DRN-5775723

The complaint

Miss N 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

In June 2021, Miss N acquired a used car ("Car A") using a hire purchase agreement with Alphera. The car was around three years old, the cash price of the car recorded on the agreement was £27,400, the agreement was for 48 months, made up of 47 regular, monthly repayments of £278.21, followed by an optional final payment of £12,397. The advance payment recorded on the agreement was £7,508.86. The mileage recorded on the vehicle invoice for the car was 37,161 miles.

Miss N said in July 2024, the car had a mechanical fault in relation to the car's gearbox when the car had been driven around 58,094 miles. When the car was diagnosed, it was estimated to cost around £9,200 to repair.

Miss N said she contacted Alphera to discuss her options and was told she could source another car from the supplying dealership ("SD") which was a similar make, model, and mileage of Car A. Miss N said it was described to her as a like-for-like vehicle substitution.

In July 2024, Alphera sent Miss N an email explaining that if she wished them to process a vehicle substitution request, then she would need to send Alphera a copy of the new car's invoice and it needed to include a set of criteria which was listed in the email they sent her. Some of the criteria which needed to be met was that the invoice had to be issued by SD and the invoice needed to have a nil balance.

Miss N said she asked if payments could be paused while she sourced another car but was told that wasn't an option.

After several months, Miss N sourced an alternative car ("Car B") but this was declined by Alphera as it didn't meet their requirements. The sourced car, Car B, cost more than the cost of Car A at the time it was supplied.

In early October 2024, Alphera sent Miss N a further email detailing similar information to the email they sent to her in July 2024. It requested Miss N to contact SD and provide them the criteria that needed to be met to process a vehicle substitution request.

Miss N later managed to source another car ("Car C") from a different dealership to Car A. Car C cost around £23,000 and Miss N asked Alphera if it met their requirements. Miss N said Alphera didn't help in liaising with the dealership to progress things. Alphera said they needed the dealership to request the information they required on behalf of Miss N. And Miss N said that the dealership was unable to issue an invoice without Alphera contacting them directly and informing them what type of agreement was attached to the car.

Miss N grew frustrated with how long things were taking as she required a driveable car and so complained to Alphera. Miss N wanted Alphera to reimburse her monthly repayments since July 2024.

Miss N eventually referred her complaint to our service as Alphera didn't provide a final response.

While the complaint was with our service, Alphera issued a final response to Miss N. They said that they sent the necessary information in October 2024 to Miss N and explained that a car substitution was only possible with SD. And if Miss N wished to replace her car from any other dealership, then she would need to part exchange Car A to settle the finance. Alphera offered Miss N £250 for the delays in responding and resolving her complaint.

Miss N explained that the car she sourced has since been sold due to what she believed were delays by Alphera. Miss N also confirmed to our service that Car A's mileage was 58,760 miles in February 2025.

Our investigator upheld Miss N's complaint. She explained that while Miss N didn't complain about the quality of the car, she found the car to not have been durable. And so, didn't think it was of satisfactory quality at the point of supply. Our investigator went on to say that Alphera should have done more when Miss N initially contacted them about the car and wished to discuss her options. She thought Miss N should be allowed to reject the car, given the time that had passed and the challenge in sourcing a replacement car. Our investigator also thought, among other things, that Alphera should reimburse Miss N monthly repayments since when the car broke down in July 2024 onwards, as well as pay £250 to her for the distress and inconvenience caused.

Miss N explained that her agreement was naturally reaching its term and that she intended to return the car. Alphera later supplied a vehicle condition report to our service to show that the car was returned in June 2025 and its mileage was 60,089 miles.

Alphera later responded and explained that Miss N had possession of the car for around three years and had driven over 21,000 miles in it. Alphera said the car had been driven further miles after July 2024, when it was alleged, the car couldn't be driven. Alphera also explained that SD wasn't made aware of the fault with the car diagnosed in July 2024 and they hadn't seen a copy of the repair quote Miss N obtained. In summary, Alphera didn't agree that the car wasn't durable at the point of supply.

As Alphera didn't accept the investigator's findings, the complaint was passed to me to decide.

