

The complaint

Miss A is unhappy that a car supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alphera Financial Services ('BMW') was of an unsatisfactory quality.

What happened

In October 2022, Miss A was supplied with a used car through a hire purchase agreement with BMW. She paid an advance payment of £13,000 and the agreement was for £20,000 over 48 months; with 47 monthly payments of £168.47 and a final payment of £19,999. At the time of supply, the car was around five years and three months old and had done 44,948 miles.

Miss A started to have problems with the car on 20 April 2023, when a warning light came on. She contacted the supplying dealership, who advised her to have the car inspected by a local garage and contact the warranty company about any issues. Miss A says she booked the car in for an inspection at a local service centre, but the first date they had available was 11 May 2023. However, on 10 May 2023, the car broke down.

Miss A had the car inspected by a manufacturer's garage. On 15 May 2023 the garage confirmed *"found no oil in engine with no signs of leaking. Checked oil filter [and] found there are metal filings in the filter [so] car will require new engine and turbos."*

The car was examined by an independent engineer on 10 July 2023 and this inspection was of a stripped-down engine. At the time of this inspection the car had done 48,165 miles – 3,217 miles since supply. The engineer said the engine had failed due to a lack of oil pressure and *"a likely cause could have been a faulty or defective high pressure oil pump"* but this couldn't be established beyond reasonable doubt.

The engineer also said *"there is no indication that the low oil pressure warning or engine temperature warning were displayed"* and *"we would not have expected a low mileage, well maintained engine of this age and type to have suffered this type of engine damage through normal use."*

Miss A paid £200 plus VAT (£240) for the initial inspection, £250 for the engine to be stripped down, and £250 recovery costs. A reconditioned engine was also fitted at the cost of £11,580, of which the warranty company contributed £5,000. The car was returned to Miss A on 4 September 2023.

She complained to BMW, but they didn't uphold the complaint because they didn't think the fault with the car was present when it was supplied to Miss A. Miss A wasn't happy with what'd happened, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was a fault with the car and the engine wasn't sufficiently durable – the engine could be expected to last at least 100,000 miles, so it had failed sooner than would be reasonably expected. As such, the investigator thought BMW should cover the

shortfall in the repair costs; refund Miss A's inspection and recovery costs; refund the payments she'd made while the car was off the road; and pay her an additional £200 for the distress and inconvenience she'd been caused.

While BMW initially indicated they were in discussions with the dealership to cover the repair costs, they eventually didn't agree with the investigator's view. They said the pre-delivery check indicated the oil level was ok, with the oil being free from contamination. So, they thought the fault with the car was caused by Miss A's negligence by failing to correctly maintain the car, rather than the presence of any manufacturing defects.

Because BMW didn't agree, this matter has been passed to me 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Miss A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMW are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMW can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Miss A to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss A took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMW to put this right.

It's not disputed there was a fault with the car. However, BMW believe this was caused by Miss A's negligence in failing to correctly maintain the car.

I've seen the Pre-Delivery Inspection checklist and "*engine oil is correct level & dipstick oil sample is free from contamination*" has been marked as being ok. While I don't doubt the check that was carried out, I don't think this means that a full check of the oil pressure system was carried out, or that this checklist is confirming the oil pressure system is free from any defects.

The independent engineer suspects the fault with the car was likely caused by the high pressure oil pump failing. While the engineer couldn't confirm this beyond reasonable doubt, this isn't the burden of proof I'm looking for – I'm considering what was most likely based on the balance of probabilities. And the engineer's comments lead me to believe that this is the most likely cause of engine failure.

BMW have commented that Miss A failed to maintain the car to the required standard. However, the car was supplied to her with a full service history, and the dealership had conducted an inspection to confirm everything was running ok. The car had also recently passed an MOT. Given this, I'm satisfied the car was reasonably well maintained when it was provided to Miss A.

Miss A received the car when it had done almost 45,000 miles. And the engine failed around seven months after, at less than 50,000 miles. So, for the time the car was in Miss A's possession, it had not reached a time or mileage milestone whereby a manufacturer's recommended service should've taken place. What's more, the independent engineer specifically comments on the engine having been well maintained, and that the warning lights that illuminated in April 2023 weren't related to either the oil pressure or engine temperature. So, I'm satisfied that Miss A didn't act negligently by driving the car between the warning lights coming on and the engine failing.

Given the above, I'm not satisfied the engine failed because of Miss A's negligence, but I am satisfied this was as a result of the engine not being sufficiently durable – as the independent engineer said, the engine damage wasn't as a result of normal use. As such, this makes the car of an unsatisfactory quality when it was supplied to Miss A, and BMW should do something to put things right.

Putting things right

The car was off the road and undrivable between 10 May and 4 September 2023. During this period, Miss A wasn't supplied with a courtesy car. As such, she was paying for goods she was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as BMW failed to keep Miss A mobile; I'm satisfied they should refund the payments she made during this period.

Miss A has also incurred costs in having the car inspected and repaired. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that BMW reimburse these costs.

Finally, it's clear that Miss A has been inconvenienced by the car breaking down and by having to arrange for it to be inspected and repaired. So, I think BMW should compensate her for this. The investigator had recommended BMW pay her £200, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, BMW should:

- remove any adverse entries relating to this agreement from Miss A's credit file;
- upon receipt of proof of payment, refund the inspection, recovery, and repair costs Miss A incurred;
- refund the equivalent of the payments Miss A made between 10 May and 4 September 2023;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Miss A made the payments to the date of the refund[†]; and

- pay Miss A an additional £200 to compensate her for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

†If HM Revenue & Customs requires BMW to take off tax from this interest, BMW must give Miss A a certificate showing how much tax they've taken off if she asks for one.

My final decision

For the reasons explained, I uphold Miss A's complaint about BMW Financial Services (GB) Limited trading as Alphera Financial Services. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 14 February 2024.

Andrew Burford
Ombudsman