

The complaint

Mrs W complains about the quality of a car supplied to her using a hire purchase agreement with BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ("Alphera").

What happened

In May 2023, Mrs W acquired a used car using a hire purchase agreement with Alphera. The cash price listed on the agreement was £19,989, the car was under four years old at the point of supply, and the mileage recorded on the car's invoice was 24,736 miles.

In August 2023, Alphera's contact notes said that Mrs W contacted them and informed them that she was having issues with the car and that it was with the supplying dealership being repaired for around a week. Mrs W explained to Alphera that the car had already been back to the supplying dealership twice with issues with its back seat, and a new part had now been ordered to rectify the issue. And the car's engine had now started to smoke and it went into limp mode. Mrs W explained to Alphera that she was topping up the engine oil more frequently as well.

A job sheet for the works carried out to the car explained that the engine oil was overfilled, so it was topped up to the correct level. The notes also said for the car to be driven for 600 miles to monitor the oil level to complete the consumption test they were carrying out. The mileage recorded on the job sheet was 27,198 miles.

The supplying dealership also said that the repair was completed to the back seat around this time. In October 2023, Mrs W received the car back and she informed Alphera that she wanted to still be compensated for the time she didn't have the car. Mrs W explained that the car was used as a taxi, but also needed it to drop her children off to school.

Alphera upheld Mrs W's complaint and in their final response, they offered £500 (which was partly made up of one monthly repayment and a payment to cover the inconvenience caused). Mrs W accepted the offer made.

In December 2023, the car was serviced by the supplying dealership and the mileage recorded was 41,286 miles. It was found that the oil level was at its minimum. So, the oil was topped up and Mrs W was told to drive the car for around 1,000 miles to see if the issue persisted. The car also had its windshield replaced due to damage during the service.

Mrs W didn't receive the car back until January 2024. This was because the spark plug pulled the thread out of the cylinder head which Alphera explained rendered the car off the road and a specialist repair couldn't be carried out until January 2024.

In January 2024, Mrs W contacted Alphera again and told them the car was back with the supplying dealership as she believed the oil issue had returned.

Alphera responded to Mrs W with another final response. Alphera didn't uphold Mrs W's rejection of the car as they didn't believe there was a return of a fault as the supplying dealership had informed her to top up the oil again and monitor it for the next 1,000 miles.

Unhappy with Alphera's response, Mrs W referred her complaint to our service as she wished to reject the car.

In February 2024, Mrs W supplied our service with a copy of a diagnosis completed on the car by a third-party garage. It explained that the car was consuming coolant and emitting smoke out of its exhaust and it had a slight engine mis-fire. It went on to explain that the issue was a suspected head gasket failure and that the rear intercooler pipe was also leaking. The mileage recorded on the diagnosis was 45,164 miles.

Mrs W informed our service that she returned the car to the dealership in February 2024 and had given them the keys to it.

Our investigator didn't uphold Mrs W's complaint. The investigator explained that he thought there was likely a fault with the car, but he concluded it was of satisfactory quality when it was supplied to Mrs W. He explained that the car appeared to have been overfilled with oil in August 2023. And he said that the dealership asked to inspect the car once it was driven for 600 miles, but it wasn't returned to them until a service was completed on it, over 14,000 miles later. So, he thought it was highly unlikely that the car would have travelled this mileage without the fault causing failure sooner.

Mrs W disagreed with the investigator's findings. Among other things, Mrs W strongly believed the car was still leaking oil from when the car was returned to her up until December 2023 and she had to keep topping it up with oil.

As Mrs W disagreed with the investigator's findings, the complaint was passed to me to decide.

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'm not upholding this complaint and I'll explain why below.

Mrs W complains about a hire purchase agreement. I'm satisfied here that Mrs W entered into the contract predominantly for business purposes. But, the amount of credit provided was under £25,000. So, I'm satisfied the agreement was regulated. Entering into regulated credit agreements such as this as a lender is a regulated activity, so I'm satisfied I can consider Mrs W's complaint about Alphera.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations.

Mrs W, Alphera and our investigator all referenced the Consumer Rights Act 2015 ("CRA") in relation to this complaint. But, as I'm satisfied Mrs W entered into the agreement predominantly for business purposes, she wasn't acting as a consumer. So, I'm satisfied the CRA doesn't apply here. But, the Sale of Goods Act 1979 ("SGA") is relevant to this complaint.

Similar to the CRA, the SGA implies a term into the contract that the car Alphera supplied to Mrs W should have been of "*satisfactory quality*". The SGA explains satisfactory quality is

what a reasonable person would expect, taking into account any relevant circumstances. It's important to point out in this case that the SGA specifically explains that the durability of goods can be considered part of whether they are unsatisfactory quality or not.

I would consider relevant circumstances here to include things, amongst others, like the car's age, price, mileage and description. So, what I need to consider here is whether the car supplied to Mrs W was of satisfactory quality or not. I'll take into account that the car was used, so I don't think a reasonable person would expect it to be in the same condition as a new car. But, it was under four years old, had covered under 25,000 miles and cost around £20,000. So, I think a reasonable person would expect the car to be in good condition, be free of anything other than minor faults and would expect trouble free motoring for some time.

Why I don't think the car developed a fault

I have noted that there have been a few issues with the car, for example regarding the back seat, the broken windshield, and the spark plug impacting the cylinder head. However, I have focussed my findings on the issue regarding the possible oil leak, as this is the only aspect which is still in dispute.

