorrect mileage had simply been copied over from the MOT certificate.

But, had that been the case, I would still have concerns. My own research shows that the car was advertised during February 2021 with a mileage of around 37,600. That was almost two weeks before Miss M was sent details of the car. I would have expected that, if the mileage had simply been copied across from the MOT certificate, the error would have been identified and corrected in that period of time.

So I am not satisfied, on the balance of probability, that the evidence I currently hold is sufficient to suggest that the described mileage of the car, at the point it was supplied to Miss M, is a fair reflection of its true value. Instead I am persuaded that the earlier recorded mileage (from the MOT in September 2020) and that shown on the initial advertisements, is more likely to be accurate.

I have thought carefully about what should be done in order to put things right. It is clear from the two advertisements that the dealer thought the car with the higher mileage should have a selling price of £1,400 less than Miss M paid. But I am not persuaded that a simple refund of that additional money is sufficient here. I think a car with an altered mileage (rather than simply a higher mileage) might have a significantly impaired value, and in fact might be difficult to sell at all. So I am persuaded that the most reasonable resolution here would be to allow Miss M to reject her car.

There is little doubt that the misrepresentation of the car's mileage, and the steps that would be required to reject the car will cause inconvenience to Miss M. So I also intend, subject to any further representations I receive on this provisional decision, to direct Alphera to pay Miss M £300 for her inconvenience.

Having reached that conclusion, it might be unnecessary to consider the remainder of Miss M's complaint. But it is possible that Alphera might provide further information in response to this provisional decision that leads me to conclude the car's mileage is genuine. In that case I would no longer think rejecting the car is an appropriate remedy. So here I set out my findings, and the appropriate redress, in relation to the other aspect of Miss M's complaint – the description of the service history. But to be clear, the redress I am proposing against this part of the complaint would be instead of, rather than additional to, the rejection of the car.

Miss M's car was described by the dealer as having a service history. But it appears that the only service that had been completed on the car was by the selling dealer, shortly before the car was supplied to Miss M. Being pedantic it could be argued that a record of that single service would represent the stated "service history." But I think it would be fair to apply a more common interpretation of the phrase "service history." That would suggest to me a number of services, carried out in line with the manufacturer's recommendations. I would accept that perhaps one, or two, of those services might have been late, or even missed altogether. I don't think it would be reasonable to accept them all being absent.

So, I am not persuaded that a description of the car as a having a "service history" is a fair reflection of its true nature. But, like our investigator, I am not persuaded that the lack of the service history would have been of the utmost importance to Miss M. It was more than two years before she raised the problems with the service history – and I think, had Miss M been keen to ensure a full-service history was maintained, those omissions would have been noticed, or pointed out to her, much sooner. Instead I think that those problems only became of concern to her once the larger issue, of the mileage discrepancy, was being investigated by her.

But, the lack of a service history, to the extent was missing here, is likely to have an impact on the future resale value of the car. So, if the rejection of the car, doesn't take place, I think it would be fair for some compensation to be paid to Miss M. In that case I think a payment of £300 would be fair.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Once again Alphera has failed to respond. Miss M has said that she accepts my provisional findings but has had some further discussions with me about the redress that would be appropriate here.

Miss M has said that in the past year her financial position has worsened. So she says it would now be difficult for her to take new finance in order to support the purchase of a replacement car. So she says that rejecting the car would no longer be in her best interests.

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 set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Miss M and by Alphera. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Given that neither party has provided me with any new evidence or further comments on my findings I see no reason to alter the conclusions I reached in my provisional decision. But as I will now go on to explain I think it appropriate that I should alter the way in which Alphera should put things right.

Miss M's current financial position means that she would be unlikely to be able to replace the finance agreement she has on this car with a new agreement on an alternative car. So, since the problems with the car do not relate to anything mechanical, and I understand it is operating well, she says that she would prefer to retain it, and continue making her repayments on the hire purchase agreement. I think that is a reasonable request, and I have written to Alphera to explain that I intended to change my directions on how to put things right.

As I set out in my provisional decision, when the car was first advertised with the higher mileage, there was a price difference of £1,400 compared to the later advertisement and the price Miss M paid. So I think that is a reasonable representation of the loss that Miss M experienced in the purchase price of the car.

But I am also mindful that the misrepresentations that I have found took place at the time the car was supplied, both in terms of the car's mileage and its service history, are likely to have an impact on Miss M's ability to resell the car in the future. So I don't think a simple refund of the difference in the purchase prices is sufficient.

I set out in my provisional decision that I thought compensation amounting to £300 would be sufficient for the reduced service history of the car. And I think a further sum of £400 would be fair and reasonable to reflect any future impaired value that Miss M's car might experience due to the mileage discrepancies.

So I think total compensation for the impaired value of the car of £2,100 would be appropriate here. I set out that amount of compensation when I wrote to Alphera about my proposals to change the compensation and, as I said earlier, I haven't received any objections.

And it remains the case that the misrepresentation of the car's mileage and its service history, and the steps that have been required to highlight those problems, have caused inconvenience to Miss M. So I will also direct Alphera to pay Miss M £300 for that inconvenience.

Putting things right

In order to put things right, Alphera should do the following;

- Pay Miss M £2,100 to reflect the impaired value, and potential resale value, of her car due to the mileage and service history being misrepresented.
- Pay Miss M £300 for the inconvenience she has suffered.

Both payments should be received by Miss M within 28 days of Alphera being notified of her acceptance of this final decision. Should payment not be made by that date, Alphera should add simple interest at a rate of 8% per annum to each amount from the date of this final decision to the date of settlement. HM Revenue & Customs requires Alphera to take off tax from this interest. Alphera must give Miss M a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Miss M's complaint and direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 2 September 2024.

Paul Reilly
Ombudsman