

The complaint

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

Mr J has been represented during the claim and complaint process by Miss S. For ease of reference, I will refer to any comments made, or any action taken, by either Mr J or Miss S as "Mr J" throughout the decision.

What happened

In July 2023, Mr J was supplied with a used car through a hire purchase agreement with Alphera. He paid an advance payment of £1, and the agreement was for £13,596 over 48 months; with 47 monthly payments of £266.09 and a final payment of £5,078.70. At the time of supply, the car was almost five years old and had done 49,384 miles (according to the MOT record for 16 July 2023).

The car broke down in May 2024. The car had done 56,641 miles at the time of the breakdown – 7,257 miles since supply to Mr J. A local manufacturer dealership diagnosed a failed turbo charger and low engine pressure. However, because the car hadn't been serviced in line with manufacturer guidelines, the manufacturer's warranty was invalid. So, the dealership didn't take any further action.

Mr J had the car recovered to a local independent garage who confirmed the turbo had failed, and the oil in the car was thick, black, and congealed. They said this had caused oil starvation, which had damaged the bearings. They advised that a new turbo and engine were required. Mr J complained to Alphera, but they didn't uphold his complaint. They said there was no evidence of a fault with the turbo that was present or developing when the car was supplied to Mr J.

Unhappy with what had happened, Mr J also brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said there was a fault with the car, and Mr J had been quoted around £11,500 for repair (which included a replacement engine). Mr J says he believed the car had a manufacturer's warranty, but the car wasn't sold with a manufacturer's warranty or a full-service history – it had been sold with a 60-day used car warranty. The investigator said that Mr J hadn't been able to evidence the car was sold to him with a manufacturer's warranty or a full-service history, nor had he been able to provide anything to show the turbo had a fault that was present or developing when the car was supplied to him.

So, as Mr J had been able to travel for more than 7,000 miles before the turbo failed, the investigator didn't think the car was of an unsatisfactory quality when it had been supplied. And they didn't think Alphera needed to do anything more.

Mr J didn't agree with the investigator's opinion. He said that the failure of the turbo and the presence of congealed oil within 10-months of the car being supplied to him *"is indicative of*

a significant pre-existing issue, not normal wear and tear.” He felt that, as the finance provider, Alphera was responsible for the car being fit for purpose and free from defects at the time of sale, and he thought the failure to highlight the lack of a full-service history constitutes misrepresentation.

Mr J also didn’t think it was fair to put the burden of proof onto himself, and he asked for the matter to be passed to an ombudsman 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 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. Mr J 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, Alphera 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.

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 Alphera can show otherwise. And any fault that occurs more than six months after supply is assumed not to be present when the car was supplied, unless Mr J can prove otherwise. So, if I thought the car was faulty when Mr J took possession of it, and this made the car not of a satisfactory quality, it’d be fair and reasonable to ask Alphera to put this right.

Based on the evidence I’ve seen, I’m satisfied there’s a fault with the car. The turbo, which is an oil fed part, has failed. There’s also evidence to show the oil in the car was past its usable lifespan and became congealed. Based on this, and as I have no evidence to the contrary, it’s reasonable to conclude the condition of the oil resulted in the failure of the turbo.

The manufacturer of the car provides a seven-year or 100,000 miles warranty that’s transferrable between owners. As such, I don’t think it was unreasonable for Mr J to believe the car he was supplied with had the benefit of this warranty as it was both less than seven-years old and had done less than 100,000 miles.

But, in this instance, the manufacturer’s warranty wouldn’t cover the repairs needed to the car as they don’t cover oil fed parts without a full service history. And the car didn’t have a full service history.

I've seen a copy of the agreement Mr J signed with Alphera in July 2023. Under section 4 *"Your Care of the Vehicle"* the agreement states *"until the Vehicle is returned to us at the end of this agreement or you become the owner of the Vehicle, you must (a) keep the vehicle in good repair and condition and have it serviced, maintained and repaired in accordance with the manufacturer's recommendation and any manufacturer warranty."*

Mr J has provided a copy of the car's service book. The car was first registered in September 2018 and the service record for '12-months or 20,000 miles' has not been completed. The first recorded service, the '24-months or 40,000 miles' service, took place on 4 January 2021 at 30,729 miles. The '36-months or 60,000 miles' service took place on 27 January 2022 at 35,746 miles, and the '48-months or 80,000 miles' service took place on 4 January 2023 at 45,512 miles.

Based on this service history, the next service was due in January 2024. And the agreement required Mr J to ensure this service took place. However, I haven't seen anything to show me that it did. And, if the service had taken place, then the oil shouldn't have been in the condition it was when the turbo failed. As such, I'm satisfied it's reasonable for me to conclude that Mr J failed to service the car when it was due, which was a breach of the conditions he'd agreed to.

I'm unable to say whether the manufacturer would've replaced the turbo if the service due in September 2019 had taken place, and if the service due in September 2020 hadn't been delayed until January 2021 (which was most likely as a result of the national lockdowns that were happening at that time). But I think it's fair to say that, given the turbo is lubricated by the oil in the car, the manufacturer were reasonable not to replace the turbo because the latest service was missed. I say this because the oil that was put in the car during the service in January 2023 had clearly degraded beyond the end of its useful life and, as such, it was unable to provide adequate lubrication to the turbo.

However, the oil the car was originally supplied with, and should've been changed in September 2019 and September 2020 wasn't changed until January 2021. I haven't seen anything, for example an independent engineer's report, that shows me this delay was the ultimate cause of the turbo failure, and not the failure to service the car and change the oil in January 2024.

Mr J has commented that he doesn't think it's fair the burden of proof for this falls on him. While I understand his feelings about this, as I've said above, the CRA implies that any fault that occurs more than six months after supply is assumed not to be present when the car was supplied, unless Mr J can prove otherwise. Due to when the turbo failed, and especially because of the missed service in January 2024, I don't think it was unreasonable to ask Mr J to provide proof that the issue that caused the turbo fault was present or developing when the car was supplied to him.

Mr J has also said the car was misrepresented to him as he was never made aware there was no full service history. For misrepresentation to be present there must (a) have been a false statement of fact, and (b) that false statement of fact must have induced, in this instance, Mr J to have financed this particular car with Alphera.

While there is no evidence Mr J was ever told the car came with a full service history, he's claiming misrepresentation by omission – the fact that he was not told the car didn't have a full service history led him to believe that it did. Even if I were to accept this argument, I also need to consider whether this induced Mr J to finance the car. In this case I don't think it did, and I'll explain why.

As detailed above, Mr J was responsible for servicing the car in January 2024, and he didn't do this. Had a full service history been the overriding factor why Mr J financed this particular car, and if maintaining a full service history was of utmost importance to him, then it's reasonable to say that he would've serviced the car in January 2024. And in doing so it's likely that the turbo wouldn't have failed when it did. But, by not servicing the car when it was due, Mr J has shown that a full service history was not so important to him that a full service history would've been the factor that induced him to finance the car.

It therefore follows that, without this inducement, no misrepresentation took place.

As such, and while I appreciate this will come as a disappointment to Mr J, for the reasons given I don't think Alphera have done anything wrong, and I won't be asking them to take any further action.

My final decision

For the reasons explained, I don't uphold Mr J's complaint about BMW Financial Services (GB) Limited trading as Alphera Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 August 2025.

Andrew Burford
Ombudsman