

## **The complaint**

Mr K is unhappy with the quality of the car he acquired under a hire purchase agreement with BMW Financial Services(GB) Limited trading as Alphera Financial Services (Alphera).

When I refer to what Mr K has said, and Alphera have said, it should also be taken to include things said on their behalf.

## **What happened**

In July 2022, Mr K entered into a hire purchase agreement with Alphera to acquire a used car first registered in November 2016. At this time the car had travelled about 52,500 miles. The cash price of the car was around £21,800 and the total amount payable was approximately £26,454. Mr K made an advance payment of £500. The duration of the agreement was set at 48 months, consisting of first payment of about £368, followed by 46 monthly payments of around £368, and an optional final repayment to purchase the car at the end of the agreement of around £8,646.

Mr K said that in November 2022 the engine of the car started to make a horrible noise. He said the car at the time had travelled approximately a total of 57,090 miles. He paid for the car to be transported to his house, and later the car was taken to a garage that estimated the repair costs at around £8,300. The estimate said that a full engine stripping and building was required. Mr K wanted to reject the car so he complained to Alphera.

In March 2023, Alphera responded to Mr K's complaint about the quality of the car. They said the garage that did the repair estimate concluded that in their opinion the cause of the engine failure would've been present or developing at the point of supply, but they said that they arranged for their own inspection of the car in February 2023. Alphera said that this inspection concluded the failure was not present when the car was sold to Mr K, so they thought the car was of satisfactory quality. As such they said they were not able to offer to cover the cost of the repair. But to recognise it had taken them several months to reach their decision, during which time Mr K continued to make his monthly payments for the car, they proposed to offer Mr K a refund of four monthly payments: a total of about £1,473.

Mr K was unhappy with Alphera's response, so he referred his complaint to our service.

Our investigator thought there was enough information for her to say that, on the balance of probabilities, the car was not of satisfactory quality when it was supplied to Mr K – particularly, that it wasn't reasonably durable.

Alphera didn't respond, so the complaint has been passed to me to make a final decision.

After reviewing the case, I issued a provisional decision on 10 August 2023. In the provisional decision I said:

### ***'What I've provisionally 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.*

*In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law, and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr K acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements.*

*Alphera is the supplier of goods under this hire purchase agreement and is responsible for dealing with complaints about their quality. The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr K entered into. Under the 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 its cash price. The CRA says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.*

*In Mr K's case the car was used, with a cash price of around £21,800. It had covered about 52,500 miles and it was approximately over six years old when he acquired it. So, the car had travelled a reasonable distance and it's reasonable to expect there to be some wear to it as a result, and I'd have different expectations of it compared to a brand-new car. As with any car, there is an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time, and it is reasonable to expect these to be replaced. And with second-hand cars, it's more likely that parts will need to be replaced sooner or be worn faster than with a brand-new car. So Alphera would not be responsible for anything that was due to normal wear and tear whilst in Mr K's possession. But given the age, the mileage and the price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after it was acquired.*

*There is no dispute that there is a fault with the car. Alphera said that the independent inspection, which they commissioned, determined that the fault wasn't present or developing at the point of sale. In support of this they quoted the independent inspection which, in summary, said that the fault symptoms have all the characteristics of worn big end bearing shells. And that most big end bearing wear issues are induced by an interruption in oil supply such as the car being operated with insufficient oil in the sump which induces accelerated engine bearing wear. The report also concluded that the car had covered almost 5,000 miles since the date of sale leading them to the conclusion that the current issue couldn't have been present at the point of sale, especially as the car wouldn't have passed an MOT with the engine noise present, and it wouldn't be possible to drive the car in its current condition.*

*I've taken the above into consideration, but I also considered that the report which Alphera commissioned also said that, to confirm the exact cause of the internal failure of the engine, would require further investigation under workshop control conditions (i.e. the engine will have to be stripped). So, this statement weakens the conclusions of the independent report. And the garage, where Mr K took his car after the fault occurred, have also told our service that when the car arrived at their premises the oil level was correct. They also said that the common cause for this type of damage is caused by previous lack of servicing which causes lack of lubrication and wearing of the crankshaft bearings. So, this also undermines the findings of the independent report's statement alluding to the fact that the car must have been operated by Mr K with insufficient oil in the sump. Finally, I think it's also reasonable to*

take into account the nature of the problem and whether it's fair to say the car was reasonably durable.

Considering the above, combined with the age and mileage of the car, I think that a reasonable person wouldn't expect for the car to need an engine rebuild and to have such a big expense so soon. Mr K only had the car for approximately four months and only covered approximately 4,600 miles. I understand that the engine may experience wear over time, but I think needing to rebuild an engine is a significant problem to arise with a car, and it can be very expensive to put right – estimated at £8,300. Given the mileage of the car, and the price paid, I don't think this was a cost a reasonable person would expect to bear, or a fault that would be expected to arise in the time frame Mr K has had the car. So, I don't think the car, including its engine, was sufficiently durable. For this reason, I do not think the car was of satisfactory quality.

