

## The complaint

Ms N has complained about the quality of a car provided on finance by BMW Financial Services (GB) Limited trading as Alphera Finance Services (“AFS”).

## What happened

The circumstances of the complaint are well known to the parties, so I won't go over everything again in detail. But, to summarise AFS supplied Ms N with a used car on a hire purchase agreement in August 2022. The cash price of the car was around £30,500 and it had covered around 52,800 miles since first registration in April 2017. The hire purchase agreement required payments of around £260 for 47 months followed by an optional final payment of around £16,900. Ms N paid a deposit of around £8,500.

Ms N said the car broke down with engine failure in December 2024. The mileage was around 78,000. She complained to AFS, enclosing a diagnostic which said the cost of repairs would be around £8,100 and also requested to Voluntary Terminate (VT) the agreement.

AFS said the car was of satisfactory quality at the point of supply and ultimately didn't uphold her complaint.

Ms N referred her complaint to the Financial Ombudsman. She supplied evidence from a third party diagnosing the issue. An investigator here looked at the complaint. He said that the timing belt was maintenance free and had failed prematurely so the car wasn't durable. He recommended that Ms N could reject the car and other steps to put things right.

Ms N agreed with the investigator's recommendations. But AFS disagreed. In summary it said:

- The car was over five years old when it was supplied and had already covered around 52,800 miles.
- The car did not fail until December 2024, more than two years later, at which time it had covered around 78,000 miles and Ms N had driven around 25,000 miles. The car was by that time around seven years old.
- AFS said it had no knowledge of how the car had been driven during that time and couldn't attribute that the failure was unreasonable given the age and mileage.

As an agreement couldn't be reached the complaint was passed to me to make a decision. I issued a provisional decision which said:

*When considering what is, in my opinion, fair and reasonable, I take into account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time.*

*I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't*

*considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.*

*Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.*

*Firstly, I'd like to express my sympathy for the circumstances that Ms N has described to our service. I can't imagine how she is feeling but thank her for bringing her complaint.*

*The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. AFS is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.*

*The Consumer Rights Act 2015 (CRA) is also of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory."*

*The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances might include things like the age and mileage at the time of supply and the car's history.*

*The CRA says 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.*

*As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality at the point of supply. It doesn't seem to be in dispute that there is a fault with the car, and it needs a significant repair.*

*The CRA says that "goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer much be taken not to have conformed to it on that day". This means it is assumed that where a fault occurs which makes the car of unsatisfactory quality within the first six months, it is generally up to the business to put things right. After six months it falls to the consumer to demonstrate the fault would have been present or developing at the point of supply.*

*As a starting point Ms N needed to demonstrate the fault would have been present or developing at the point of supply. Ms N commissioned an expert to look into the problem for her. I don't hold myself to be an expert with mechanical engineering. I'm somewhat reliant on the experts that have seen and inspected the car. And where there isn't a finding on where liability lies, and why, I find myself having to draw a conclusion taking into account all the specific circumstances of this case.*

*The car supplied to Ms N was used, around five years old and had covered around 52,800 miles. There would be different expectations of it than if it was a brand-new car. The car cost around £30,500 which is a significant amount, but less than if it were a new car. The price paid reflects the age and condition of the car.*

*Ms N was able to drive the car for around 25,000 miles before the car broke down in December 2024. This is important to note as some of the issues may have arisen or become*

*apparent during this time and they may not have been present or developing at the point of supply.*

*Ms N has supplied a detailed diagnostic and an email from a third party who specialises in servicing cars from this manufacturer. The email summarises the findings of the engineer: "It is our opinion that sudden failure of the left side timing chain, or left side timing chain tensioner, resulted in the left-side camshafts losing synchronisation with the crankshaft causing consequential damage to the left-side cylinder head's valves due to contacting the pistons. The loss of camshaft/crankshaft synchronisation being the trigger for the diagnostic trouble codes relating to timing concerns.*

*The correct amount of engine oil and coolant etc, lack of damage to the right-side timing and valve components, and "maintenance free" nature of the timing chains and tensioners provide evidence to that end, assuming the vehicle has been serviced according to manufacturer specifications".*

*The report from Ms N's expert makes a finding on the failure of the timing chain being sudden. But it also assumes that the car has been serviced according to manufacturer specifications. But I don't think that's the case here.*

*Ms N has provided evidence to show that the car was serviced in 2023 and 2024, which seems to be in line with the manufacturer recommendations. But looking at the advert for the car I can't see that it was advertised as having a full service history. The online servicing history shows that it was fully serviced from first registration in 2017 up until March 2021. There's no requirement for a car to have a full service before it is sold, although it would be expected to go through a pre-delivery inspection to ensure that it was of satisfactory quality.*

