

The complaint

Mr R is unhappy with a car he acquired under a hire purchase agreement provided by BMW Financial Services(GB) Limited trading as Alphera Financial Services ('BMWFS').

What happened

In November 2021 Mr R entered into a hire purchase agreement with BMWFS in order to acquire a used car. The car was around six years old and had covered around 58,354 miles. The car cost £34,418.24, a deposit was recorded on the finance agreement of £500 and Mr R was due to make regular payments of £588.40 per month for 48 months, with a final repayment of £14,266.50 if he wanted to keep the car.

Unfortunately, a few days after Mr R collected the car he says an engine management light ('EML') appeared. He says this was intermittent, and the car was returned to the dealer in December 2021.

Mr R says he got the car back the same month, but the EML returned. He says the dealer told him the EML was in relation to the Diesel Particulate Filter ('DPF') and says he was advised to take the car on a longer journey to clear it.

Mr R says he followed the advice, but the EML continued to be an issue and the car was again returned to the dealer to look at. The dealer booked the car in with a manufacturer's garage, who inspected the car and did various tests. This garage advised the DPF should be removed to be inspected and recommended other tests to be carried out.

The dealer told Mr R that the recommended work had been completed and the car was returned to him in March 2022. Mr R says the EML wasn't present and did not return – so he assumed the issue was fixed. But, Mr R says he didn't receive any paperwork for the repairs carried out.

At the beginning of July 2022 the car broke down and needed to be recovered. Mr R says the dealer couldn't look at the car for a number of weeks. The car was taken to a couple of different garages, but it doesn't appear it could be seen, before being taken back to the dealer.

The dealer noted that it believed the car had 'way too much oil in' and the crank shaft could be snapped. The dealer later did further investigation and said the engine had suffered a catastrophic failure.

Mr R complained to BMWFS. An independent inspection was then carried out on the car at the end of September 2022. The mileage at this point was recorded as 64,129. This inspection, in summary, said that the engine had suffered excessive damage to bearing shells and 'crankshaft journals'. The inspector believed at some point in the past the car had been run with insufficient oil in. It said this had likely been the case for hundreds or likely thousands of miles. It said it was likely the damage was due to driver error.

The dealer said it believed the car would have given Mr R a warning light to say it was low on oil, which it said he had ignored. It said it thought Mr R had then panicked when the car broke down and overfilled the car with oil before it was moved back to the dealer. BMWFS issued its final response in October 2022. This said, in summary, that the faults weren't present at the point of sale and it believed the car was reasonably durable.

Mr R was unhappy with this and referred the complaint to our service. Mr R said, in summary, that he had never had any warning lights about oil and so never topped up. He said He didn't think the DPF was ever repaired and the issue had been 'masked up'. He said he had spoken to the manufacturer of the car, who told him if the DPF had failed, this could cause the oil level to rise.

Our investigator issued an opinion. She said, in summary, that she thought the later issues with the car were likely linked to the earlier issues with the DPF. She said she thought this meant the car wasn't of satisfactory quality when it was supplied and so Mr R should be able to reject it. She said he should get back his repayments made from July 2022, be reimbursed for the cost of cancelling his insurance, be reimbursed £170 for towing costs and she said BMWFS should pay Mr R £150 to reflect what happened.

Mr R got in touch and said he mostly agreed with the view. But, he said he should be reimbursed various other costs. These included insurance, tax, additional towing costs, his monthly payment for the time he had a courtesy car, the cost of transferring a private plate and some funds towards a second car he had to buy.

Our investigator reviewed Mr R's comments and said, in addition to what she'd previously recommended, Mr R should be reimbursed - the costs of insuring and taxing this car once he'd bought the second one, £250 for the towing costs, £80 to remove a private plate and 20% of the February 2022 payment from when he had the courtesy car. She also said, having reviewed things, that BMWFS should pay him £250 to reflect what happened.

BMWFS then also responded. It said, in summary, that neither the MOT history nor the manufacturer had noted an oil leak. It said there was no evidence to say the car was sold with engine failure. It said the DPF and oil issue weren't the same and it pointed to the conclusions of the independent report.