<u>I issued a provisional decision on 8 August 2025 where I explained why I intended to uphold Miss N's complaint. In that decision I said:</u>

"*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 N 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 N's complaint about Alphera.

Miss N initially raised a complaint to both Alphera and our service in relation to what can be described as an administrative issue. Miss N was frustrated with Alphera's actions when attempting to process a vehicle replacement request. However, I don't think this is the underlying crux of the complaint and I'll explain why below.

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 – Alphera 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. It's important to point out in this case that the CRA specifically explains that the durability of goods can be considered part of whether they are unsatisfactory quality or not.

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 N acquired was used, three years old, had been driven around 37,160 miles and cost £27,400. 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.

<u>Had the car developed a fault?</u>

Miss B has supplied a diagnostic completed on the car in July 2024 at 58,095 miles by a manufacturer garage. It said there was a fault where the reverse gear couldn't be engaged and that there was a sporadic malfunction of the park pawl, among other things. A quote had also been supplied to our service from the manufacturer garage which said that the car required a new gearbox.

Considering the above, I think it is likely there was a fault with the car, specifically to the gearbox.

<u>Was the car of satisfactory quality at the point of supply?</u>

I'm mindful here that the car was around six years old and had been driven around 58,100 miles before a fault was found with its gearbox. I'm also mindful that the service history of the car has been supplied which showed it was regularly serviced in line with the car's recommended guidelines.

I'm also mindful that no independent inspection was carried out at the time to ascertain whether the fault with the car was present or developing at the point of supply. And I also accept that I'm not an expert mechanic. But, having completed a general search online, a gearbox for this particular car is generally expected to last between 150,000 and 200,000 miles, with proper maintenance. And with diligent care, it may last even longer.

Considering the above, I'm satisfied the car wasn't durable. I wouldn't expect there to be a need to repair items such as the gearbox to a car so early in its lifetime, especially considering it was also regularly serviced. And so, I'm satisfied a reasonable person would not consider it to have been of satisfactory quality when it was supplied to Miss N.

<u>Remedies under the CRA</u>

I've gone on to think carefully about the remedies available to Miss N under the CRA. I've also thought carefully about the time that has elapsed, and the opportunity Alphera has had to resolve any issues with the car.

One of the remedies available to Miss N under the CRA is a replacement of the goods. And when considering this option, I've thought carefully about what Alphera has said in their response to our investigator's view.

Alphera didn't initially think our service was required to consider the quality of the car supplied to Miss N, but rather only consider whether there was an administrative error made by them towards Miss N. However, I'm mindful that Miss N's complaint stems from when she contacted Alphera in July 2024.

I can see from internal notes supplied by Alphera that they were made aware that the car was faulty in July 2024. At this point, Miss N was given the option of a vehicle substitution i.e. a replacement, which as I have explained above, is a remedy under the CRA.

So, while Alphera say they didn't have the opportunity to consider whether the goods supplied was of satisfactory quality, their actions suggest they did have the opportunity to do so. Alphera were informed the car was faulty and they gave Miss N an option to replace the goods. I have inferred from their own actions that they concluded the car wasn't of satisfactory quality at the point of supply. I say this because, I don't think they would have allowed Miss N the option to replace the car had they thought there wasn't a fault with it and they thought they weren't liable for it being supplied of unsatisfactory quality.

Furthermore, having been told in July 2024 by Miss N that there was a fault with the car, Alphera could have requested the necessary information or requested an inspection be carried out to it to determine their liability.

Having said that, I no longer think a replacement of the car is an appropriate remedy in the circumstance. Sourcing a like-for-like replacement of a car can be a practical challenge, which Miss N has showed to be the case here. But more importantly, I'm mindful that the car has now been returned as the agreement naturally reached its term, without the optional final payment being made. So, there is no asset to replace.

Due to the time that has passed and the opportunity Alphera had to put things right, I think Miss N should be allowed to reject the car and this be recorded to have occurred when she informed Alphera of issues with the car in July 2024.

While I appreciate the car has already been collected, any adverse information in relation to this agreement from July 2024 should also be removed, if any.

