

The complaint

Mr W complains that a car supplied with finance from BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS) wasn't of satisfactory quality.

What happened

In August 2020 Mr W was supplied with a used car and entered into a hire purchase agreement with BMWFS. At the point of supply the car was around 3 years old and had covered around 33,500 miles.

After having the car for around a year Mr W became aware from a Safety Recall that BMW planned to install software to monitor the EGR cooler.

On 7 August 2023 BMW wrote to Mr W and referred to the Safety Recall. It said a software based protective function had been installed in the vehicle which was designed to monitor the performance of the EGR cooler and if failure is detected display an alert message to the driver. The letter also said that as a follow up measure to the Safety Recall BMW planned to replace the EGR cooler in the future. The letter advised Mr W that as soon as parts were available for his vehicle, they would contact him again but that he could get the EGR checked for free if he had any concerns in the meantime.

In April 2024 the car overheated and displayed a drive chain fault. There was also a burning smell. Mr W took the car to his local BMW dealership. Mr W has told this service that the garage carried out an EGR cooler replacement on 7 May 2024. At this point the car had covered around 80,500 miles.

When Mr W collected the car, he found it a bit slow pulling away. He queried this with the garage but was assured that the car was ok. At the end of May 2024, the drive chain fault displayed again and there was a burning smell. The car was recovered and the garage who looked at the car and raised the question as to whether the EGR cooler had been changed. Mr W spoke to the dealership and was told that they were unable to find details of the EGR being changed.

The car was diagnosed with manifold damage not related to the EGR. Mr W had repairs carried out and was unhappy that he was asked to pay for these.

In July 2024 the drive chain fault occurred again. Mr W returned the car to the dealership, who diagnosed engine failure.

Mr W complained to the dealership about their repeated failure to repair the issue. The relationship between Mr W and the dealership broke down and Mr W raised a complaint with BMWFS.

BMWFS didn't uphold the complaint. In its final response it said it required evidence in the form of an independent inspection report to show that the fault was present or developing at the point of supply.

Mr W remained unhappy and brought his complaint to this service.

Our investigator didn't uphold the complaint. He said he agreed that there was a fault with the car but said that based on what he'd seen the faults didn't become evident until April 2024 which was more than 3 ½ years after the car had been supplied, during which time the car had covered over 45,000 miles. The investigator said that if the engine failure was due to an inherent fault with the engine, he would've expected the engine to have failed much sooner. The investigator also said it wasn't unreasonable for BMWFS to require an independent inspection report to show that the fault was present or redeveloping when the car was supplied. The investigator said there was no evidence to link the EGR cooler replacement to the engine failure, and that the problems with the car were more likely due to a reasonable level of wear and tear.

Mr W didn't agree. He said that at the end of the agreement he should have had the option of paying the balloon payment or returning the car. Mr W said he asked to return the car but was told by BMWFS that he still needed to make the final payment. Mr W said he'd been forced to make the final payment even though he had no car due to the engine failure. Mr W also said that BMWFS hadn't contacted the garage where the car was being stored to arrange an inspection.

Because Mr W didn't agree I've been asked to review the complaint.

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 know it will disappoint Mr W, but I agree with the investigators opinion. I'll explain why.

I've read and considered the whole file, but I'll concentrate my comments on those points which are most relevant to my decision. If I don't comment on a specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account things such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general state and condition, and other things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr W was a used car with around 33,500 miles, so I'd expect it to have a degree of wear and tear to some of the parts. It's reasonable to expect that a used car will require repairs and maintenance sooner than, say, a brand-new car.

I've considered all the information and I've thought about whether there was a fault with the car which made it of unsatisfactory quality. Mr W has told this service that the fault with the drive chain and the burning smell first occurred in April 2024. Repairs were carried out but there was a further drive chain fault in May 2024. The engine failed in July 2024.

Based on what I've seen I'm satisfied that there is a fault with the car. However, just because there's a fault doesn't mean that the car wasn't of satisfactory quality when it was supplied.

In order to uphold the complaint, I would need to see evidence to persuade me that the fault with the drivetrain was present or developing at the point of supply. The relevant legislation –

the Consumer Rights Act 2015 – states that where a fault occurs in the first 6 months, it's presumed that the fault was present or developing at the point of supply. After 6 months it's up to the consumer to show that the fault was present or developing at the point of supply.

In this case, the fault with the drive train occurred more than 3 ½ years after the car was supplied to Mr W. During this time Mr W had covered around 45,000 miles. Mr W has highlighted the fact that he experienced some other issues with the car prior to April 2024 but there's no evidence to link these to the drive train fault. Similarly, Mr J has also referred to a Safety Recall and some software which was installed to monitor the EGR cooler. Again, there's no evidence to link the Safety Recall or the software to the drive train fault.

Because the fault occurred outside of the first 6 months it's up to Mr W to prove that the fault was present or developing at the point of supply. An independent inspection report can be useful in cases such as this, as an independent engineer assesses the fault and gives a professional opinion on whether it's likely that the fault would've been present or developing at the point of supply. In this case, there's no independent inspection report. I can see that BMWFS advised Mr W to obtain one, but I haven't seen any information to suggest that Mr W tried to arrange this. Mr W has said (in response to the investigators' view) that BMWFS failed to arrange an inspection. However, there's no obligation on BMWFS to arrange an inspection. The burden of proof under the legislation rests with Mr W to provide evidence that the car wasn't of satisfactory condition when it was supplied to him.

Even though I can see that there was a fault with the drive chain in April 2024 which wasn't resolved by repair, and even though it's accepted by all parties that the engine failed, there's no evidence to persuade me that either of these issues were present or developing at the point of supply. If the drivetrain or engine issues had been present at the point of supply, I think they would've presented themselves much sooner, given the mileage that Mr W has covered in the 3 ½ years since the point of supply.

I've read what Mr W has said about paying the final payment at the end of the agreement despite the car being at the garage with engine failure. I do understand that Mr W would've preferred to hand the car back in August 2024. I can't see that what happened at the end of the agreement formed part of Mr W's initial complaint to BMWFS so I can't comment on this until BMWFS has investigated, which they will do if Mr W raises a complaint with them about this aspect. However, what I would say is that in order to return a car at the end of an agreement, the car needs to be in good condition. Charges may be imposed for damage which exceeds reasonable wear and tear. In this case, the engine had seized, which meant that the car wasn't in good condition. If Mr W had returned the car with the seized engine, the damage charges would've likely exceeded the amount of the final payment.

My final decision

For the reasons I've explained, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 May 2025.

Emma Davy
Ombudsman