As BMWFS disagreed, the case 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.

Having done so, I think this complaint should be upheld. I'll explain why.

I should start by explaining to both parties that I may not comment on every point raised nor every piece of evidence and testimony. Where I haven't, this doesn't mean I consider something unimportant. I've carefully thought about all of the information on the case. But, my decision will focus on what I consider to be the crux of Mr R's complaint along with what I think are the key facts and evidence. This approach reflects the informal nature of our service.

Mr R complains about the quality of a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can consider Mr R's complaint against BMWFS.

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 – BMWFS 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, I'll consider that the car Mr R acquired was around six years old and had covered over 58,000 miles. So, I don't think a reasonable person would expect it to be in the same condition as a newer, less road worn car. And I think they would expect parts of the car to have suffered some wear and tear.

But, that being said, the car also cost over £34,000. So, I think a reasonable person would expect it to have been free from anything other than very minor faults and would expect trouble free motoring for some time.

What I need to consider in this case is whether the car was of satisfactory quality or not.

It isn't in dispute here that the car developed a fault. All parties acknowledge there was an initial issue with an EML/DPF and a later one with the engine failing. And I can also see this was the case from the job sheets and the independent report.

Our investigator felt the earlier issue with the DPF led to the later issue with the engine failing. BMWFS and the dealer have said that Mr R ran the car without oil in, ignoring a warning light, which led to the engine failure. So, I need to think about what likely happened here.

I've firstly considered the initial issue with the DPF. The job sheet from the manufacturer's garage said:

"CHECKED ELETRICAL CONNECTORS ALL OK

CHECKED TEMP SENSORS ALL OK CHECKED COMPRESSION ALL OK

UPDATED SOFTWARE BUT FAULT STILL PRESENT ADVISE TO REMOVE DPF FOR INSPECTION. CARRY OUT INJECTOR, TURBO AND SMOKE TESTS OF THE INTAKE SYSTEMS"

I've seen an invoice from a third party company that says:

"Dpf clean on the ('manufacturer') dpf

Reset system"

And then I've seen a job sheet from the dealer that says:

"removed intake pipe and plug smoke Tester in no leaks on intake system exhaust system smoke Test passed fine"

Mr R has confirmed once the car was handed back to him, the EML had gone off and the issue didn't return. So, it might appear that the dealer referred the issue to the manufacturer and then followed the manufacturer's guidance, leading to an initially successful repair.

I've gone on to consider what Mr R said here. He believes the DPF wasn't repaired and the issue was masked over. In summary, he's made various points about the work completed, including questioning the validity of the job sheets for numerous reasons.

Having thought carefully about this, I will say I can understand Mr R's scepticism here. I say this for a couple of reasons – there are some discrepancies around the dates on the job sheets and invoice. For instance, the information from the third party about the DPF clean is dated *after* the job sheet from the dealer going through the work which was to be carried out following this.

Mr R has given us a detailed timeline of what he says happened, and has said the paperwork from the dealer and the third party are dated *after* the point where he got the car back. And, having looked at the third party's website, they are very clearly a remapping specialist. The website advertises "*DPF solutions*", along with various ECU mapping and tuning, but no other vehicle servicing or mechanical work is offered.

There is an earlier invoice, for significantly less money, from another remapping specialist that does appear to offer DPF cleaning. But the invoice simply says "*repair*".

That being said, I don't think I need to make a finding on what happened here – I'll explain why further below.

I've then considered what happened when the engine failed.

There is a job sheet from the dealer which explains:

"CAR HAS WAY TOO MUCH OIL IN SEE DIP STICK"

The independent report explained:

"We believe that, at some time in the past, this vehicle has suffered from cavitation of the oil which has reduced the oil flow around the engine causing accelerated engine bearing wear/erosion"

"Cavitation of the oil is usually caused by the vehicle having been run with insufficient oil in"

"with the level of wear confirming to us that the vehicle been driven on in a distressed condition for multiple hundreds and will likely multiple thousands of miles"

"Checking oil on a regular basis as the vehicles owner's responsibility leading us to conclusion that the engine damage is employed by driver error rather than a mechanical failure"

So, in summary, the dealer noted a *high* level of oil, while the independent report said the engine showed a high level of wear that was consistent with being driven with oil cavitation for a significant period. And it said this was usually caused by a *low* oil level. It is worth pointing out however that this is noted as being "*at some point in the past*", as opposed to stating this was likely directly before the engine failed.

