DRN-5748439

The complaint

Mr A is unhappy with the car supplied under the hire purchase agreement with BMW Financial Services(GB) Limited trading as ALPHERA Financial Services (Alphera).

When I refer to what Mr A and Alphera have said or did, it should also be taken to include things said or done on their behalf.

What happened

In September 2024 Mr A entered into a hire purchase agreement with Alphera to acquire a car first registered in September 2022. At the time of acquisition, the car had travelled around 15,000 miles. The total cash price of the car was £69,995. There was an advance payment of £7,000. There were 47 monthly payments of around £1,178 followed by one optional final payment of around £31,105.

In September 2024, shortly after acquiring the car, Mr A wrote to Alphera and said that car was listed in the advertisement as 2023 make, but that it is actually a 2022 make, with only one year warranty, instead of two. The advertisement showed a car with a bigger spoiler, specific tips on the exhaust, and carbon on the rear bumper. Mr A also said the advertisement showed the car as having certain anniversary badges at the front and back, but that it did not come with these. In this correspondence, Mr A also indicated that the car had three different branded tyres on different axles, which he said is an MOT failure when considering the high-performance type of car he acquired. Mr A said he was sent four tyres by the supplying dealership, but they were second hand tyres with nearly illegal thread.

Mr A said he was unable to raise these issues with the supplying dealership at the time of delivery because he picked up the car from a private address instead of going to the dealership's physical location. He said the supplying dealership promised to resolve the issues for him but has started to avoid his calls and messages. Mr A said that he also advised the supplying dealership of a few marks/scratches around the car which, he said, a detailer was agreed to come out to rectify but this has not happened. Later he also mentioned that the car mileage was also incorrect compared to what was stipulated in the advertisement. Overall, Mr A is unhappy, and he would like to reject the car.

As Mr A remained unhappy with the above, he referred his complaint to the Financial Ombudsman Service (Service).

In January 2025, Alphera told us that the car advertisement provided by Mr A is from a different dealer and is a different car. In summary, they said the background of the pictures has a different dealership name from the one where Mr A acquired the car. They also said the advertisement shows no registration number of the car, and that the branding and background of the dealership in the advertisement are completely different from the one from which Mr A acquired the car. Therefore, the advertisement does not represent the exact car he bought. Alphera said Mr A could have saved many adverts in the process of looking for the car he wanted to acquire. Plus, they said that the car invoice states the date the car was first registered so Mr A would have known the car was first registered in 2022 instead of 2023.

Our investigator looked at Mr A's complaint and was of the opinion that the complaint should not be upheld. The investigator said there was nothing to link the car in the advert to his car, there is no registration number and the background and branding of the dealership in the advert is different to the one from where the car was purchased. So in summary, the investigator did not think that the car was misrepresented to Mr A.

Mr A did not agree, so the complaint has been 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I am very aware I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me, reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

What I need to decide in this case is whether the car Mr A acquired was misrepresented to him by Alphera and/or their agents. To make a finding of misrepresentation, I would need to be satisfied that Mr A was told a false statement of fact that caused him to enter into a contract he would not have entered into otherwise. And if I am not satisfied there has been a misrepresentation, I still need to consider whether there has been a breach of contract because the goods might have been mis-described or not of satisfactory quality as per the Consumer Rights Act 2015 (CRA). This is because the requirement for goods to be as described and of satisfactory quality are implied into the contract between Mr A and Alphera by the CRA.

In summary, Mr A said that when he got the car, there were many car aspects deviating from what was advertised. Mr A provided copies of the advertisement which he said he relied on.

Alphera, on the other hand, said that nothing in the advertisement provided by Mr A links the advertised car to the one Mr A acquired.

So I have considered what both sides have said and provided.

