

## Complaint

Mr D has complained about the quality of a car that BMW Financial Services (GB) Limited (trading as “Alphera” Financial Services) supplied to him through a hire-purchase agreement.

## Background

In September 2023, Alphera provided Mr D with finance for a used car. The car was just over five years old and it is my understanding that it had completed 43,552 miles at the time of sale. The cash price of the vehicle was £37,950.00. Mr D paid a deposit of £1,352.47 and applied for finance to cover the remaining £36,597.53 required to complete the purchase. Alphera accepted Mr D’s application and entered into a 57-month hire-purchase agreement with him.

The loan had an APR of 10.8%, interest, fees and total charges of £12,654.80 and the total amount to be repaid of £49,252.33 (not including Mr D’s deposit) was due to be repaid in 56 monthly instalments of £639.64 followed by an optional final payment of £13,432.49 which Mr D only had to pay if he wanted to keep the vehicle at the end of the agreement.

Although Mr D signed his finance agreement on 29 September 2023, I understand that Mr D didn’t collect the vehicle until 1 October 2023. So the vehicle was not supplied to him until 1 October 2023.

Mr D experienced issues with the alternator and a pulley in December 2023. However, this was partially covered by a vehicle warranty claim and Mr D paid £103.61 to cover the repairs that were not covered by the warranty. This repair was completed in January 2024 and the car was returned to Mr D at this point.

In February 2024, the vehicle broke down while Mr D was on the motorway. I understand it has since been established that this was because the engine had seized. Mr D was able to have the vehicle recovered under his warranty. But the warranty company informed Mr D that as the repairs now required were to the engine and his engine type was one which it considered was ‘*very common for failing*’, his warranty would not cover them.

Mr D complained to Alphera in February 2024. Alphera did not issue its final response to Mr D’s complaint within its allotted eight weeks. As a result, it let Mr D know that he had the right to refer his complaint to our service at this point and Mr D did so.

Mr D’s complaint was subsequently reviewed by one of our investigators. He thought that Alphera supplied Mr D with a vehicle that was not of satisfactory quality. So he upheld Mr D’s complaint and thought that Mr D should be able to reject the vehicle.

Despite being given more than one extension to the period of time to do so, Alphera didn’t respond to our investigator’s view. As this is the case, the complaint was passed forward to an ombudsman as per the next stage of our dispute resolution process.

## **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Alphera's total lack of engagement with Mr D's complaint means it is difficult for me to know what its position on this matter is. The correspondence between it, the supplying dealer and the broker appears to indicate that it accepts the vehicle it supplied may not have been of satisfactory quality. But the suggestion is that a repair should take place, rather than Mr D being able to reject the vehicle. Yet Alphera hasn't confirmed that this is its position.

Bearing this in mind, I'm satisfied that what I firstly need to decide is whether the car that Alphera supplied to Mr D was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Alphera to do put things right.

Having carefully considered matters, I'm satisfied that the vehicle Alphera supplied to Mr D was not of satisfactory quality and I'm therefore upholding Mr D's complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Alphera purchased the vehicle from the dealership Mr D visited. Mr D then hired the vehicle from Alphera and paid a monthly amount to it in return. Alphera remained the legal owner of the vehicle under the agreement until Mr D's loan was repaid.

This arrangement resulted in Alphera being the supplier of Mr D's vehicle and so it is also responsible for answering a complaint about its quality.

### *The Consumer Rights Act 2015 ("CRA")*

The CRA covers hire-purchase agreements – such as Mr D's agreement with Alphera. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

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### *Is there a fault with the vehicle?*

Having considered everything provided, I'm satisfied that there is a fault currently present on the vehicle. I know Mr D had an earlier repair carried out in relation to the alternator. However, the main reason I'm satisfied that there is a fault currently present on the car is because, the warranty company responsible for Mr D's warranty has confirmed that the engine has seized and repairs are required. It also confirms that an engine replacement is needed.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, meant that the car wasn't of satisfactory quality at the point of supply.

*Why I don't think that Mr D was supplied with a vehicle of satisfactory quality*

Mr D acquired a car that was used – it was just over five years old when it was sold and had completed just under 44,000 miles. I accept that there would be different expectations regarding its quality when compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors.

In this case, Mr D almost immediately began having difficulties with the vehicle. The available evidence suggests that a repair took place to the alternator and a pulley in December 2023 and that Mr D only had the vehicle back close to a month later. It's also not in dispute that the car broke down again less than a month after the first repair took place and Mr D once again had possession of the vehicle.

