

The complaint

Mr T complains about a used car he acquired through a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alphera ('Alphera'). Mr T says that the vehicle was mis-sold.

He says he was not told that a missing service in the cars service history could invalidate the manufacturer's warranty. And if he was given full information about this, then he wouldn't have purchased the car.

What happened

Mr T's complaint is about a car he acquired in September 2022. The car was used, and it was first registered in 2019. So, it was three years old when Mr T received it. It had covered 37,679 miles.

Mr T acquired the car using a hire purchase agreement that was started in September 2022. The vehicle had a retail price of £17,750. Mr T paid a £500 deposit meaning £17,250 was financed. This agreement was to be repaid through 49 monthly instalments, there were 48 monthly repayments of £333.32 and then a final instalment of £5,847. If Mr T made repayments in line with the credit agreement, he would need to repay a total of £22,346.36.

The car broke down on 15 March 2024 and it was looked at by a garage and then recovered to a dealership. A vehicle health check said that there were excessive metal particles in the engine and the oil pick up line was partially blocked. The lack of oil had caused damage to the engine. The car now needs a new engine which is estimated to cost £12,864.46. I understand the car had travelled 71,734 miles at the time it broke down.

Mr T contacted the manufacturer as he understood the car still had a manufacturer's warranty. But the manufacturer has declined to repair the car as it wasn't serviced within the specified intervals in the warranty agreement. And so, it thought the warranty was invalid.

Mr T initially complained to the car manufacturer saying that he disagreed with the decision not to repair the car under its warranty. He found documentation that some servicing had taken place over the time the service book says they were missed. But he says he was told this didn't matter. He went on to complain to Alphera, as the finance provider and supplier of the car, saying he was misled about the cars service record at the time of sale.

Alphera considered this complaint, and it didn't uphold it. It said that as the car had been supplied to Mr T longer than six months ago it would need further evidence to show it was mis-sold, or faulty, at the time of sale. It didn't agree to repair the car. Mr T didn't agree with this and brought his complaint to the Financial Ombudsman Service.

Our Investigator didn't uphold Mr T's complaint. She said that the problems with the car were likely to have been caused by a lack of servicing and so the car wouldn't be of unsatisfactory quality when it was supplied. She also wasn't persuaded that it was mis-sold as there wasn't enough to say it was sold with a 'full service history'.

Mr T didn't agree with the Investigator and there was some further correspondence. He said that the car dealer advertised on their website that they had serviced the car when it owned it, and this may not have been done. And this invalidated the warranty. Mr T, and our Investigator, did try to obtain some further information about the advertisement for the car and how it was serviced by the dealer. Mr T thinks that the dealers lack of ability to prove it serviced the car demonstrates that it was mis sold. They were unable to obtain further information as the dealer had ceased trading (I've noted the brand name is still trading but it is not the same company).

Despite this further correspondence, no new issues were raised. And because Mr T still 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Alphera as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

Mr T hasn't directly complained that the car wasn't of a satisfactory quality. That said, his complaint has come about because the car broke down, so the quality of the car is a consideration. So, I have considered this.

The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that 'the quality of the goods is satisfactory'.

To be considered 'satisfactory', the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the car's history.

The CRA 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 can be aspects of the quality of goods.

Does the car have a problem and does this mean it wasn't of satisfactory quality?

It's been established that the car has a problem with the engine, and this will now need to be replaced. To say that the car wasn't of satisfactory quality at the time of sale it does need to be reasonable to say that it's likely that the fault was present, or developing, at this time. I've thought about whether this was the case.

There isn't any report, or analysis, about the condition of the car at the time of sale. But it was around three years old at the point of supply and had travelled 37,679 miles. Mr T was able to drive the car a further 34,055 miles before it broke down. This suggests to me that there were no engine problems present when the car was supplied to Mr T.

And leaving aside whether the car was serviced in line with the manufacturers specified service intervals, there were some very long periods when it was not serviced and should have been. And this is very likely to have led to some damage to the engine.

Given what I have seen, I agree it's likely the engine failure came about due to a lack of maintenance. So, I can't say it's likely that the engine problems were apparent, or developing, at the time the car was supplied to Mr T. It follows that, having looked at everything, I don't think there is enough for me to say that the car was not of satisfactory quality when it was supplied.

Was Mr T Misled about the service history of the car at the time of sale?

The manufacturer will not repair the car under the warranty as it was not serviced within the service intervals that the warranty specified. This is every year, or 10,000 miles, whichever is the soonest.

I've been provided with the service history of the car. According to the service book it was serviced in November 2019 at 9,831 miles, September 2020 at 19,840 miles, July 2021 at 29,119 miles. The next service took place in May 2023 and was an interim service at 50,935 miles. It was serviced again in September 2023 at 58,424 miles and in January 2024 at 66,873 miles.

There is also some information from the car dealer that shows the car was serviced in September 2022, having travelled 37,369 miles. But the service book was not stamped.

This complaint isn't against the manufacturer but it's not really in dispute why it won't repair the car under the warranty. Even if the car dealer did service the car in September 2022 this was over a year since the last recorded service. And the service after this took place significantly over 10,000 miles. The servicing terms of the manufactory warranty have not been adhered to.

Mr T says he was given false information by the dealership about the service history of the car, and this led to him entering into the finance agreement for it. He essentially says that he thought the car had a full service history and so would have a manufacturer's warranty.

I understand that Alphaera wasn't a party to some of the sales negotiations, and it may not have been aware of what was discussed between Mr T and the dealer. But it can still be responsible for what was discussed and the information that Mr T was provided by a broker and car dealer. This is because section 56 of the Consumer Credit Act 1974 establishes that a finance company can be held responsible for antecedent negotiations carried out by their agent that take place before the agreement is entered into.

And Section 75 of the Consumer Credit Act 1974 implies that, in supplying a regulated credit agreement, a finance provider can be held equally liable if there's been a breach of contract or misrepresentation by the supplier of goods

So, to uphold this complaint, I need to be satisfied that a misrepresentation has taken place. This means I would need to see that a false statement of fact about the service history was made, and this false statement induced Mr T into entering into the agreement.

The dealer has supplied an information sheet that shows the September 2022 service took place. But it doesn't have any further information about what was done within this service, and whether it would have been the right type for the warranty (I understand it needed to be a major service). It does seem reasonable to assume that some maintenance may have been done to the car. But there isn't any further evidence that Mr T was misled by the dealer.

Added to this, Mr T was provided with the service history of the car and this does show that a service was not undertaken when it should have been. And Mr T was provided information that showed even if what the dealer said about the service was right, there would still be periods where the car was not serviced in line with the warranty conditions. So, I don't think I can reasonably say that he was misled about the manufacturer's warranty as he was also provided with information about the car's service history that shows it may not have a manufacturer's warranty.

Mr T essentially says that he was told, either in person or in the advertisement for the car, that it had a full service history. Both Mr T and our Investigator have made enquiries about what was provided to Mr T about this, but unfortunately, very little record of the sale still exists with the dealer.

So, given what I do have, I can't reasonably say that Mr T was misled at the time of sale in this way. He was provided with documentation that showed the car didn't have a full service history and it's reasonable to conclude that the car may not have a manufacturer's warranty because of this.

Overall, I don't think it's reasonable to say that the car wasn't of satisfactory quality at the point of sale or that Mr T was misled by the car dealer about the service history of the car. And whilst the car breakdown was unfortunate, I don't think that Alphera should be responsible for putting the faults with the car right or paying any compensation.

My final decision

For the reasons set out above, I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 24 April 2025.

Andy Burlinson
Ombudsman