

## The complaint

Mr H complains about the quality of a car supplied to him under a hire purchase agreement by BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ("BMWFS").

## What happened

Mr H acquired a used car under a 49 month hire purchase agreement with BMWFS in April 2022. The car was around five years old and the cash price was £37,560. Mr H paid a deposit of around £4,500 towards the agreement. So, the total amount of credit was £33,060. Under the agreement, Mr H was required to make 48 monthly payments of £516.39, followed by a payment of £18,376.06, which included the option to purchase fee, if he wanted to keep the car. The total amount payable under the agreement was £47,660.78, including the deposit. The car was supplied from a dealership I'll refer to as "D". At the time the car was supplied to Mr H, the mileage was listed as 65,000.

In June 2023, Mr H says the car broke down. He says he was told by a garage I'll refer to as "F", that a big end bearing had failed and the rockers were broken. Mr H also spoke to D who asked him to ship the car to it for assessment. Mr H says he did this at a cost of around £1,548. He says D said this was a sudden mechanical failure and it would request a goodwill payment. Mr H says D said it couldn't make a request without the oil filter. As F didn't keep this, no request was made by D. Mr H complained to BMWFS.

BMWFS issued its response to Mr H's complaint in September 2023. It said there was no evidence that the fault with the car was present or developing within the first six months of the agreement, it didn't uphold the complaint. It said it linked the issues to the service completed 4,500 miles after it was scheduled to be. It said Mr H was responsible for maintaining the car though regular service intervals.

Unhappy, Mr H referred a complaint to this service. He said he obtained a service when the service light appeared on the dashboard of the car and didn't know the car was serviced later than expected. He said it was brought to his attention that a service completed in March 2022 wasn't a routine maintenance service and instead it was a preparation for sale service which excluded an oil change. He said two previous services had also been carried out late.

Mr H said since the start of 2023, various problems occurred with the car. He said he incurred significant expenses including replacing all four tyres and a new battery totalling £1,500 and although these were consumable parts, he would have expected to get at least a year out of them. Mr H said the car had known engine faults which included issues with the timing chain. Mr H said he wanted BMWFS to pay for the cost of replacing the engine. He also said he paid £180 in transport fees, £1,698 in diagnostic charges, £4,920 towards repayments and insurance payments and he had purchased another car for £4,500, plus paid insurance and tax on it.

Our investigator looked into the complaint and he said he didn't think the car supplied to Mr H was of satisfactory quality. He said he didn't think the car's engine was sufficiently durable, he didn't think Mr H servicing the car 4,500 miles late was excessive and the crankshaft was designed to last for the lifetime of the car. He said Mr H should be entitled to reject the car, BMWFS should refund his deposit, refund any payments since July 2023,

refund £1,878 for additional expenses and pay £300 for any distress and inconvenience caused.

In response to our investigator, Mr H said he had paid £11,400 to get the car repaired.

BMWFS disagreed with our investigator. It said the crankshaft was susceptible to wear and tear if the car wasn't maintained properly. It said the offer of a goodwill payment was withdrawn, as there was no oil present in the engine and no oil filter present as it had been disposed of before it got to D. It said there wasn't enough evidence to provide an outcome as to how the failure occurred and the engine had already been disassembled from the car when it was delivered to D. BMWFS said it wouldn't cover the cost of repairs.

Mr H said the service was due every 21,000 miles or 24 months. He said the last service before he got the car was late and so, the next service wasn't due until 65,066 miles. So, the car wasn't due to be serviced at the time it broke down. He also said no engine oil being present in the car was never discussed with him. Mr H also confirmed he had exercised his right to voluntary termination and said he paid around £4,000 to do this.

Our investigator reviewed the further information provided. He said it was possible that the garage who carried out a service at 63,000 miles hadn't put in a new oil filter. He said a car can run without an oil filter but contamination can build up and the engine will become damaged causing engine failure. He said it was difficult to know what the problem with the car was and on balance, it was likely that the oil filter was removed during the most recent service, but this wasn't the fault of BMWFS. So upon review, the investigator didn't think the car supplied to Mr H was of unsatisfactory quality.

Mr H said the oil filter was present when D inspected the car. He said F removed the oil filter and drained the oil and D didn't inspect the engine.

As Mr H remains in disagreement, 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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mr H has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

What I need to decide in this case is whether the car supplied to Mr H was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. BMWFS is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mr H acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their

general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

In this case, Mr H reported that the car broke down around 14 months after it was supplied to him. F provided an invoice in June 2023 which states that it had stripped the engine and accessed damage, it found a big end bearing had failed and the rockers were broken. D also confirmed the engine had failed when it looked at the car in November 2023. I've also seen a copy of an invoice from March 2024, which confirms that a new engine was fitted by F.