First, I should say that I believe that Section 56 of the Consumer Credit Act 1974 would apply here. This section deals with "antecedent negotiations" and it explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier (in certain circumstances) before the consumer takes out the credit agreement. Considering all the circumstances of this case, I think most likely, this section does apply. However, I am only considering the aspects Alphera are responsible for and the ones I am able to look at. So, I cannot look at certain actions and/or inactions of the dealership(s) or broker which Mr A might be unhappy about, such as what happened after the car's acquisition. So, I am only looking at the events that have been raised by Mr A with Alphera, the ones they were provided an opportunity to address.

I have not seen a copy of the advertisement that would have been provided by the supplying dealership or Alphera. I have only seen copies of an advertisement provided by Mr A. So, when things are unclear, I make my decision on the balance of probabilities taking into consideration what both sides have said. I have also considered the paperwork Mr A would have been provided with and signed, including the finance agreement.

A misrepresentation is a false statement of fact which induces a person to enter a contract which they would have acted on differently, had they known the truth. However, in this case and based on the evidence before me, I think I do not have enough information to say that, on balance, Mr A was told a false statement of fact about the features of the car and/or that there has been a breach of contract, namely that the goods (here the car) were not as described. When coming to the above conclusion I have taken into consideration many aspects, including what both sides have said and provided. I'll explain this further below.

I considered that none of the car pictures from the advertisement provided by Mr A link that advertisement to the car he has acquired. The advertisement provided by Mr A does not contain the car's registration number, so there is not enough information to be able to conclude that, on balance, the advertisement relates to the same car Mr A was acquiring.

The name of the dealership visible in the background of the pictures from the advertisement provided by Mr A, does not match the name of the one listed on his finance agreement. I know Mr A has provided text messages where the telephone number in his phone is saved with a similar name to the dealership's name from those pictures, but that is not enough evidence for me to be able to say that, most likely, the advertisement he provided was for the car he acquired. Moreover, it would not have been unreasonable for him to question why a different name of a dealership was on the agreement he was being asked to sign if he thought he was dealing with a different entity at the time.

In addition, the suppling dealership's invoice and the finance agreement both listed the car as being registered in 2022 and the advertisement he provided, has the car as being registered in 2023. So, it would not have been unreasonable for Mr A to question this before he signed the finance agreement, if he thought that the car was supposed to be a 2023 plate.

Taking all of the above into consideration I cannot say that anything listed in that advertisement is representative of the car he has acquired. So, I do not have enough evidence to be able to say that the car was misrepresented to Mr A or that there has been a breach of contract as the car was not as described based on the advertisement he has provided.

Mr A has also raised concerns regarding the car's tyres, where the car was supplied with three different brands' tyres on different axles, which he said is an MOT failure. He also said the car had a few marks/scratches. So, I have considered if the car was of satisfactory quality when supplied to him.

The CRA covers agreements such as the one Mr A entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mr A’s case the car was about two years old when acquired and had travelled around 15,000 miles. So, it is reasonable to expect there to be some wear to it, and I would have different expectations of it compared with a brand-new car. But given the age, mileage, and price paid, I think it is fair to say that a reasonable person would have high expectations of it and would not expect anything significant to be wrong shortly after it was acquired.

MOT guidance states that tyres of different types of structure, such as radial-ply and cross-ply, must not be mixed on the same axle, but it does not comment on the fact that tyres cannot originate from different brands. I have not seen enough evidence to be able to say that, most likely, the setup of the tyres that were on the car would render the car unsafe. With the limited evidence available I cannot say on balance that this aspect would render the car of unsatisfactory quality.

I have also thought about whether a few marks/scratches would render the car of unsatisfactory quality. And taking particular circumstances of this specific case, on balance, I do not think it would. When coming to this conclusion I considered I have limited information surrounding the scratches. Also, I considered the fact that Mr A still accepted the car when he took delivery of it and that the car had travelled around 15,000 miles and was two years old. As such, I think that it would not be unreasonable for the car to have experienced some wear to it by the time Mr A acquired it.

I know that this is not the ideal outcome that Mr A would like and I would like to express my sympathy for the position he is in, but considering all the circumstances of this complaint I do not think Alphera is required to take any further action.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 30 September 2025.

Mike Kozbial
Ombudsman