

The complaint

Mr S complains that a car he acquired through a Hire Purchase Agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services (Alphera), wasn't fit for purpose. He would like the issues resolved.

What happened

Mr S told us he took out a Hire Purchase Agreement with Alphera in March 2023 for a five-year-old car with 46,376 miles on the clock. Unfortunately, the car broke down and he was advised he needed a new engine, turbo and air cooler which he felt was Alphera's responsibility.

Alphera didn't uphold Mr S's complaint as it had no evidence of a point-of-sale issue.

Our investigator issued a first view in which he agreed with Alphera's assessment. However, he issued a second view upholding Mr S's complaint based on an independent report on the car Mr S provided. This indicated a likely oil servicing issue leading to the engine failing which brought into question the durability of the car given it had only covered 56,570 miles since manufacture. He recommended Alphera arranged and covered the cost of repairs.

Alphera initially accepted this second view, but suggested rejection would be a better option due to the likely cost of repairs. Whilst discussions on rejection were ongoing the dealership raised some issues with the independent report in respect of anomalies with the service history provided. It felt these indicated a service had likely been carried out during the time Mr S had the car which may have led to the issues.

At this point Alphera asked for 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.

I understand Mr S's frustration, nine months after he took out his agreement the car broke down and there is no dispute significant repairs are needed. In addition to this Alphera initially seemed to accept our investigator's second view.

However, Alphera changed its mind when information contained in the independent inspection report was brought to its attention. It suggested a second independent inspection which Mr S agreed to.

However, although Alphera requested this second inspection in January 2024, and seemed to put this in motion the inspection hasn't, as far as I am aware, been done despite prompts by us to do so.

Given the time that has elapsed and Alphera's lack of response to requests to update us on the progress of the inspection I think it's only fair that I now go ahead and make my decision based on the information that I have.

I am mindful Mr S took out an agreement for a five-year-old car as such he could reasonably expect more wear, tear and repairs issues than with a new car. Having said that we expect cars to be fit for purpose at the point of sale. If issues arise within the first six months of an agreement, it's the responsibility of the business to investigate and, if point of issues arise, if appropriate to resolve these. If issues arise after six months, it's the consumer's responsibility to provide evidence of point-of-sale issues for which the business is responsible.

Mr S provided evidence from a garage which stated the car need a new engine, turbo and air cooler. Additionally, he arranged for an independent inspection of the car which confirmed the garage assessment. So, I am persuaded there are significant faults with the car.

The independent assessor was unable to confirm the exact reason for the catastrophic failure of the car. He thought the most likely reason was a servicing issue with the oil where the engine oil became diluted with fuel causing a lack of lubrication due to oil quality. It thought the old oil filter had been removed, but the filter element had not been refitted, and the oil had not been replenished or only a small amount had. He concluded it was likely that the car hadn't been of durable quality at the point of sale.

The report indicated some anomalies with the service record, and it is these that Alphera has picked up on

Mr S was required to service the car after every 21000 miles or every two years whichever was the sooner. The information on the car's service record showed the last service was on 16 November 2022 when the mileage was 36,479. So, the next service should have been at 57,479 miles or 16 November 2024 whichever was the sooner.

The mileage on purchase was 46,332 so Mr S needed to service the car by 16 November 2024 or when the mileage reached 57,479 miles.

However, the report noted that the next service was due at either 13,346 miles or by 303 days which doesn't match the service history. Alphera made the point that it seems likely Mr S had the car serviced whilst in its possession. I think it seems likely a service not noted on the car's service record was carried out I can't be sure when that was.

The mileage and time to the next service the inspector noted in his report would indicate that the last service as over a year ago, so before Mr S had the car. I have considered that if someone altered the mileage and date for the next service that person could potentially have input any mileage and date so I don't think I can reasonably rely upon the information the inspector found and recorded in his report.

Also Alphera told us that the oil and filter were changed just prior to Mr S getting the car. As it's the oil and filter that seem to have caused the engine failure it's possible that the issue happened at that point. It perhaps wouldn't be surprising that it took some 9 months to manifest itself given that Mr S drove relatively little mileage in the time he had the car.

I have also considered that the report stated that Mr S would have had some notice of an engine issue with warning lights, audible noises, warning messages and lack of performance. As I understand it the car failed whilst Mr S was driving it on the motorway, I am not aware he had any warning of an issue.

The dealership advised Alphaera to seek a further inspection to consider the servicing anomalies and to advise on any contributory negligence by Mr S. Alphaera decided to do this which seemed reasonable to me but hasn't done so. I don't know why this is as it hasn't responded to our requests for updates.

Considering all of the information that I have, firstly I am conscious whilst Mr S took out an agreement for a used car it was only 5 years old and with relatively modest mileage when he got it. His own mileage wasn't excessive. The oil and filter were changed just prior to Mr S getting the car it's likely that an oil and filter issue caused the problem.

Secondly its possible a non-recorded service was carried out at some point, but I am not persuaded Mr S did this. He provided an independent inspection and co-operated with our investigation including agreeing to a second independent investigation. I am not persuaded he would have gone to these lengths had he arranged for an off the record service of his own to be carried out on the car.

Thirdly the independent inspector picked up on the service anomalies in his report so was aware of these, but his conclusion was still that it was questionable the car was durable at the point at sale.

Finally, whilst I could be persuaded that Mr S may have contributed to the failure of the car by ignoring warning signs, I have no evidence to support this. This point may have been addressed by a second independent inspection, but Alphaera has failed to do this despite having every opportunity to do so.

In conclusion I think it's more likely than not that the car wasn't durable at the point of sale. On this basis it's reasonable to allow Mr S to reject the car, have any deposit refunded along with his monthly payments from when the car failed, and costs associated with the car failure refunded as listed below along with a payment for distress and inconvenience.

I am mindful Mr S has also asked for storage costs to be refunded. I think that is reasonable, but Mr S will have to evidence such costs by way of an appropriate business invoice which he hasn't, as yet, done so.

My final decision

My final decision is that I uphold this complaint.

In full and final settlement BMW Financial Services (GB) Limited trading as Alphaera Financial Services should: -

- Take back Mr S's car at no cost to Mr S
- End Mr S's finance agreement and show the agreement as settled on Mr S's credit file.
- Refund any deposit Mr S paid.
- Refund Mr S's monthly payments after the date the car failed (12 December 2023).
- Refund Mr S the cost of the independent report (£312), car transportation costs (£204 and £260) and the diagnostic report (£149)
- On appropriate proof of payment refund Mr S's storage costs for the car from 23 July 2024.

- Pay 8% simple yearly interest on the amounts refunded from the date of payment to the date of settlement.
- Pay Mr S £350 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 May 2025.

Bridget Makins
Ombudsman