Mrs W says that she frequently had to top up the engine oil, for example, in between September 2023 and December 2023. I have noted that the manual for the car says:

"It is normal to top up the oil level between two services (or oil changes). [MANUFACTURER] recommends that you check the level, and top up if necessary, every 3,000 miles (5,000 km)."

Considering the car had been driven around 14,000 miles in this time, and the manual says it is normal to top up the oil between services and for it to be checked every 3,000 miles, I'm satisfied that there wasn't a fault with excessive oil leaking around this time.

In February 2024, Mrs W supplied a copy of a diagnosis completed by a third-party, when the mileage of the car was 45,164 miles. It said:

"Inspect vehicle for excessive oil use [sic] found that the vehicle is also consuming coolant and emitting [sic] smoke out of exhaust and has slight miss fire [sic] suspect head gasket failure, also rear intercooler pipe is weeping"

While I'm not an expert mechanic, from a general search online, a damaged gasket can lead to an oil leak and white smoke being emitted.

I've noted that the investigator concluded that there was a fault with the car due to the suspected head gasket failure as it was consuming coolant and emitting white smoke out of the exhaust. I am not as confident as the investigator to conclude with certainty that there is a fault with the head gasket. I say this because, I don't consider the comments the third-party garage to have made to be a full investigation and diagnosis of a fault. And I'm also mindful that the comments say there is a "suspected" head gasket failure, so it doesn't say with certainty that there is a fault.

As the car was returned back to the supplying dealership in February 2024, I am unsure as to its current condition, or who is currently in possession of it. And, given that a year has now passed since the car was returned, I don't think a current diagnosis or inspection would be helpful as it would be too difficult to conclude whether any issues were present or developing at the point of supply. So, due to the limited information, I'm not persuaded there is a fault with the car.

Even if I was to conclude there is a fault with the car, was it of satisfactory quality at the point of supply?

Normally, I wouldn't expect a head gasket to fail so early into the car's lifetime, with only around 45,000 miles being driven. However, like any other component in a car, it is subject to wear and tear damage. While it is intended that no part should fail, they can. A manufacturer cannot be expected to provide an indefinite guarantee against a component part failure.

The criterion is "durability" not "duration". Whether something is durable is linked to whether it is defective at the point of sale. If something is not durable, that is, it doesn't last as it is expected to, then it is indicative of something being inherently wrong with it. The defect will, therefore, have been present or developing at the point of supply.

Even if I was to conclude the head gasket to be a fault, I still don't think I would reach the conclusion that the fault was present or developing at the point of supply to consider the car of unsatisfactory quality. I'll explain why below.

Mrs W has explained the car was used as a taxi. In total, in about nine or so months, the car had been driven around 20,000 miles. From August 2023 up to its service in December 2023, the car was driven around 14,000 miles. Around a month in between this period, the car was also with the supplying dealership, which meant the 14,000 miles covered was within an even more condensed period, while Mrs W had use of a courtesy car. A further 3,876 miles was driven in the car in between the service and the February 2025 diagnosis. So, I think it is fair to say that the car had been driven more frequently than a reasonable person would expect it to have been driven. I also think it is fair to say that more wear and tear has occurred to the car within a short period.

I think it is reasonable to expect that problems might occur when a car reaches that age and mileage.

Furthermore, around the time the car was supplied, an MOT was completed and it did not highlight any problems of oil leaking or with the head gasket. Mrs W was then able to drive the car some considerable miles.

Mrs W also believes the issue with the oil leaking was evidenced as early as August 2023. I have noted Mrs W told Alpha that the car's engine had started to smoke and that she was topping up the engine oil more frequently as well. These are some of the symptoms that can lead to a head gasket failure but isn't conclusive of one. It is worth noting that the job sheet dated 31 August 2023, where the mileage of the car was recorded as 27,198 miles, said:

"...Investigate excessive oil consumption, customer using a lot of oil. Oil consumption test may be required. Drained oil and 7 ltrs removed from vehicle. Overfilled. Refilled oil to correct level..."

I have inferred from the comments above that engine oil was overfilled and so it was refilled to the correct level.

While I'm not an expert mechanic, a general search online as to the symptoms of overfilling an engine with oil can be things such as dense white smoke coming out from the exhaust, as excess oil may be burning. This is one of the symptoms Mrs W said she experienced. I have also noted that when too much oil is added, it can cause the oil to essentially aerate, resulting in a foamy substance which may not be able to properly lubricate the engine. Also,

it is known that extra oil can possibly create excessive pressure inside an engine, which may look to escape through various gaskets and seals, leading to those failing.

So, considering the above, even if I was to conclude that the head gasket did turn out to be faulty, I'm not satisfied that this fault was presenting itself either before or at the point of supply. To hold Alphera liable, I would need compelling evidence that the car was defective in May 2023. In the absence of this, it would be unfair for me to do so. Instead, I think any issue with the car is more likely a result of inevitable and natural wear, or as a result of some error in the maintenance or servicing of the car.

I'm satisfied the car was durable at the point of supply. It follows that I'm satisfied the car was of satisfactory quality at the point of supply. And so, I don't think Alphera need to do anything further in relation to this complaint.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 13 March 2025.

Ronesh Amin
Ombudsman