

The complaint

Mr C complains that the car he acquired through BMW Financial Services(GB) Limited trading as Alphera Financial Services ("BMW") wasn't of satisfactory quality. He says although the car was nearly new, he suffered catastrophic engine failure. He wants BMW to pay for the repairs, or to accept his rejection of the car.

What happened

Mr C entered into a hire purchase agreement in February 2022 to acquire a used car. The cash price of the car was £18,995, and after taking into consideration Mr C's advance payment; the amount of credit provided was £11,995. The credit agreement was set up over a term of 37 months with Mr C's monthly payments set at £159.13, meaning the total amount repayable if the agreement ran to term would be £21,437.68. At the time of acquisition, the car was less than 18 months old, and had been driven less than 5,000 miles.

Mr C told us:

- The car he acquired was nearly new, and he paid a substantial deposit of £7,000;
- the first two years were faultless, and he had the car serviced regularly, and at the suggested intervals at large recognised dealerships;
- in April 2024, he had to make a longer journey, and whilst on a busy dual carriageway, the car experienced complete and catastrophic engine failure;
- the car was recovered by a well-known third party and taken to a garage where the problem was investigated;
- the garage concluded that the engine required complete replacement at an estimated cost of £10,000;
- he was informed that the manufacturer does not supply replacement engines – its engines are generally known for the reliability and robust construction, and it would be highly unusual for a car of this age to experience issues of this nature, with only 16,000 miles on the odometer;
- because of this, each part will need replacing individually, adding further cost to an already expensive issue;
- although BMW rejected his complaint, saying it had reached this conclusion having thoroughly investigated the matter, his garage – a well-known national dealership – says that no-one from BMW had been in contact with it about this car;
- he would've expected someone from BMW to have made contact with the garage to understand the issue and how it arose on a vehicle that had not been driven very far in its lifetime;
- he's continued to pay the monthly payments due under the credit agreement, even though he's not been able to drive the vehicle.

BMW rejected this complaint. It explained its understanding of the Consumer Rights Act 2015 ("CRA"), and said it needed an independent vehicle inspection to satisfy it that the fault with the car was present or developing at the point of supply. It did say it would review its position if Mr C provided additional information, but that without it, it wouldn't uphold his complaint.

Our Investigator looked at this complaint and said that she thought it should be upheld. She said there were clearly things that had been wrong with the car, and she didn't think that BMW had acted fairly in the circumstances.

Our investigator said she didn't think that the car supplied to Mr C had been durable at the point of supply. And she explained the premature failure of the engine indicated that there was a problem with the car. In summary she said because the car wasn't durable, it was not of satisfactory quality at the point of supply.

She noted that repairs had now taken place, and that these appeared to have been successful. But she noted that the time taken to repair the car meant Mr C had not had use of, or enjoyment of the car for a lengthy period of time. Because of this, she asked BMW to reimburse Mr C for the cost of repairs and to refund some of his monthly payments. She also asked BMW to pay Mr C some compensation for the impact its actions (and inaction) had caused him.

BMW disagreed. It said it had sought a financial contribution from the manufacturer to assist Mr C with repairs, but that this had been declined because Mr C had serviced the car at a garage that wasn't associated with the manufacturer. And because of this, BMW said it had seen no evidence to support the cause of engine failure being present or developing at the point of supply. It went on to say that it now understood the cause of engine failure to be a maintenance related matter, something that Mr C was responsible for.

Because BMW disagreed with our Investigator's opinion, the complaint comes 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.

Having considered all the evidence and testimony afresh, I've reached the same conclusion as our Investigator and for broadly the same reasons. I'll explain why.

The hire purchase agreement entered into by Mr C is a regulated consumer credit agreement which means that this Service is able to consider complaints relating to it. BMW is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

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 other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and *durability*.

I've seen evidence in the form of testimony, as well as copies of job sheets and records from Mr C that support the timeline of issues and events that he describes. I've also seen correspondence from the garage which I find compelling. It said it had "*never seen a car so*

young with so little mileage end up requiring a new engine". It diagnosed the fault as being an issue with the head gasket. It went on to say that the quality, reliability and construction of this manufacturer's engines is good, and it is very uncommon for one to need a full replacement, especially when the car has only been driven 16,000 miles.

So, taking this into account, although I understand BMW's position, I find the evidence provided to support Mr C's position to be persuasive here – I don't think that in the circumstances, the car supplied was durable.

I've considered carefully BMW's comments that Mr C used a non-approved garage to service the car. But the car's service history shows it was serviced on time and at the recommended frequency. And at least one service was with a manufacturer approved garage. I've also noted BMW's position in that it told this Service it had asked the manufacturer for a contribution towards engine replacement costs as the car wasn't long out of its warranty, and that when it declined, BMW felt it was *"ducking its responsibilities"*.

Taking all this into account, I've concluded that based on the limited mileage that Mr C has driven the car, the car supplied by BMW was not suitably durable. Put simply, a reasonable person would not expect to experience these problems in a car after just 16,000 miles. So, on balance, I don't think the car was durable and it wasn't of satisfactory quality when supplied.

I'm led to understand that the issues with the car have now been rectified and satisfactory and successful repairs have been carried out – so Mr C needs reimbursing for these costs. But there also remains the issue of compensating Mr C for the period in which he was unable to use his car, and for the distress, worry, anxiety and inconvenience that he's experienced.

Mr C has described in some detail the inconvenience he and his family have been caused because he had a car he couldn't use. And he's talked about the impact this had on his work and his day-to-day life. I'm satisfied that he paid for a car that he wasn't able to use, and he experienced a loss of enjoyment in terms of using the car. Because of this, I'm going to ask BMW to refund him some monthly rentals, and I'm going to ask it to pay him some compensation in recognition of the anxiety and worry it caused.

Putting things right

I direct BMW Financial Services(GB) Limited trading as Alphera Financial Services to put things right by doing the following:

- Reimbursing Mr C the cost of repairs following his provision of a paid invoice;
- Refunding all monthly payments from 11 April 2024 to the date the car was back on the road and driveable – this will address the loss of use of the car because of the inherent quality issues;
- Paying 8% simple interest on the refunded amounts from the time these payments were made to the date of settlement*.
- Pay Mr C £250 for the distress and inconvenience caused.

*HM Revenue & Customs requires BMW Financial Services(GB) Limited trading as Alphera Financial Services to take off tax from this interest BMW Financial Services(GB) Limited trading as Alphera Financial Services must give Mr C a certificate showing how much tax has been taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint and require BMW Financial Services(GB)

Limited trading as Alphera Financial Services to compensate Mr C as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 May 2025.

Andrew Macnamara
Ombudsman