

## The complaint

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

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

## What happened

In May 2022, Mr R was supplied with a used car through a hire purchase agreement with BMWFS. He paid an advance payment of £1,000 and the agreement was for £38,169 over 49 months; with 48 monthly payments of £634.45 and a final payment of £18,973.58. At the time of supply, the car was around five years old and had done 40,003 miles (according to the MOT record for 13 May 2022).

The car broke down on 23 July 2022 due to engine failure. A new engine was required, and this was installed on 31 August 2022. However, this engine failed on 7 August 2024, and the warranty refused to cover any repairs as the engine hadn't been supplied through the manufacturer's network.

Mr R complained to BMWFS, but they didn't uphold his complaint. They said the car hadn't been serviced in line with the manufacturer's guidelines, although they couldn't confirm if the missed services were the cause of the problems with the car. BMWFS also felt that *"the engine issues experienced with the vehicle was caused by the vehicle towing unsuitable objects."* Unhappy with BMWFS's response, Mr R brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator didn't think the car supplied to Mr R was sufficiently durable – they didn't think a car needing replacement engines given the age and mileage could be said to be of a satisfactory quality. The investigator said the first engine had failed shortly after it had been serviced, and that there was nothing to show Mr R had been towing 'unsuitable objects'. So, they thought Mr R should be allowed to reject the car, with a refund of the deposit he paid, a refund of the payments he made when he was without use of the car or a courtesy car, a refund of the repair costs he paid, and £200 compensation for what had happened.

Mr R accepted the investigator's opinion. However, after requesting, and being provided with, evidence of when Mr R was without the car, BMWFS failed to respond to the investigator's opinion. Under our rules, this is treated as a rejection, and this matter has been passed 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 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 R 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, BMWFS 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 and its durability. Durability means that the components of the car must last a reasonable amount of time.

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 BMWFS can show otherwise. So, if I thought the car was faulty when Mr R took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMWFS to put this right.

I've seen the breakdown report dated 23 July 2022, when Mr R first had problems with the car. This happened at 42,986 miles – around 3,000 miles after the car was supplied to him. The breakdown company identified engine related fault codes, and the car was recovered to a garage.

An invoice for 1 August 2022 shows that the timing chain was replaced at the cost of £2,566.61. However, a further diagnostic on 16 August 2022 indicated the engine still wasn't working, and a new engine was required. The engine was then replaced on 25 August 2022 at a cost of £7,000.

As I've explained above, where a fault occurs within the first six months it's deemed to have been present when the car was supplied, unless BMWFS can show otherwise. Which they haven't. As no reasonable person would expect an engine on a car that's done less than 50,000 miles to fail, especially after just a few months of driving, I'm satisfied this made the car of an unsatisfactory quality at the point of supply.

In these circumstances, section 24(5) of the CRA allows for a single chance of repair. The replacement engine in August 2022 was that single chance of repair. The CRA also says that, if the single chance of repair fails, then the customer has the right of rejection.

A diagnostic report dated 8 August 2024 identified an engine noise and swarf in the oil. As a result of this, the diagnostic concluded that a new engine was required. This diagnostic took place at 57,928 miles – around 15,000 miles since the engine had been replaced. I don't think any reasonable person would expect an engine to fail after just 15,000 miles and, as such, I'm satisfied the engine that was fitted to the car in August 2022 was insufficiently durable. And this means that the single chance of repair failed.

BMWFS have said that the car wasn't serviced in line with the manufacturer's guidelines, implying that this was the reason the replacement engine failed.

The service record refers to a servicing requirement of every 2-years or 21,000 miles (whichever is sooner). The car was serviced on 18 March 2017 (29 miles) and on 2 August 2017 as preparation for sale (6,996 miles). The 21,000 mile/24-month service took place on 27 April 2019 at 16,627 miles, and the 42,000 mile/48-month service took place on 11 March 2021 at 30,289 miles. All this happened before the car was supplied to Mr R.

Mr R was supplied with the car on 19 May 2022, and the 63,000 mile/72-month service took place on 12 March 2024 at 53,843 miles. While this was within the manufacturer's mileage guidance, it was outside of the two-year guidance – this service should've happened by March 2023. However, I think it's reasonable to assume that the engine fitted in August 2022 was supplied in good working order, and fluids such as oils and coolant would've been renewed when the engine was replaced. So, while this wasn't an official service, the main components of a service were carried out by default in August 2022.

The replacement engine failed around three-months and 4,000 miles after the car was serviced by Mr R. If the engine failed due to the delay in the 72-month service, then it's highly likely the swarf would've been present in the oil at the time of the service. But if that was the case, then it would've been identified during the service, which it wasn't. It's therefore likely that the issue with the engine occurred after the last service, and the servicing wasn't a factor in the engine failure.

BMWFS have also said that the engine failed because Mr R was towing unusual objects. However, I haven't seen any evidence to support this assertion.

As such, given the above, I'm satisfied the single chance of repair failed due to insufficient durability, and BMWFS need to do something to put things right.

### **Putting things right**

As the single chance of repair has failed, and as the car has been off the road and undrivable since August 2024, Mr R should now be allowed to reject the car. He's provided dates when he was without use of the car due to the issues with the engine, and without any courtesy car. These are:

- 24 July to 3 August 2022
- 9 and 10 August 2022
- 18 to 30 August 2022
- 7 August 2024
- 7 September to 31 October 2024
- Since 26 November 2024

During these periods, Mr R was paying for goods he was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as BMWFS failed to keep Mr R mobile; I'm satisfied they should refund the payments he made during this period.

For clarity, I haven't included any dates Mr R was without use of the car, and without use of a courtesy car, due to the car undergoing general maintenance and servicing, including the replacement of wear and tear items such as brakes and suspension parts. The agreement required him to keep the car in good repair and said that BMWFS were not responsible for any general maintenance to the car. As this work was general maintenance related to the

car, I don't think BMWFS are responsible for the cost of these repairs, nor are they required to keep him mobile during these times.

However, BMWFS are liable for any costs relating to the engine replacements that wasn't covered by the warranty/supplying dealership, and for which Mr R had to pay for himself.

Finally, I think Mr R should be compensated for the distress and inconvenience he was caused. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended BMWFS pay Mr R an additional £200 to recognise the distress and inconvenience caused. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward. So, this is a payment I'm directing BMWFS to make

Therefore, BMWFS should:

- end the agreement, ensuring Mr R is not liable for any monthly payments after the point of collection (if any payments are made, these should be refunded);
- collect the car at no collection cost to Mr R;
- remove any adverse entries relating to this agreement from Mr R's credit file;
- refund the deposit Mr R paid (if any part of this deposit is made up of funds paid through a dealer contribution, BMWFS is entitled to retain that proportion of the deposit);
- refund the equivalent of the payments Mr R made for the periods specified above;
- upon receipt of proof of payment, reimburse Mr J for any costs he incurred relating to the breakdown and engine replacement in August 2022, and the breakdown in August 2024, including the timing chain replacement and any diagnostic costs;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr R made the payments to the date of the refund<sup>†</sup>; and
- pay Mr R an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (BMWFS must pay this compensation within 28 days of the date on which we tell them Mr R accepts my final decision. If they pay later than this date, BMWFS must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment<sup>†</sup>).

<sup>†</sup>If HM Revenue & Customs requires BMWFS to take off tax from this interest, BMWFS must give Mr R a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr R's complaint about BMW Financial Services (GB) Limited trading as Alphera Financial Services. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 November 2025.

Andrew Burford  
**Ombudsman**