Miss N says she continued to make payments towards the car throughout the agreement and more importantly, while the car was undriveable since July 2024. I appreciate Alphera's comments here that some miles must have been driven in the car after July 2024, given the information supplied. But I'm mindful that the mileage covered is significantly less, on average, than in previous years Miss N was in possession of the car. I'm also mindful that Miss N had to store the car for all this time as well. Thinking pragmatically, I think it is fair that Alphera reimburse Miss N for all monthly repayments from July 2024 up until when the car was collected and the agreement ended as this was when the car was mostly unused.

<u>Other costs</u>

Miss N has explained that she has incurred costs insuring and taxing the car while she has complained to Alphera. As I've already concluded that I think Alphera should have done *more in July 2024 to put things right for Miss N, and that the car should be rejected from that point, it follows that I also think Alphera should reimburse Miss N for any costs she's incurred here from July 2024. To be clear, our service hasn't seen any payments made to cover insuring or taxing the car. But if Miss N can show Alphera evidence of payments made (and Miss N is unable to retrieve a rebate or refund from the third parties she made payment to), then I think it is fair Alphera reimburse the cost of insuring and taxing the car from July 2024 onwards.*

<u>Distress and inconvenience</u>

Alphera offered Miss N £250 for the delays in responding to her complaint. It is unclear whether Alphera has paid this to Miss N. But in any event, I think Alphera needs to do more in this instance. In addition to the delays, I'm mindful that Alphera didn't get to the crux of Miss N's complaint. Had they done so, I think it is likely they would have reached the same conclusion as I have, albeit much sooner, and may have negated the need for the complaint to be referred to our service. From Miss N's correspondence with our service, it is clear that Miss N was left frustrated with the complaint she raised, all whilst continuing to make her repayments towards the agreement for a faulty car. In the circumstances, I think Alphera should pay Miss N an additional £150 for the distress and inconvenience caused. So, £400 in total, which includes the £250 award Alphera made to Miss N in their final response."

I set out that I intended to uphold this complaint. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

<u>Responses to the provisional decision</u>

Alphera didn't respond to the provisional decision.

Miss N responded and said she accepted my provisional decision. Miss N also provided additional information to show the costs incurred taxing the car and insuring it. Some of the information Miss N supplied were photos of payments made.

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 persuaded to change my opinion from the provisional decision I made.

As Miss N accepted my provisional decision and Alphera didn't respond, I see no reason to depart from what I said in my provisional decision.

Miss N has provided some commentary and images to show payments made in relation to insuring and taxing the car. As explained in my provisional decision, I think it is fair Alphera reimburse these costs from July 2024 onwards, if Miss N is unable to retrieve a rebate or refund from the third parties she made payment to and she can also supply Alphera the evidence to show that payment was made by her.

In summary, I think Alphera needs to do more in this instance to put things right. I'm satisfied the outcome reached is fair and reasonable given the circumstances.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct BMW Financial Services(GB) Limited trading as Alphera Financial Services to put things right by doing the following:

- End the agreement (if this has not been done already) and record it as so from July 2024.
- Collect the car (if this has not been done already) without charging for collection.
- Ensure Miss N is not liable for monthly repayments after the point of collection (it should refund any overpayment for these if applicable).
- Refund Miss N's advance payment towards the agreement of £7,508.86. If any part of this advance payment was made up of funds through a dealer contribution, then Alphera doesn't need to refund this amount. *
- Reimburse Miss N her monthly repayments made from July 2024 up to when the agreement ends and the car is collected. *
- Reimburse Miss B the cost of insuring and taxing her car from July 2024 onwards. This should be paid to Miss B on production of evidence to Alphera to show that payment was made by her. *
- Pay Miss N £400 in total to reflect the distress and inconvenience caused. This amount includes the £250 award Alphera made in their final response to Miss N in November 2024.
- Ensure any adverse record of the agreement is removed from July 2024 onwards, as Alphera should accept rejection of it from this date.

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If Alphera considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Miss N how much it's taken off. It should also give Miss N a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

If Alphera has already given compensation in relation to this specific complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 23 September 2025.

Ronesh Amin
Ombudsman