

## The complaint

Mr D complains that the car he acquired through BMW Financial Services(GB) Limited, trading as ALPHERA Financial Services, wasn't of satisfactory quality. He wants BMW to give him back his money or obtain for him a replacement car of the same value.

## What happened

Mr D entered into a hire purchase agreement in August 2023 to acquire a used car. The cash price of the car was £17,200, and the total repayable was £23,921, and was to be repaid through the credit agreement which was set up over a 48-month term with monthly payments of £316.50. At the time of acquisition, the car had already been driven nearly 40,000 miles and was nearly six years old.

Mr D told us:

- A few weeks after acquiring the car, he told the supplying dealership that there was a problem with the oil; a dashboard light illuminated;
- the dealership said there may be an issue in that the car had not been serviced before he acquired it, and it agreed to have the car serviced as no cost to him;
- he subsequently learnt that the dealership had only arranged for the oil and oil filter to be changed. This had the effect of no longer illuminating the light on the dashboard, and masking the underlying issue – the rate of oil consumption;
- in March 2024 – seven months after acquisition – the car broke down due to engine failure, and he needed recovering by a recognised third-party;
- the recovery firm provided its findings – the main fault that caused the engine to seize was a result of the spark plugs burning excessive oil, something that had been happening for a significant length of time; this has left them covered in a burnt oil residue, causing the piston to seize in the engine;
- he'd like to reject the vehicle, cancel the credit agreement, and get back the monthly payments he's already made.

When Mr D brought his complaint to this Service, BMW had not yet completed investigating his complaint, and although many months had passed, it hadn't issued its *final response letter*. But it did provide its business file. So, our Investigator was able to start looking at this complaint.

In September 2024, BMW indicated that it partially upheld Mr D's complaint - it offered to pay Mr D £400 compensation in recognition of the distress and inconvenience he'd experienced with the delays in getting the issues with the car resolved.

BMW said that following the engine's failure in March 2024, it was within its rights to use its opportunity to repair the car first, instead of supporting outright rejection of it. It said that the car had been repaired successfully, at a cost of £2,018.56 – none of which had been passed on to Mr D; it had all be paid for by the supplying dealership. And it explained that although the repairs took longer than it would've liked, it noted that the supplying dealership had kept Mr D mobile with courtesy cars costing it more than £2,000.

BMW said one of the underlying reasons for the delays in the repair and the car being returned to Mr D was the need to complete oil consumption tests – something that could only be undertaken once the initial repairs had been carried out and the car had then been driven several hundred miles. It was only after this additional driving that final diagnostics could be completed. BMW confirmed that on 10 July, the car passed its MOT, with only two unrelated advisories.

Mr D told this Service that the supplying dealership had failed to fix the problem when he first advised it about the dashboard light – it only replaced the oil and filter – and this resulted in the total engine failure several months later. And he says that for around six weeks, no courtesy car was provided, because he'd been told the repairs would only take around seven days.

Our Investigator looked at this complaint and said she thought it should be upheld. She'd seen evidence in the form of Mr D's testimony, correspondence between Mr D and the supplying dealership, and the summary findings of the recovery firm that confirmed there was a fault with the car that resulted in engine failure, and an indication of the cause of this. So, she was satisfied that the car wasn't of satisfactory quality when it was supplied. And because of the repairs that had been undertaken by the supplying dealership and at no cost to Mr D, she noted that all parties appeared to accept this to be the case.

She said she didn't think the car supplied was of satisfactory quality, or that the dealership had adequately investigated the issue when Mr D first contacted it. And she recommended BMW accept the rejection of the car; the cancelling of the credit agreement; and she asked it to pay Mr D £400 in compensation.

BMW disagreed so the complaint came to me to decide. It says the car has been successfully repaired following Mr D's first approach to it on 8 March 2024, and that this is the correct remedy in the circumstances.

My initial conclusions are set out in my provisional decision. In it I said I thought Mr D's complaint should be upheld, but I reached a different conclusion to our Investigator about how it should be fairly settled, and I explained my reasoning as follows:

*"When looking at this complaint I need to have regard to the relevant laws and regulations, but I am not bound by them when I consider what is fair and reasonable."*

*As the hire purchase agreement entered into by Mr D is a regulated consumer credit agreement 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.*

*Under the Consumer Rights Act 2015 ("CRA") there is an implied term that when goods are supplied "the quality of the goods is satisfactory". The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.*

*The relevant law also says that the 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 the goods. So, what I need to consider in this case is whether the car supplied to Mr D was of satisfactory quality or not.*

*The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMW can show otherwise. But, if the fault is identified after the first six months, then it's for Mr D to show the fault was present when he first acquired the car. So, if I thought the car was faulty when Mr D took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMW to put this right.*

