

The complaint

Mr J complains that a used car he acquired with finance provided by BMW Financial Services (GB) Limited (trading as Alphera Financial Services) (Alphera) is of unsatisfactory quality.

What happened

Mr J entered into a hire purchase agreement (HPA) with Alphera at the end of February 2022. In late August the same year, a coolant warning light came on but the level rose again when Mr J tried to top this up. Mr J contacted the supplying dealer who said there was a problem with the water pump which had damaged the head gasket. The head gasket, water pump and timing cover were replaced with Mr J contributing £372 for the water pump (as this wasn't covered by the six month warranty the car came with).

When Mr J went to collect the car an overheating warning light illuminated on the journey home. The supplying dealer said there was an airlock in the system and a buzzing noise and strong smell of fuel coming through the vents meant an O-Ring had to be replaced. This work was undertaken at no additional cost to Mr J but another overheating warning light appeared not long after. Mr J says it looked as if coolant was low again but this returned to the max line when he went to top up so he contacted the supplying dealer once more.

The supplying dealer was unable to find a fault and Mr J contacted Alphera to say he wanted to reject the car. Another light came on in November 2022 and the head gasket was replaced again but more warning lights appeared on the way home. Mr J contacted the supplying dealer again and the car was repaired at the roadside - the supplying dealer says a pipe that shouldn't have been disconnected had to be reconnected.

Mr J thought there was probably an unresolved issue with the coolant system and Alphera instructed an independent expert (that I'll call D) to inspect the car in December 2022. D found no fault with the coolant system on the day of his inspection but he was concerned that a repair invoice showed the timing cover had been changed yet the cover sticker had a 2018 manufacturing date and there was sealing compound around the top casing.

Alphera didn't think Mr J should be entitled to reject the car - as D didn't find a fault and the repairs undertaken seemed to have fixed things - but Mr J didn't think that was right. He arranged another inspection by a different independent expert (that I'll call N). N saw the car three times in January and February 2023 and concluded that there was an ongoing defect. Like D, N also had concerns about the quality of previous repairs - in particular the manner and amount of sealant applied and how this might impact adversely on the engine going forward.

Alphera didn't accept N's conclusions. It suggested a third report should be obtained and Mr J arranged for a main dealer (for the brand) to check the car. That dealer found the coolant warning light was on, there was evidence of overheating and the car needed a new engine but Alphera didn't change its position.

One of our investigators considered the evidence and recommended the complaint should

be upheld. She acknowledged D couldn't replicate the coolant problem on the day of his inspection but she didn't think this was surprising as Mr J reported it was intermittent. She was satisfied that N and the main dealer both identified issues within the coolant system. And, taking into account the car's price, age and mileage at supply and when faults first appeared, she thought it was likely these were present when Mr J got the car.

The investigator found the car was of unsatisfactory quality and Mr J should be allowed to reject it. She said Alphera should reimburse Mr J's out of pocket expenses totalling £832 – for repairs (£372) and inspections (£320 and £140) - and pay interest on any refunds. She thought the car was off the road for repairs and inspections for about 60 days and, given Mr J wasn't supplied with alternative transport during this time, he should have two monthly payments refunded to reflect this lost/impaired use. She was satisfied that Mr J stopped using the car in April 2023 and that was reasonable. She considered he should have any monthly payments made after that refunded for this additional loss of use. And Alphera should also pay Mr J an additional £300 compensation for distress and inconvenience and remove any adverse information from his credit file.

Mr J accepted the investigator's recommendations and Alphera asked for more time to consider things. When Alphera didn't respond within the additional time allowed by the investigator, the matter was passed to me for a decision. Having considered the available evidence, I was minded to uphold the complaint but my reasons weren't quite the same as the investigator's. I thought it was fair to give the parties the chance to see my provisional findings and make further submissions (if they wanted to) before I made my final decision so I issued a provisional decision on 2023. I've set out below (in italics) what I decided provisionally - and why – and this forms part of my final decision.

