

The complaint

Mr P complains that the car he acquired through BMW Financial Services(GB) Limited trading as Alphera Financial Services ("BMW") wasn't of satisfactory quality. He wants BMW to repair the car or allow him to reject it and have his finance agreement cancelled.

What happened

Mr P entered into a hire purchase agreement in October 2022 for a used car, with a cash price of £19,450. After taking into account the advanced payment of £3,000, the balance was to be paid through the credit agreement which was set up over a 49-month term. The monthly payments were £252.67, which meant the total repayable if the agreement ran to term would be £24,521.16. The car was five years old at the point of supply and had been driven nearly 64,000 miles.

Mr P told us:

- On 2 February 2024, the car stopped working when he was driving home, and he called out a third-party roadside recover firm, but the car could not be repaired at the roadside, and it was taken to a garage that was associated with the manufacturer;
- several weeks later the garage called to say that the car needed a new engine which would cost in excess of £14,000;
- he was told that this make of car has a known fault, and a country in SE Asia had undertaken a recall of it;
- he contacted BMW but it won't reimburse him for the cost of repairs, so he wants to reject the car and cancel the credit agreement.

BMW rejected this complaint. It said that it had seen no evidence that the problem with the car was present or developing at the point it had been supplied, and there was simply no evidence that the car is or was not of satisfactory quality. But it told Mr P that it would review things again if he were to provide evidence that this was not the case.

BMW told this Service that the fault reported by Mr P is more than 16 months after it supplied the car, and the credit agreement started. It said it had received no evidence so far from him that the issues were present or developing at the point of supply. And, because of this it could not accept his request to reject the car.

Our investigator looked at this complaint and initially said that it should be upheld. She said the engine had failed at around 71,000 miles even though Mr P had maintained the car well. She concluded that based on what she'd seen, it appeared that the engine had failed prematurely; the car supplied was not of satisfactory quality, and she recommended that BMW accepts its rejection.

BMW disagreed. It said it had not had sight of the evidence referred to by the Investigator in reaching her conclusion. It said it had not seen any information which confirms either the vehicle fault or a diagnosis confirming the cause of the vehicle failure, and it said it had not been given a quote or costings for any repair. BMW suggested that an independent engineer be instructed to look at the car, and it said it would pay for this.

Following the independent inspection and receipt of the engineer's report, our Investigator concluded that the car was of satisfactory quality when BMW supplied it to Mr P. She explained that the engineer had explained the cause of the fault and had concluded that this was down to wear and tear. Because of this, she said she didn't think the complaint should be upheld.

Mr P disagreed, so the complaint comes to me to decide. He says it's a known manufacturing fault; the timing chain is not fit for purpose.

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 agree with our investigator – I don't think this complaint should be upheld – and I'll explain why.

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 P 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 P was of satisfactory quality or not.

I don't think there's any dispute that Mr P has experienced problems with the car - that has been well evidenced by both his testimony and the documentation he's sent us. It's also clear that BMW doesn't dispute that there's a problem. Both parties accept that the car engine needs a full replacement. But just because Mr P has had problems with the car, and things have gone wrong, it doesn't necessary follow that the car *supplied* to Mr P wasn't of satisfactory quality.

BMW would only be responsible for putting things right if I'm satisfied that the fault – the cause of the catastrophic engine failure – was present or developing when the car was supplied; that is to say, the car wasn't of satisfactory quality when Mr P acquired it in October 2022. And I haven't seen anything that shows me that the fault, or its cause, was present or developing when the car was first supplied to Mr P.

In this particular case, a third-party was instructed to carry out an independent inspection of Mrs H's car. It is a recognised and trusted expert in this arena. From reading its report, it's clear that it was provided with an accurate background that clearly set out the issues. I say this because the report background says, "*The vehicle has engine failure (top end does not*

turn) and we need to determine a cause. Was this present or developing at the [point of sale]”.

The engineer confirms that the car is considered to be a fair and reasonable example of the type, being in a generally reasonable condition that is consistent with its age and mileage. Following the inspection, the independent engineer made a number of conclusions including:

- *“...the timing chain has broken on this engine causing complete failure”.*
- *“this is a common occurrence on this engine and would be down to wear and tear”.*
- *“the fault was not developing / present at the time of purchase”.*

The engineer makes no cautionary statements about the conclusions reached, or that a different conclusion may have been reached with additional information. The instruction of an independent inspection is what’s required and expected in these circumstances. And in the absence of any other persuasive and independent evidence to the contrary, I’m not persuaded that Mr P’s car was of unsatisfactory quality when supplied.

Mr P sent this Service a number of links to website and forums that he says indicates a known problem and a manufacturing fault with this car. But I do not agree. The forums and websites make very *general* comments about what can go wrong with this make of car, but they also make reference to things that customers can do to avoid these problems. But in this particular case, Mr P’s car was inspected by an *independent* engineer, who provided a *bespoke* report on this car. And although the engineer commented that the fault is a common occurrence, they went on to confirm that the cause is *wear and tear* and that the fault was *not* present or developing at the time that BMW supplied the car to Mr P.

I know Mr P will be disappointed by the decision that I’ve reached. I know he continues to believe that someone bears responsibility for the fact that the car engine needs replacing. But as I’ve explained, this isn’t something for which I can hold BMW responsible. There’s simply no evidence of a fault present or developing at the point of supply.

Because of this, and in the absence of any evidence to the contrary, I’m not persuaded that Mr P’s car was of unsatisfactory quality when supplied. So, I can’t hold BMW responsible for the problems Mr P has experienced with it.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 1 August 2025.

Andrew Macnamara
Ombudsman