

The complaint

Miss C complains about a car supplied to her using a hire purchase agreement taken out with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services ("Alphera").

What happened

Miss C referred a complaint to us along with her representative. As the complainant is Miss C, for ease, I have addressed my decision to her only throughout, when referring to what she and her representative have told us.

In March 2022, Miss C acquired a used car using a hire purchase agreement with Alphera. The car was around four years old, the cash price of the car recorded on the agreement was £20,300, the agreement was for 49 months, made up of 48 regular, monthly repayments of £259.76, followed by an optional final payment of £12,327. The mileage recorded on the agreement for the car was 22,000 miles.

Miss C said that for almost two years the car was running smoothly, with necessary MOT's and services completed on the car.

In around February 2024, Miss C said the car started to judder when coming to a stop.

And in March 2024, Miss C said the car failed its MOT due to a coil spring and two of its tyres needing to be replaced. Miss C said she asked the MOT garage to carry out the repairs and she was invoiced for the works.

When Miss C collected the car, she said she noticed the engine management light ("EML") illuminated on the car's dashboard and the car's automatic transmission wasn't shifting gears smoothly, and she said there was no power when she tried to accelerate. Miss C said she was advised by the MOT garage to take the car to a manufacturer specialist.

Miss C had a diagnostic test completed on the car at a specialist garage and she said she was told the car likely had been involved in a previous accident, considering the various clips and covers which were either damaged or missing from the engine bay. The diagnostic report also found several historic and stored fault codes and she said she was told not to drive the car as it wasn't roadworthy.

Miss C informed the supplying dealership and Miss C said they arranged for the car's oil and filter to be changed to see if that helped the issues Miss C experienced. Miss C said it didn't help and was told that the gearbox needed to be replaced and that it might resolve the issues.

Miss C complained to Alphera about the gearbox failure as she didn't think it should have occurred so early into her agreement. Alphera provided their final response in June 2024. They didn't uphold Miss C's complaint as they didn't believe any issues with the car to have been present or developing at the point of supply.

Unhappy with Alphaera's response, Miss C referred her complaint to our service.

Miss C commissioned an independent inspection to be carried out to the car in September 2024. The mileage of the car recorded on the report was 38,964 miles.

The report concluded that there were too many variables to determine the cause of the fault or who was liable. Given the mileage that had been covered in the car since it was acquired.

Our investigator issued their view and explained she didn't uphold the complaint. In summary, she explained there wasn't enough evidence to support the fault was present or developing at the point of supply, and therefore couldn't recommend Alphaera needed to support Miss C with repairs.

Miss C disagreed with the investigator's findings. Among other things, she said she believed an oil leak was present before she acquired the car, due to the MOT history of the car. As Miss C disagreed, 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.

I'm aware I have summarised events and comments made by both parties very briefly, in less detail than has been provided, largely in my own words. No discourtesy is intended by this. In addition, if there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Miss C complains about a car supplied to her under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Miss C's complaint about Alphaera.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – Alphaera here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note that the car Miss C acquired was used, around four years old, had been driven around 22,000 miles and cost £20,300. I think a reasonable person would accept that it would not be in the same condition as a new car and was likely to have some parts that are worn.

What I need to consider is whether the car was of satisfactory quality when it was supplied. And in order to do that, I first need to consider whether the car developed a fault.

Had the car developed a fault?

Among other things, Miss C said that from around February/March 2024, the car started to judder when coming to a stop and the car's automatic transmission wasn't shifting gears smoothly.

Miss C had an independent inspection carried out to the car in September 2024. The report said:

"...when gear was engaged there was an abnormal noise from gearbox and when taking up drive there was a lurching from the vehicle, which is indicative of insufficient hydraulic oil pressure within the auto box to thread through the pilot valves correctly. This occurred in both drive and reverse.

....

In our opinion, based on the available evidence we were able to identify a gearbox fault, which affected the take up of drive in drive and reverse gears, this was in the form of a lurch / jolt upon take up, which is indicative of a lack of gearbox internal oil pressure. We were also able to detect a significant gearbox oil leak from the nearside output driveshaft seal."

Considering the above, from what Miss C has said and the inspection report, I think it is likely there was a fault with the car, in relation to the gearbox.

Was the car of satisfactory quality at the point of supply?

I now need to consider whether the fault was present or developing at the point of supply to determine whether the car was of unsatisfactory quality at the point of supply, under the CRA.

I have noted the findings of the inspection of the car that was carried out in September 2024. The report said:

"...This type of defect is often the result of in-service deterioration, which develops over an extended period of time and is part of seal ageing....

...Unfortunately, in this particular instance the mileage from the point of sale to the defect becoming apparent may be very significant, as it's now very difficult to be specific as to what happened 17,000 miles ago and all the variables involved in the condition cannot be fully assessed at this stage...

...Unfortunately, taking this into account of the mileage we are unable to state that the current issue would have required rectification at the time of sale, the evidence simply is not strong enough to make such a conclusion...

..We note from the information provided in our instructions that the vehicle has covered 17,160 miles in 726 days since purchase to the reported failure date...

...At this stage after the inspections of the vehicle there appears to be too many variables, which cannot be satisfactory concluded and the mileage that the vehicle has covered since the point of sale is a substantial hurdle in balance of probability determinations in this case the vehicle covering 17,000 miles..."

I have inferred from the above comments that the engineer didn't think it was likely the fault was present or developing at the point of supply, given the time that had passed and mileage that had been covered in the car since it was acquired. I say this because the engineer said it is, *"...often the result of... deterioration, which develops over an extended period of time and is part of seal ageing"*. The report went on to say that it couldn't conclude the issue would have required rectification at the time of supply, taking into account the mileage, due to the evidence not being strong enough.

Miss C strongly believes symptoms of the fault were apparent before the car was supplied, given the MOT history of the car. In September 2021, the car passed its MOT, and there was an advisory, which said:

“Nearside Front Oil leak, but not excessive seems to be driveshaft seal...”

I have noted that the engineer who carried out the inspection also considered this and couldn't conclude that the leak which was identified in the MOT was the same as that identified much later. The engineer later said that due to the extent of the leak found in September 2024, it would have been visible during a service. Miss C has explained that the car had been serviced on two occasions while the car was in her possession.

Considering the above, and the comments Miss C has made to our service that the car was running smoothly for almost two years, I don't think it is likely the fault with the gearbox was present or developing at the point of supply.

My final decision

For the reasons I've explained, I don't uphold this complaint. So, I don't require BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to do anything more here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 9 June 2025.

Ronesh Amin
Ombudsman