

## **The complaint**

Mr O complains that a car acquired with finance from BMW Financial Services (GB) Limited trading as Alphera Financial Services (AFS) wasn't of satisfactory quality.

## **What happened**

In July 2020 Mr O was supplied with a car and entered into a hire purchase agreement with AFS. At the point of supply the car was around 4 years old and had covered 30,635 miles.

At the point of supply Mr O purchased a warranty from a third party which covered repair costs equivalent to the value of the car.

In June 2021 the car suffered catastrophic engine failure. Metal filings were found in the oil filter. Mr O was advised that he needed a replacement engine at an estimated cost of around £16,000.

Mr O contacted the warranty company, who said it required a full service history of the car before it could consider a claim. An issue arose over the most recent service which had been carried out by the supplying dealer, because no cost for oil was shown on the invoice. Mr O had concerns that the service hadn't been completed. Ultimately, the warranty company declined the claim because the full service history couldn't be provided.

Mr O complained to AFS. It arranged for an independent inspection of the car to establish whether the fault had been present or developing at the point of supply.

The inspection was completed in August 2021. The inspector stated that the engine had seized, and that he had found metal particles in the oil filter. The inspector concluded that because the car had travelled 8,600 miles since the point of supply, the fault would not have been present at the point of supply.

Based on the findings of the independent report, AFS didn't uphold the complaint.

Mr O remained unhappy and brought his complaint to this service. He seeks a refund of the costs of replacing the engine.

Our investigator upheld the complaint. He said he didn't think the engine in a premium car should seize and require replacement after 38,000 miles or 5 years. The investigator said he didn't think the engine was durable, which meant that the car wasn't of satisfactory quality when supplied. The investigator said that AFS should refund Mr O the cost of the replacement engine, refund monthly payments for the period Mr O was unable to use the car, and pay compensation of £150 for distress and inconvenience.

AFS didn't agree. It said that Mr O had purchase a used car and that no-one could reasonably expect a car to remain fault free throughout its lifespan. It said that the independent inspection report had concluded that the fault wasn't present at the point of supply. AFS said that it didn't agree to pay for the repairs, but that it was prepared to recognise the inconvenience caused to Mr O and offered to refund all payments made whilst

the car was off the road and pay £150 for distress and inconvenience.

Mr O didn't want to accept the offer made by AFS. So, I've been asked to make a final decision.

### **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.

The hire purchase agreement entered into by Mr O is a regulated consumer credit agreement, so this service is able to consider complaints relating to it. AFS is also the supplier of the goods under this type of agreement and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 is relevant to this complaint. Because AFS supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as the age and mileage of the car and the price paid.

The Consumer Rights Act also says that the quality of goods includes their general state and condition, and other things like fitness for purpose, freedom from minor defects and safety. Satisfactory quality also includes durability. For cars, this means that the components must last a reasonable amount of time. Durability depends on various factors. In this case, Mr O was supplied with a car which was around 4 years old and which had covered 30,635 miles. The engine suffered catastrophic failure after 38,671 miles, around 11 months after the point of supply.

An independent inspection can help to determine whether a car was of satisfactory quality when supplied. I've looked at the independent inspection report in this case. The engineer found metal in the oil filter and stated that the engine would need to be removed and further inspected to confirm the failed part. The engineer stated that because the car had been driven for 12 months and had covered 8,600 miles before the engine failed, the fault wouldn't have been present at the point of supply.

I've taken the independent inspection report into account. However, I have some concerns about the engineer's comments. The engineer hasn't identified what the fault is, nor has he made any suggestions as to what might have caused the engine to seize. He found that there was metal in the oil filter but doesn't comment on what could have caused this, or whether this is the likely cause of the engine failure. Without any discussion of these aspects, I don't see how the engineer can reasonably conclude that the fault wouldn't have been present or developing at the point of supply.

I've also given thought to whether the engine was sufficiently durable. I've taken the age and mileage of the car into account. Whilst I agree with AFS's comment that a reasonable person wouldn't expect a car to remain fault free for its lifespan, I don't think a reasonable person would expect an engine to suffer catastrophic failure after only 38,000 miles, particularly when the car has a full service history, as is the case here. There's no evidence to suggest that Mr O has done anything, or failed to do anything, which would impact on the reliable functioning of the engine.

Taking everything into consideration, I'm of the view that the engine wasn't sufficiently durable, which means that the car wasn't of satisfactory quality when supplied. AFS need to take steps to put things right.

## **Putting things right**

Mr O has already paid for the engine to be replaced. I understand that the repairs were carried out by the manufacturer at a 50% discount. I think it's reasonable that Mr O is refunded for the repair costs he's paid, upon production of an invoice.

Mr O continued to make monthly payments under the agreement following the engine failure. Because I've found that the car wasn't of satisfactory quality, I don't think it's fair that Mr O has made payments for a car he was unable to use. AFS should refund all of the monthly payments made by Mr O during the period when he was unable to use the car.

It's clear that Mr O has been caused significant inconvenience as a result of being supplied with a car which wasn't of satisfactory quality. AFS should pay compensation to reflect the distress and inconvenience suffered.

## **My final decision**

My final decision is that I uphold the complaint. BMW Financial Services (GB) Limited trading as Alphera Financial Services must:

Refund Mr O the cost of repairs on provision of an invoice

Refund all monthly payments made by Mr O for the period he was unable to use the car

Pay compensation of £150 for distress and inconvenience

Pay simple interest of 8% per annum on all amounts refunded from the date of payment to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 29 October 2022.

Emma Davy  
**Ombudsman**