Having carefully considered this, I'm satisfied the car supplied to Mr H had a fault as both D and F confirm there is a problem with the engine. I now need to consider whether the fault makes the car of unsatisfactory quality.

Mr H has provided a written statement from F which states:

*"we carried out an inspection on the engine of [numberplate], a [model name]. As part of this process, we stripped the engine, drained the oil, and removed the oil filter to check for any signs of metal debris or particles."*

D's report dated November 2023 states, the engine was supplied to it in a stripped-down state. It said the crankshaft had seized and it suspected there was a sudden mechanical failure of the crankshaft. It said it declined to make a goodwill payment as there was no oil filter in the car. It noted that the car had been serviced 4,504 miles overdue and the engine had failed 1,308 miles after the last service. Whilst the mileage was recorded at 64,134, D said it couldn't confirm this as the car was stripped down. It said Mr H had told it the current mileage was 70,878.

D has said there was no oil filter in the car when it was inspected. F has also said it removed the oil filter as part of the service it carried out in June 2023. The service invoice from F lists that a new oil filter was purchased. However, it's unclear whether F meant that the car didn't have an oil filter in it prior to the breakdown or whether the engine it inspected didn't have an oil filter present. If it was the case that F didn't replace the oil filter, then it is likely that this caused the subsequent engine damage. However, it isn't clear what happened here.

I've also looked at the service schedule for the car supplied to Mr H. This confirms that services are required every 21,000 miles or 24 months, whichever is sooner. This means services were recommended at the following intervals:

21,000 miles or 24 months

42,000 miles or 48 months

63,000 miles or 72 months

84,000 miles or 96 months.

Mr H was supplied the car in April 2022. The last service on the car was completed at 44,000 miles in August 2021. The next service was due on the car at 63,000 miles. However, the official record by F shows the service was completed at 69,570 miles in May 2023. This means the service was completed around 6,750 miles late. There appears to be a suggestion that there is a discrepancy, as D's invoice states the service was completed 4,504 miles late. And there is no mileage listed on the service invoice from F to show what the mileage was at the time it carried out the service in May 2023. In any event, I'm satisfied that Mr H serviced the car late by around 4,500 – 6,750 miles.

I've taken into account that Mr H said he wasn't notified of the schedule of the services and previous services had been carried out late. But it was Mr H's responsibility to ensure the car was maintained properly and I don't consider that any previous late services contributed to the subsequent faults that occurred to the car in 2023. In addition, Mr H has also provided us with a customer copy of the online service history which lists all the services carried out before he acquired the car. This states, *"Please note that the service intervals always represent the maximum time and distance that should exist between servicing. Driving style*

*and conditions may necessitate servicing earlier as indicated by the notifications on your instrument panel.*” So I’m not persuaded that Mr H wasn’t aware when the car needed to be serviced as per the manufacturer’s requirements.

In this case, there isn’t enough supporting information to confirm exactly why there was a mechanical failure of the engine. It has been suggested this is for various reasons such as the oil filter possibly not being present and or because the car wasn’t maintained as it was supposed to be.

It’s also been suggested there was a sudden mechanical failure of the crankshaft. However, the breakdown mileage of the car reported by Mr H was 70,878. This means he was able to travel around 13,000 miles in the car before it broke down. I’ve looked at the service carried out by F and there is no indication that there were any issues with the engine or crankshaft and neither does any of the MOT history indicate there were any failures or advisories relating to any possible engine issues, such as an oil leak. In addition, none of the invoices confirm why the faults have occurred. Instead they simply list the faults that occurred. In effect I have the symptoms, but not enough to know what caused them to present. I’m not persuaded that any supporting information has been provided to confirm that the car supplied to Mr H was not of satisfactory quality.

Finally, whilst I’ve considered durability of the engine, on balance, I’m not persuaded that the car supplied to Mr H wasn’t of satisfactory quality as the crankshaft is susceptible to wear and tear and it is important to maintain the car’s components through regular service intervals. Given the car was serviced late, I’m not persuaded the car was maintained as the manufacturer required it to be and on balance, without any information to suggest otherwise, I think this may have been a contributing factor to the engine failing. I also think it’s unlikely that Mr H would have been able to drive the car for around 13,000 miles if the car had a problem with the engine that was developing or present at the point of supply. It follows that I’m not asking BMWFS to take any action to put things right.

### **My final decision**

My final decision is that I don’t uphold Mr H’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 7 March 2025.

Sonia Ahmed  
**Ombudsman**