The dealer said it thought Mr R had run the car with too little oil, and then had panicked and overfilled the oil when the engine failed.

Mr R directly disputed this. And he explained he had spoken to the manufacturer who had said, in summary, that if the DPF failed and couldn't regenerate, then this could cause fuel to mix with the oil – increasing the volume and causing issues with the engine.

This also reflects my own understanding here, which is that if a DPF is clogged, this can increase exhaust gas pressure, which can force fuel into the oil system. It's also worth explaining here that, while the independent report explained oil cavitation is usually caused by low oil, I understand this can also be caused by oil levels being too high – as this can cause bubbles to form.

I've carefully thought about all of this. Having done so, I don't think that the investigator's opinion that the later engine failure was linked to the earlier DPF issue was unreasonable. I say this as the high oil level found can reasonably be explained by the DPF failing and not regenerating.

This same logic would apply whatever the reason for the DPF failure. So, if the DPF failed due to the later failure of an initially successful repair, an underlying issue with the DPF which wasn't repaired, or if the repair in fact didn't take place - and the DPF warning system had instead been bypassed as Mr R seems to allege - all of these could cause the issues seen.

I've considered that the DPF issues initially appeared very soon after Mr R got the car. So, I'm satisfied this means the car had a fault that was present or developing at the point of supply. If any of the above scenarios were correct, I'm satisfied this would mean the later engine failure was due to an earlier issue that was present or developing at the point of supply. It follows this means the car would not have been of satisfactory quality when Mr R got it.

All of that being said, I appreciate this is somewhat finely balanced. And so I've considered what BMWFS and the dealer said here – that Mr R drove the car with too little oil and then topped up too much.

But, having done so, I don't find this version of events persuasive. I say this as Mr R has been consistent with what he's said here. He's given us a detailed timeline of events and provided a lot of evidence to back up what he's said.

I've also thought about his actions. Mr R quickly complained and took action to arrange attempted repairs, on multiple occasions, when the EML appeared in relation to the DPF. Given this, I can't see why he would then ignore another EML about oil levels, continue to drive the car for potentially thousands of miles until the engine failed, mistakenly top up too much oil and then, to be blunt, lie about what had happened -in detail - to the dealer, BMWFS and our service.

Thinking about all of this, I'm satisfied a few things may have happened here. It's possible the damage to the engine was directly caused by the DPF failing. Or it's possible engine damage was caused *before* Mr R got the car due to the engine being run with low oil – which then came to light due to the DPF failing. It's again worth noting here that the independent inspection stated:

"We believe that, at some time in the past, this vehicle has suffered from cavitation of the oil" (emphasis added by myself)

As I've explained before, the DPF could've failed for various reasons. But, whatever happened here, the key thing is that, on balance, I think it's more likely the engine failed due to one of these scenarios, rather than what was put forward by the dealer and BMWFS.

It follows all of this that I'm satisfied the car supplied to Mr R wasn't of satisfactory quality. I want to reassure BMWFS that I've carefully considered all of the other information and comments it's provided, including all of the arguments put forward by the dealer. But this doesn't change my opinion.

I've then gone on to consider what would be fair and reasonable to put things right. Repairs have already been completed or attempted. I'm satisfied any further repairs could be very costly given the issues. And I've considered the time Mr R has already been without the car. Thinking about all of this, I agree with our investigator that Mr R has a right under the CRA to now reject the car.

It's worth adding a note here about the deposit which Mr R is due back. The credit agreement shows an 'advance payment' of £500, which is what our investigator originally told BMWFS to reimburse Mr R. In their second view, our investigator said Mr R had shown evidence he paid a total deposit of £1,100. She said he'd carried £235 negative equity over from part exchanging his previous car – which meant it appeared Mr R had actually paid £865 as a deposit. Our investigator asked BMWFS for an explanation of what happened here, but it didn't comment.