*But there appears to be a big gap in servicing between 2021 and the next service which was completed by Ms N in September 2023. The mileage covered between services was around 25,000, so the car hadn't been serviced in line with manufacturer recommendations. I can't see any clear evidence that Ms N was told the car was fully serviced, the advert for the car doesn't say that. Unfortunately, the history of the car is an unknown risk when buying a used car. The service history, before supply, might be a key factor in what has caused the catastrophic failure, as alluded to by the third-party expert in their report.*

*Ms N has supplied evidence that she paid for another service in July 2024. The mileage at this point was around 75,300. The invoice shows an advisory note which says: "slight rattle from supercharger area, but goes off after approx. 1 min, would req specialist to investigate. P2189, P2187 mixture faults stored, cleared and re-set adaptations, but will req specialist" [sic]. I haven't seen anything which indicates that Ms N had further investigations before the car ultimately failed, so I can't rule out the possibility that other factors as well as the missed service, might have contributed to the overall wear on the car.*

*Buying a second-hand car comes with some risk of parts wearing and needing maintenance sooner than you would expect on a brand-new car that isn't as road worn. And unfortunately, not all second-hand cars have been serviced or had parts replaced in line with manufacturer's recommendations. But that doesn't necessarily mean that the car isn't of satisfactory quality.*

*Just because a part is starting to wear it doesn't mean that a fault is present or developing at the point of supply. In order to make a reasonable finding on durability I would need to be more persuaded on what had caused the fault. It would be difficult for me to say that a car that had covered around 78,000 miles wasn't durable.*

*I can understand that Ms N is disappointed that the car has such a significant problem, that*

*might not be cheap or easy to rectify. What I have to bear in mind is that just because I've seen there was a fault which came about around two years after supply, this doesn't necessarily mean the car wasn't of satisfactory quality when it was supplied.*

*I'm sorry to disappoint Ms N, but without sufficient evidence of a fault which made the car of unsatisfactory quality at the point of supply, I find I don't yet have the grounds to direct AFS to do anything to resolve this complaint.*

*I understand that Ms N has asked to VT the agreement. I would remind AFS to treat her with forbearance and due consideration if she's in financial difficulties. If Ms N is unhappy with AFS' handling of the VT, then she'll need to make a further complaint as I'm not dealing with that in this decision.*

AFS didn't respond to the provisional decision. Ms N didn't agree and in summary she said:

- She was truly hurt and disappointed by the provisional decision, it had caused her great stress, and she didn't think it was a fair outcome for both parties. To be told she wasn't entitled to any support when it was not her fault is very disappointing and upsetting and she didn't have £8,000 to make repairs. She had never missed a finance payment, and she was still making payments.
- There was no consideration to help support her in the matter
- She had contacted the manufacturer and the manual which stated that the part that had failed was maintenance free and should last the life of the car
- This had nothing to do with the mileage, and the car was very well looked after
- There were no advisories in place to tell her if she needed to get the car checked or serviced or replace certain parts after a certain age or mileage of the car. If she had been given guidance she would have made sure she met those requirements.

As the deadline for responses has now passed I'll go on to make my final decision,

### **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'd like to thank Ms N for responding promptly to my provisional decision. I'm sympathetic to the difficult situation Ms N finds herself in. Despite my natural sympathy, I need to be impartial when I look at this complaint.

I've attempted to summarise above the responses that I received from Ms N as I want her to know that I've carefully considered all the points made and the evidence provided. I don't intend to address the same points again as in my provisional decision. Instead, I've tried to concisely explain why the additional comments and evidence I've received since I issued my provisional decision haven't changed my mind.

I do understand Ms N's point that the manufacturer told her that a part was maintenance free. But unfortunately, all the other evidence, including from the experts that saw the car, point towards the service history of the car being particularly important. Maintenance free usually means that the part doesn't have a specific replacement interval, but it doesn't mean it isn't affected by poor maintenance. That's because parts of the engine require consistent

lubrication, and if that isn't maintained it can cause undue pressure on other parts which might lead to premature wear.

I've listened to Ms N's comments on the mileage and how the car was maintained but I must disagree. Given the significant mileage covered overall, and the lack of maintenance history, it would be difficult for me to say that the part failed prematurely. Regrettably it isn't a requirement for all cars to be supplied with a perfect service history, or for the supplier to give instructions on maintenance, and there is some inherent risk in acquiring a second-hand car. I don't think the car was of unsatisfactory quality when it was supplied, so I don't require AFS to do anything to resolve this complaint.

I'd encourage Ms N to reach out to AFS to discuss what additional support it can provide if she's struggling to make payments and keep herself otherwise mobile. Our investigator can also signpost her for appropriate debt advice if needed.

As a reminder, Ms N doesn't need to accept my decision, and then she'll be free to pursue the complaint by other means such as through the courts, after taking legal advice as necessary.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 31 December 2025.

Caroline Kirby  
**Ombudsman**