My provisional decision

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's fair and reasonable, I must have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. And, where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr J brings his complaint to our service because he acquired this car with a HPA. And Alphera was required under the Consumer Rights Act 2015 (CRA) to ensure (amongst other things) that the car was of satisfactory quality at the point of supply. What amounts to "satisfactory" quality will vary depending on individual circumstances. The quality of goods includes their general state and condition as well as other things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Goods need to meet the standard that a reasonable person would consider "satisfactory" and, in the case of a used car, it's generally reasonable to take the age, cost and mileage at the point of supply into account. The car Mr J got here was around four years old, cost just over £31,000 and had just over 11,000 miles on the clock. As such, I think a reasonable person would accept that it was likely to have some parts that were worn and would need replacing or repairing sooner or later – which is reflected in the lower price paid compared to the price of a brand new vehicle. I'm satisfied there's also a reasonable expectation however that any vehicle will be fairly durable – taking its age, cost and mileage into account. And the CRA also provides (broadly speaking) that if goods such as Mr J's car aren't of satisfactory quality within six months of delivery, they're taken to have been of unsatisfactory quality at the outset – unless there's reason to think otherwise.

I've considered the evidence here carefully. I'm satisfied that Mr J reported an fairly significant problem with this car overheating within six months of supply. I can see the supplying dealer undertook various investigations and carried out several repairs but this didn't resolve things. And I think it was reasonable to seek the opinion of an independent expert in the circumstances.

Expert evidence/inspections

D checked the car in December 2022 and, whilst no fault with the cooling system was found during that inspection, the expert acknowledged that Mr J said the issue was intermittent. And he went on to conclude (based on correspondence provided and an invoice dated August 2022) that "there appears to be an ongoing issue with the coolant system, this appears to have been going on for some time, (at least since August 22)".

N then inspected the car in January and February 2023 (at just over 23,000 miles). I'm satisfied N found there was a problem with the coolant system – air was trapped and coolant was unable to circulate and the engine continued to lose coolant, which seemed to last for about 10 days only. N considered some of the repair work was sub-standard and concluded that the car was likely unfit for purpose since supply and the various repairs attempts were unsuccessful.

I'm satisfied that both N and D seem to have appropriate expertise and their reports are reasonably detailed but I think it's reasonable to give more weight to N's conclusions in the circumstances. I consider N's investigation was more extensive than D's – N saw the car on three different occasions, allowing the engine to idle for about two hours on one visit. I consider the faults that N identified seem consistent with the problems Mr J reported to the dealer in August 2022 (as set out in his fairly detailed email to Alpheria in October 2022 and on several occasions after that). I find N's conclusions are also supported by the other evidence available - such as the main dealer's findings. And I don't think what N says is contradicted to any significant extent by D's report as, whilst D couldn't replicate the faults reported on the day of the inspection, he acknowledged these were intermittent and other evidence suggested the car had an ongoing coolant problem since August 2022.

Satisfactory quality

Taking everything into account, I find it's more likely than not this car had a fault with the coolant system in August 2022 that was probably present when it was supplied. I don't think a reasonable person would expect a car of this age, cost and mileage (at the point of supply) to have this sort of issue. I consider this car wasn't sufficiently durable and it was of unsatisfactory quality when Mr J got it.

Putting things right

I'm satisfied that the supplying dealer (and Alpheria) had the opportunity to repair the car - work was done to the head gasket initially then the supplying dealer thought there was an air lock in October 2022, which I note still seems to have been present when N saw the car some months later. And, when Mr J reported the same problems towards the end of 2022, the dealer suggested this was due to low fuel - but D says the coolant warning light that Mr J photographed is not a low fuel light. In addition all three of the independent reports mention concerns around the quality of the repairs that were undertaken. N considers some of the work done may adversely impact the car and the main dealer found the engine needs to be replaced.

I'm satisfied that the repairs undertaken here weren't successful. The CRA says a consumer has the final right to reject where goods still don't conform to the contract after one repair or replacement and I don't think it's reasonable to expect Mr J to wait any longer for this car to

be fixed. I'm minded to agree it's fair he should be allowed to reject the car now and end the HPA.