*I don't think there's any dispute that Mr D has experienced problems with the car. That has been well evidenced by both his testimony and the information he's sent us, along with the findings of the recovery firm. And the paperwork detailing the repairs that have been undertaken further confirms this.*

*But I'm of the view that, based on what I've seen, the supplying dealership accepted liability at the outset – it covered the costs of the repairs – and that parties accepted that 'repair' was the way forward – the supplying dealership undertook those repairs, and Mr D sought a courtesy car and used a courtesy car whilst those repairs were taking place.*

*Moreover, I understand the repairs have now been completed – and I've seen nothing to suggest to me that the remedial work hasn't been completely successful; the faults with oil consumption and the associated seizure of the engine have been addressed. The supplying dealership ran diagnostics once the car had been driven several hundred miles, and the car subsequently passed an MOT with no adverse remarks or comments relating to the fault, or the subsequent repairs. So, on the basis that the car has been successfully and fully repaired, I don't think it would be right to direct BMW to accept rejection of it. I'm satisfied that BMW, through the actions of the supplying dealership, has done what it needed to do in the circumstances.*

*Now, it may well be the case that Mr D does not have full confidence in the repairs, or he fears that other faults may manifest themselves in the future – he did find paperwork in the car that suggested other things may have been wrong with it at some point before he acquired it. In this situation, it would be for Mr D to instruct a recognised independent engineer to inspect the car.*

*In the event an independent engineer concluded that the repairs had not been successful - they'd not addressed the original fault, or alternatively, the engineer identified further faults that were likely present or developing at the point of supply, then Mr D could bring a new complaint directly to BMW. In these circumstances, most businesses would accept rejection of the vehicle and reimburse their customer for the cost of the independent inspection.*

*I am concerned that Mr D says he had no access to a courtesy car for six weeks, and I can only begin to imagine how difficult and challenging that must have been, so I'm going to ask BMW to refund two of his monthly rentals in recognition of this. And I'm going to ask it to pay Mr D the £400 it's already offered him in recognition of the distress and inconvenience he experienced with the lengthy delays in the repair process”.*

*I asked each party to let me have further information that I'd not already seen, by 21 March, that they'd like me to consider, and I've now received responses from both parties.*

*BMW said it accepted my provisional decision.*

*Mr D says he doesn't agree with my provisional decision. I will not repeat all of his submissions here but, in summary, he says:*

- *the value ascribed to the car was above what it should've been, and was above what it would be valued at today, taking into account the fault;*

- he asked to reject the car, he did not want it to be repaired;
- the supplying dealership's initial repair was quick and careless;
- the award of £400 compensation is disappointing and does not take account of BMW's lack of professionalism and the fact it ignored him when he first complained;
- he'll happily accept an alternative car of the same value, and he'd be prepared to carry on making his payments under the credit agreement.

### **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 thank both Mr D and BMW for their comments and I've considered them alongside all the evidence and arguments submitted by both parties, in order to decide what's fair and reasonable.

It may be helpful at this stage for me to explain that, although a number of points have been raised in response to my provisional decision, I will only be addressing those issues I consider to be materially relevant to the complaint in hand. Both parties should note, however, that although I may not address each individual point raised, I have given careful consideration to all of the submissions before arriving at my decision.

Having considered all of the evidence, I have reached the same conclusions as set out in my provisional decision and for the same reasons. However, I would like to make the following comments:

- If Mr D is unhappy with the price of the car that he acquired from the supplying dealership in 2023, that is something he would need to take up with it directly. It's not something that I can hold BMW responsible for, and it's not something that this Service can consider at this time.
- The illumination of a dashboard warning light is not itself a fault – it indicates that something *may* be wrong, and it signposts the driver to the fact that further investigations need to be carried out.

In this particular case, the *fault* that I've considered a complaint about relates to the seizure of the engine in March 2024, which led to the car needing recovering by a recognised third party. And the evidence that I've seen leads me to conclude that the car has been successfully repaired. In light of this, it would not be right to now permit rejection of the car.

I gave Mr D some guidance around his options if he has no faith in the repairs, or he experiences further faults with the car that he believes may have been present or developing at the point of supply. And that guidance remains valid today.

- My award of £400 in compensation was in recognition of the frustration and distress I believe he experienced. It was not to punish BMW for any perceived lack of professionalism, as this is not the role of this Service.

### **Putting things right**

I direct BMW Financial Services(GB) Limited, trading as ALPHERA Financial Services to settle this complaint fairly by:

- Refunding the equivalent of two monthly rentals in respect of the six weeks when Mr D was car-less, yet still making payments under his credit agreement;
- Pay 8% simple interest on the refunded amounts, per annum, from the time these payments were made to the date of settlement\*.
- Pay Mr D £400 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 D 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 to pay compensation to Mr D as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 April 2025.

Andrew Macnamara  
**Ombudsman**