I've seen a copy of the sales invoice that BMWFS provided to our service, which presumably was sent to it by the dealer. Here, it's recorded Mr R's previous car has a part exchange value of £16,400 and finance to be settled of £16,400. It's then recorded that Mr R paid a deposit of £500. £500 is also what appears on the credit agreement.

But, Mr R has provided another invoice from the dealer, with very similar details. But, this records a part exchange value of £16,400, a finance settlement of around £16,635 and a total deposit paid of £1,100. The cash price of the car is also slightly higher on this invoice. Thinking about this, I'm more persuaded that Mr R did in fact pay an initial total of £1,100. I say this as he's also provided a 'customer receipt' from the dealer showing this, and a card receipt for part of the deposit showing he paid the dealer £1,000.

BMWFS, when asked, hasn't given any explanation here. It's hard to say exactly what happened. But, given the conflicting evidence, and lack of a response from BMWFS, I agree with our investigator it's fair for Mr R to receive £865. I don't think it's reasonable to give the full £1,100, as this would put him in a better position than he would've been in originally, as it appears he was in negative equity on his previous agreement.

Thinking about Mr R's use of the car, I'm satisfied he stopped driving it on 4 July 2022. So, any payments made towards the agreement from this time should be reimbursed. Mr R was also given a courtesy car for the time his car was being worked on in February 2022. He's shown pictures that appear to show this car had bald tyres, so I think his explanation that he didn't use this car as much as he normally would have is reasonable. I agree with our investigator that BMWFS should reimburse him 20% of February 2022's repayment to reflect this.

Mr R has also had some additional expenses he otherwise wouldn't have, had the car been of satisfactory quality. He has shown three towing receipts from July and August 2022 totalling £250 which should be reimbursed.

While it was Mr R's responsibility to tax and insure the car, I also agree with our investigator that it doesn't seem reasonable that he was covering the cost of this for two cars when he stopped driving this one and had to acquire another.

So, BMWFS should reimburse Mr R the equivalent of £139.82 per month for his insurance and £27.56 for tax, from August 2022 when he acquired the second car, to November 2022 when he declared this car SORN and cancelled the insurance. I also agree with our investigator that it's reasonable BMWFS cover the cancellation fee from this insurance policy.

I'm satisfied that Mr R has suffered distress and inconvenience because of what happened. He's been without his car for a significant period, has had to deal with the car breaking down and has had to spend time and effort sourcing a second car to provide transport for his family. I agree BMWFS should pay him £250 to reflect this.

Mr R has said he believes BMWFS should contribute to the cost of the car he acquired when this one broke down. But, I don't think this is reasonable. Mr R is getting back the monthly repayments as I've directed, which should cover the cost of alternative transport. And although I understand the second car has had issues, this isn't the responsibility of BMWFS.

My final decision

My final decision is that I uphold this complaint. I instruct BMW Financial Services(GB) Limited trading as Alphera Financial Services to put things right by doing the following:

- Cancel the agreement with nothing further to pay
- Collect the car at no cost to Mr R
- Reimburse Mr R's deposit of £865*
- Reimburse Mr R all repayments towards the agreement from 4 July 2022*
- Reimburse Mr R 20% of the February 2022 repayment*
- Reimburse Mr R's monthly insurance premiums of £139.82 between August 2022 and November 2022*
- Reimburse Mr R's cancellation fee for his insurance policy on this car* **
- Reimburse Mr R's monthly car tax cost of £27.56 between August 2022 and November 2022*
- Reimburse the cost of transferring/removing the private plate from this car* **
- Reimburse Mr R's total towing costs of £250 from 22 January 2023 * ***
- Pay Mr R £250 to reflect the distress and inconvenience caused
- Remove any adverse information from Mr R's credit file in relation to this agreement

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

**on receipt of evidence by BMWFS of these costs from Mr R

*** This is the date the invoice shows Mr R paid these expenses, rather than the date the costs were incurred. For the purposes of the 8% interest above, this is the correct date to use

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 October 2023.

John Bower
Ombudsman