Mr K said that he wants to reject the car, but the CRA sets out that Mr K has a short term right to reject the car within the first 30 days of supply, if the car is of unsatisfactory quality. However, Mr K would need to ask for a rejection within that time. Mr K would not be able to retrospectively exercise his short term right of rejection at a later date. As he was unaware of the fault within the first 30 days, he couldn't possibly express his wish to reject the car within that time. The CRA also say that if the car acquired wasn't of satisfactory quality, or not as described, then Mr K would be entitled to still return it after 30 days, but Mr K doesn't have the right to reject the car until he has exercised his right to a repair. So, Mr K doesn't have an automatic right to return the car. For me to conclude that Mr K can exercise his right to reject the car, I would need to see that the car wasn't of satisfactory quality, because the fault he complains about was likely to have been present or developing at the point of sale, and that Alpher's attempt at the repair has failed. So, Alpher should arrange and pay for the car to be repaired. If the cost of the repairs is unviable, then Mr K should be allowed to reject the car and the finance agreement should come to an end.

As the car wasn't of satisfactory quality, Mr K hasn't had access to it since November 2022 when the engine fault occurred. As such, he had to rely on alternative transportation. So, I think it's only fair that he receives a refund for the payments he has made from November 2022 until the engine repair is carried out, minus any payments that have already been refunded to him.

Mr K has understandably gone through a degree of inconvenience and stress while he was without the car, including arranging to have it transported when the engine failed. So, considering the circumstances I think it is fair that Alpher pay him £200 compensation for the distress and inconvenience caused. They should also reimburse Mr K the amount it cost him to transport the car after the engine had failed.

### **My provisional decision**

For the reasons given above, I intend to uphold this complaint and direct BMW Financial Services(GB) Limited trading as Alpher Financial Services to:

1. Pick up and repair the car at no cost to Mr K. Refund any payments Mr K made from November 2022 until the engine repair is carried out. Add 8% simple interest per year to all the refunded amounts from the date of payment to the date of settlement;
2. If the cost of the repairs is unviable, then Mr K should be allowed to reject the car and the agreement should end. In this situation:
  - a. The agreement should be marked as settled on his credit file.
  - b. Mr K should get back his £500 deposit.
  - c. Mr K should get a refund of all payments made from November 2022 onwards.

- d. 8% simple interest per year should be added to all the refunded amounts from the date of payment to the date of settlement;
3. Pay Mr K £200 compensation for the distress and inconvenience caused;
4. Remove any adverse information that may have been recorded on Mr K's credit file from November 2022 onwards;
5. Reimburse Mr K the £500 it cost him to transport the car. Add 8% simple interest per year to all the reimbursed amounts from the date of payment to the date of settlement;
6. Reimburse Mr K a further £100 it cost him to transport the car, on production of a valid receipt or invoice. Add 8% simple interest per year to this amount from the date of payment to the date of settlement.

*If BMW Financial Services(GB) Limited trading as Alphera Financial Services thinks tax should be deducted from the interest element of my award, then they should provide Mr K with a tax deduction certificate so he can reclaim it, if appropriate.'*

I asked both parties to provide me with any additional comments or information they would like me to consider by 24 August 2023.

Mr K responded and said he has nothing further to add.

Alphera didn't respond.

### **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 and considering neither Mr K nor Alphera had any further comments to make I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

### **My final decision**

For the reasons given above and in my provisional decision I uphold this complaint and direct BMW Financial Services(GB) Limited trading as Alphera Financial Services to:

1. Pick up and repair the car at no cost to Mr K. Refund any payments Mr K made from November 2022 until the engine repair is carried out. Add 8% simple interest per year to all the refunded amounts from the date of payment to the date of settlement;
2. If the cost of the repairs is unviable, then Mr K should be allowed to reject the car and the agreement should end. In this situation:
  - a. The agreement should be marked as settled on his credit file.
  - b. Mr K should get back his £500 deposit.
  - c. Mr K should get a refund of all payments made from November 2022 onwards.
  - d. 8% simple interest per year should be added to all the refunded amounts from the date of payment to the date of settlement;
3. Pay Mr K £200 compensation for the distress and inconvenience caused;
4. Remove any adverse information that may have been recorded on Mr K's credit file from November 2022 onwards;
5. Reimburse Mr K the £500 it cost him to transport the car. Add 8% simple interest per year to all the reimbursed amounts from the date of payment to the date of settlement;

6. Reimburse Mr K a further £100 it cost him to transport the car, on production of a valid receipt or invoice. Add 8% simple interest per year to this amount from the date of payment to the date of settlement.

If BMW Financial Services(GB) Limited trading as Alpheria Financial Services thinks tax should be deducted from the interest element of my award, then they should provide Mr K with a tax deduction certificate so he can reclaim it, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 26 September 2023.

Mike Kozbial  
**Ombudsman**