DRN-5746538

The complaint

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

What happened

In September 2022, Mrs M was supplied with a used car through a hire purchase agreement with BMWFS. She paid an advance payment of £10,000 and the agreement was for £49,750 over 49 months; with 48 monthly payments of £747.51 and a final payment of £27,557.45. At the time of supply, the car was around two years old and had done 20,954 miles (according to the agreement). Mrs M settled the agreement with BMWFS in May 2023.

In April 2024 the car was refinanced with a finance provider I'll call 'C' by a limited company I'll call 'X'. Mrs M is the sole director of X and, as such, continued to use the car.

The car broke down in October 2024, and Mrs M took it to a manufacturer's approved garage. They advised her that a new engine was required, but replacing the engine under warranty was rejected by the warranty company, who didn't believe the car had been correctly serviced. So, Mrs M complained to BMWFS.

Due to the time that had passed since BMWFS had supplied the car to Mrs M, they asked her to provide evidence the car was of an unsatisfactory quality when it was supplied. Mrs M arranged for the car to be inspected by an independent engineer, and this inspection took place on 18 December 2024, when the car had done 38,417 miles. The engineer concluded that there was an oil leak linked to the turbo. However, they said that *"with the elapsed time and mileage covered it is considered the fault would not have been present or in development at the time of sale."*

Based on the contents of the independent engineer's report, BMWFS didn't uphold Mrs M's complaint. Unhappy with this, she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that the durability of the car also needed to be considered, and that it wasn't reasonable to expect the turbo to fail after less than 40,000 miles, especially when the part would be expected to last around 100,000 miles. So, the investigator didn't think the car was sufficiently durable when it was supplied to Mrs M, and this made the car of an unsatisfactory quality.

So, the investigator said that Mrs M should be allowed to reject the car, with BMWFS refunding the deposit and settlement amount she paid; reimburse the amount Mrs M paid for the independent engineer's report; and pay Mrs M an additional £200 for the distress and inconvenience she suffered.

While Mrs M agreed with the investigator's opinion, she didn't think all the costs she'd incurred as a result of the issues with the car had been considered. And she provided detailed comments, with supporting evidence, about these costs.

BMWFS didn't agree with the investigator's opinion. They said the independent engineer had said the fault with the car wasn't present or developing when they supplied it to Mrs M. So, they didn't think they were liable for this. They also said that the car had been refinanced by C in April 2024, providing an HPI check showing this. So, they thought it would be unreasonable to ask them to now allow rejection and take the car back.

I issued a provisional decision on 6 August 2025, where I explained my intention not to uphold the complaint. In that decision 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. Mrs M 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, the supplier of goods is 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 confirm 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 the supplier of the goods can show otherwise. So, if I thought the car was faulty when Mrs M 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 the supplier of the goods to put this right.

Given the circumstances, I think it's extremely important for me to set out exactly what I've been able to consider here, and why. In doing so, I've had to consider that the car was refinanced by X, with C, in April 2024. This is something we were not made aware of at the outset of the complaint – it didn't come to light until May/June 2025, so this wasn't taken into account in the investigator's opinion.

There is no doubt that BMWFS supplied the car to Mrs M in September 2022, nor that the car has since developed a fault. However, at the time the car developed the fault, it had been refinanced, so the supplier of goods was C, not BMWFS. What's more, it was X who took out the finance with C, and X are a separate legal entity to Mrs M. So, even though Mrs M was using the car as a director of X, any consideration about the impact of the faults on the car are a consideration as to how X was affected, not Mrs M.

The investigator recommended that BMWFS allow rejection and take the car back. But, as they weren't the supplier of the goods, C were, BMWFS would not be able to take the car back as it's not theirs to take back. What's more, the investigator recommended that BMWFS compensate Mrs M for the impact of what happened, but Mrs M wasn't the customer at the time of the breakdown, X was. So, any payment needs to consider the direct impact on Mrs M, not X.

Therefore, in light of the new information about the refinancing of the car, I need to reconsider what, if anything, BMWFS need to do to put things right.

As I've said, BMWFS supplied the car to Mrs M in September 2022, and C supplied the car to X in April 2024. The CRA doesn't explicitly state or imply that a previous supplier of the goods remains liable for the goods not being of a satisfactory quality where there is a current or subsequent supplier of the goods. As such, I'm satisfied that BMWFS are liable for any issues with the car that occurred between September 2022 and April 2024, while C are liable for any issues with the car that occurred after April 2024.

I've seen a copy of the independent engineer's report, dated 18 December 2024. In this report the engineer confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

The engineer has confirmed two things that are key to the facts of this case – the car failed on 16 October 2024 and there were no faults present or developing at the point of supply. And I haven't seen anything to show me this was incorrect.

As such, I'm satisfied the issues with the car happened after August 2024 i.e., after C supplied the car to X. Given this, I don't intend to hold BMWFS responsible for the issues with the car. If the car failed due to it being not sufficiently durable, as the investigator argued in their opinion, this is a matter for X to raise with C.

So, and while I appreciate this will come as a disappointment to Mrs M, I don't intend to ask BMWFS to do anything more.

Responses

BMWFS responded to my provisional decision, confirming that they had no further comments to make.

Mrs M also responded to my provisional decision. She has said that, when the car was supplied to her by BMWFS, it hadn't been correctly and fully serviced, and it was this lack of servicing that resulted in the failure.

She also said she'd *"upheld my side of the agreement as a personal owner then moving the car into the business."* However, she didn't think my provisional decision held C responsible for the current issues with the car, but she's still insuring and paying finance for the car.

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

With regards to the comments made by Mrs M, I have considered these as part of the overall situation. I understand her point about the servicing, and that this was a factor in the eventual failure of the car. However, as I explained in my provisional decision, the car didn't fail after BMWFS supplied it to Mrs M, it failed after C supplied it to X. As such, the lack of servicing when BMWFS supplied the car to Mrs M doesn't alter the fact that C own the car, not BMWFS. So, BMWFS aren't able to either repair the car or, as the investigator recommended, take back the car and unwind the agreement – the car isn't theirs to do anything with.

Mrs M is correct that I haven't said that C are responsible for the issues with the car. However, this is because I'm deciding on a complaint about a car supplied by BMWFS to

Mrs M. For me to conclude that C were responsible for the faults with the car, I would need to decide on a complaint about the car C supplied to X. And this isn't the complaint that has been brought to us – our rules only allow us to consider the complaint that was raised.

Finally, Mrs M has said that she's still paying finance for the car and insuring it. While I appreciate this is a technicality, even though she is a director of X, it is X that is legally paying the finance and insuring the car.

If Mrs M wants to progress matters, as the director of X, she would need to raise a complaint with C about the car they supplied X. C would then need to be given the opportunity to consider this complaint. However, as the agreement with C is both in the name of X and is for more than £25,000 and for business purposes, if Mrs M is unhappy about the outcome of X's complaint to C, it's unlikely that it would fall within the jurisdiction of this service to consider.

As such, the comments received from both parties don't change my provisional decision, and I see no compelling reason why I shouldn't now adopt this as my final decision.

My final decision

For the reasons explained, I don't uphold Mrs M's complaint about BMW Financial Services (GB) Limited trading as Alphera Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 September 2025.

Andrew Burford
Ombudsman