According to paperwork I've seen, Mr J paid a deposit of £10,000 under the HPA and I find it fair Alphaera should refund this along with the cost of any repairs and investigations that he paid for – as he would not have incurred these expenses if he hadn't been supplied with this faulty car. As far as I can see, Mr J also paid £372 for the water pump plus £320 for N's report and £140 for the report by the main dealer, totalling £832. If he has any other relevant out of pocket expenses, Mr J should let the investigator know in response to the decision (and provide documentary evidence if possible) and I'll take this into account in my final decision.

It looks as if the car went back and forth for about two months for various repairs and inspections between August 2022 and April 2023. I agree it's fair that Alphaera should refund two monthly payments to reflect Mr J's lost/impaired use during this time. Mr J told us he stopped using the car in April 2023 on the advice of the main dealer. And I can see a note on the main dealer's last invoice (from the end of April 2023) that "strongly recommends" the car should not be driven due to the risk of overheating which could cause the engine to seize.

On the same invoice the mileage was recorded as 26,288 miles. Mr J sent us picture of the car's odometer earlier this month that shows 26,469 miles on the clock. I'm satisfied he probably stopped using the car around the end of April 2023. I think that was reasonable – given the main dealer's comments. I don't think it's fair that Mr J should have to pay for a car he was unable to drive due to faults that were present at the point of supply. And I'm minded to find it is fair that Alphaera should refund any finance payments made after April 2023 in full for loss of use.

I realise Alphaera may feel that Mr J had fair use of this car as he'd exceeded (pro rata) the annual limit of 8,000 miles a year set out in the HPA by the time he stopped using it - but I don't think it's that simple. I say this because Mr J took out this finance over four years. I think he probably expected, at the outset, to travel around a maximum of 32,000 miles during that time. And Alphaera could charge for any miles accrued in excess of that amount under the terms of the HPA.

I don't think it's unusual however for customers to drive further in one given year than another in this situation. And, in my experience, lenders don't usually hold customers to the annual mileage limit in each individual year - if the mileage accrued at the end of the term is within the agreed limit overall. I'm satisfied it's not through any act or omission on Mr J's part that this car is going back earlier than either party anticipated at the start of the HPA – the car is being rejected because it wasn't of satisfactory quality at the outset. Weighing everything up, I'm minded to require Alphaera to refund any monthly payments made from 26 April 2023 in full to fairly reflect the fact Mr J was unable to use the car from that point.

I think it's likely Mr J experienced a good deal of distress and inconvenience as a result of being supplied with this faulty car. It broke down and had to be returned several times for repairs and various inspections leaving him without transport - so Mr J had to rely on friends and family to get to and from work, among other things. I consider the additional £300 compensation the investigator recommended for this sounds fair. I also find it reasonable Alphaera should pay interest on any refunds and I agree that any adverse information recorded about the HPA should also be removed from Mr J's credit file.

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.

I invited the parties to consider my provisional findings and let me have any new comments or evidence that I hadn't seen before by 6 October 2023. I said I'd consider all the evidence available after that and make my final decision.

Mr J accepted my provisional findings. Alphera didn't respond or raise any objections. And I see no reasonable grounds to depart from my provisional conclusions in the circumstances.

My final decision

For the reasons set out above, my decision is I uphold this complaint and I require BMW Financial Services (GB) Limited (trading as Alphera Financial Services) to:-

1. end the HPA and arrange for the car to be collected at no additional cost to Mr J;
2. refund the deposit of £10,000;
3. refund £832 for various investigations, repairs and reports that Mr J paid for;
4. refund two monthly payments, plus any monthly payments made from 26 April 2023, for loss of/impaired use;
5. pay interest on the above refunds at 8% simple a year from the date of payment to the date of settlement;
6. pay Mr J £300 compensation for distress and inconvenience; and
7. remove any adverse information recorded about the HPA from his credit file.

If Alphera does not pay the compensation for inconvenience and distress within 28 days of the date on which we tell it that Mr J accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If Alphera considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr J how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 November 2023.

Claire Jackson
Ombudsman