Despite the length of time that it has been since Mr D notified Alphera of his difficulties with the vehicle, I can't see that it has arranged for an inspection of the car, or for any other kind of diagnosis of the fault to take place. So, in truth, I don't think that Alphera is in a position to speak to the nature of the fault. That said, I can see that the warranty company has confirmed that the engine on the car has seized and that it now needs replacing.

One of the considerations of whether goods are of satisfactory quality is durability. Here, the limited information I've been provided with, appears to suggest that the vehicle requires a replacement engine. I appreciate that the vehicle had completed over 43,000 miles by the time of purchase and it also appears to have completed a further 5,500 miles or so by the time of the breakdown.

But even though the vehicle had been driven for around 50,000 miles, I still need to weigh this against the fact that Mr D had paid almost £38,000.00 for it. I think that a reasonable person would expect him to have had far more use of a vehicle costing £37,950.00 – notwithstanding the mileage completed prior to the purchase - before an engine replacement would be needed.

In reaching my conclusion, I have seen that the supplying dealer told Alphera that it was Mr D's own admission that he initially had a smaller fault diagnosed which the warranty company agreed to cover the cost for. However, Mr D instead acted negligently and continued to drive the car for considerable miles causing greater damage. Furthermore, it was its understanding that the warranty company advised it would not cover the new cost of repair and Mr D was advised not to drive the car until the repair was made.

In the first instance, I note that the supplying dealer said that it hadn't seen the car since the sale. It seems somewhat odd for the supplying dealer to be able to speak authoritatively as to the issues with the car when it hasn't seen it, let alone inspected it. In any event, the first repair was completed and this was even though Mr D had to pay for part of it.

So it's unclear to me what the supplying dealer's allegation that Mr D acted negligently, by trying to drive the car for considerable mileage after being told that it needed repair, is based on. I've not seen anything to indicate that the car was driven after it broke down in February 2024. Furthermore, I would add that while the supplying dealer has suggested negligence on Mr D's part it hasn't provided any supporting evidence to corroborate this being the case either.

I'm also mindful that the warranty company's letter to Mr D states that the reason his warranty claim was declined was because he had a type of engine which was very common for failing and that this is the reason replacing it was excluded from the cover the warranty provides. I don't think this is enough for me to make a finding that there was a manufacturing fault with the vehicle. After all, this letter was prepared with the intent of justifying the warranty company's decision not to cover Mr D's claim, rather than independently confirming the fault with the engine, or the reason for it.

Nonetheless, it does seem to me that the warranty company did not believe that the engine failure was as a result of Mr D driving the vehicle against its advice, or that he had acted negligently in any other way. I say this particularly that either of these reasons would also have been a reason to refuse the warranty claim as well. I'm therefore not persuaded by the supplying dealer's allegation that the fault was caused by Mr D's negligence.

Taking all of this into account, I think that engine seizing within such a short period, after Mr D completed less than 6,000 miles and the car had completed less than 50,000 miles overall, means that the vehicle was not durable. It follows that I don't think the car was of satisfactory quality when Alphaera supplied it to Mr D.

*What Alphaera needs to do to put things right for Mr D*

I've gone on to think about what Alphaera needs to do to put things right as a result of supplying him with a vehicle that was not of satisfactory quality.

Amongst the correspondence between Alphaera, the supplying dealer and the broker there appears to be some suggestion that the supplying dealer hasn't had an opportunity to repair the vehicle, as the warranty repair wouldn't count for the purpose of the supplier's right to repair the fault with the engine. I don't think that there is any dispute that the warranty repair does not count as the supplying dealer's attempt to repair the vehicle under the remedies available under the CRA.

That said, under the CRA, if a repair is carried out it must be done so within a reasonable time and without significant inconvenience to the consumer. Given Mr D has been reporting issues with the vehicle to Alphaera since February 2024 and he's been without the use of it since then, I don't think that a repair being carried out now would be within a reasonable period of time. I'm also mindful that Alphaera has been in contact with the supplying dealer numerous times since then and there has been no attempt to diagnose the problem, assist Mr D, or carry out a repair.

I think that it's also worth noting that the only evidence I have indicates that the engine on the vehicle needs replacing. I've not been provided with any other diagnosis or estimate. Therefore, at this stage, I'm prepared to accept the engine needs replacing. I also understand that Mr D has been in contact with the manufacturer of the vehicle and it has said that it is likely to take 12 weeks for the parts needed, for any repair, to be supplied. So it will be some time before any repair will be completed and even if things were to go smoothly from here it is likely to be the end of the year, at the earliest, before the car would be returned to Mr D.

This is also in circumstances where the problem with the vehicle appears to be engine related and there is the possibility that any repair may, in any event, prove to be uneconomical in the circumstances. I note that Mr D's enquiries has seen him quoted over £17,000.00.

Therefore, I'm not persuaded that there is a sound rationale for the supplying dealer to repair the vehicle – notwithstanding any previous opportunities which may or may not have

presented themselves. In my view, any repair could prove to be uneconomic and might not even resolve the issue. And, in any event, I don't think a repair would be completed within a reasonable time and without significant inconvenience to Mr D.

In these circumstances, I'm satisfied that the fair and reasonable resolution here would be for Mr D to reject the vehicle and for Alphera to collect it from him. As Mr D will have rejected the vehicle, I'm satisfied that Alphera should end its agreement with him and ensure that he has nothing further to pay on it. This will seek to place Mr D in the position he would be in had he not entered into the hire-purchase agreement in the first place, so I'm satisfied that Alphera should refund Mr D the £1,352.47 deposit he paid as part of the agreement with interest at 8% per year simple.

Mr D appears to have use of the car up until February 2024. Although I have noted that he was without the car for close to a month as a result of the first repair. I've not seen anything to indicate that he was provided with a replacement car at that point either. So, in the circumstances, I'm satisfied that Alphera can keep the payments Mr D made up to and including his December 2023 payment and that Alphera should refund all of the payments Mr D has made from his January 2024 payment, plus interest at 8% a year simple.

Mr D has provided evidence to show that he had to pay £103.61 towards the repairs carried out to the vehicle in December 2023. I think that he incurred this cost as a reasonable attempt to ensure that he could start using the vehicle again and that it was a reasonable attempt to mitigate any loss – particularly as he'd liaised with the warranty company responsible for the warranty he was sold when he acquired the car. So I'm satisfied that Alphera should pay Mr D the amount he paid towards the repair with interest at 8% a year simple.

Mr D has also incurred additional costs as a result of being supplied with a vehicle that he wasn't able to use from February 2024, in the form of road tax and insurance. Mr D will be able to obtain a pro-rata refund of some – but not all - of these costs once Alphera collects the car from him. However, Alphera should reimburse Mr D the road tax and insurance costs he will have incurred for the period from February 2024 onwards where he will receive no refund – likely the period from February 2024 until the refunds for road tax and insurance are processed. This reimbursement should also be made with interest at 8% a year simple.

I've also considered the distress and inconvenience that Mr D experienced and the impact of him being without a vehicle since February 2024. I appreciate that Mr D has had to take time to contact the supplying dealer, other garages and also Alphera in an attempt to rectify matters. I also understand that he may not have been able to use his vehicle for planned holidays this year and he says that the stress has impacted on his health. I am sorry to hear about the difficulties Mr D has had.

Having considered all of this, I'm persuaded that Mr D was caused distress and inconvenience as a result of Alphera supplying him with a car that was not of satisfactory quality. That said, I note that Alphera has already paid Mr D £639.64 (it effectively credited him with a monthly payment) for any distress and inconvenience caused by its actions. I think that this is reasonable compensation – particularly considering awards for distress and inconvenience are typically modest – and I'm not making a further award for distress and inconvenience.

### **Fair compensation – what Alphera needs to do to put things right for Mr D**

Overall and having considered everything, I think it is fair and reasonable for Alphera to put things right for Mr D by:

- collecting the car from Mr D at no cost to him;
- ending the hire-purchase agreement and ensuring that Mr D has nothing further to pay. Alpera should also remove any adverse information it may have recorded against Mr D as a result of this agreement from his credit file;
- refunding his deposit and all of the payments that he made to the agreement from March 2024 onwards;
- reimbursing him the £103.61 he paid towards the first repair to the vehicle;
- reimbursing any road tax and insurance costs Mr D incurred from February 2024 which he isn't refunded on a pro-rata basis, by the organisations which made the charge, once the car is collected from him;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Mr D to the date the complaint is settled†;

† HM Revenue & Customs requires Alpera to take off tax from this interest. Alpera must give Mr D a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Mr D's complaint. BMW Financial Services (GB) Limited should put things right for Mr D in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 September 2024.

Jeshen Narayanan  
**Ombudsman**