

## **The complaint**

Mr S complains about the quality of a used car that was supplied to him through a hire purchase agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS).

## **What happened**

In May 2022 Mr S acquired a used car through a hire purchase agreement with BMWFS. The car was around three years old and had travelled 65,028 miles when it was supplied to Mr S. The cash price of the car was £20,750. Mr S made an advanced payment of £10,000 so the total amount financed on the agreement was £10,750 over 60 monthly repayments of £223.25.

The history of this complaint is well known to both parties, so I don't propose to rehearse it here, but in summary, Mr S complained to BMWFS that a few days after acquiring his car it developed problems with oil consumption and the brakes which he reported to the dealership.

The dealership advised Mr S to take it to a local garage and to top up the oil. The dealership covered the costs of the repairs to the brakes, but an oil leak couldn't be found.

Mr S said the oil levels kept dropping so in August 2022 he was advised by the manufacturer not to drive the car. Mr S said he hired a car between 19 August 2022 and 28 October 2022 at a cost of £4,550.

After some further communication between Mr S and BMWFS, they issued their final response in October 2022. Mr S also brought his complaint to our service around the same time.

BMWFS didn't uphold Mr S' complaint. They advised as the issues were reported outside of the first 30 days from supply, they wouldn't facilitate a rejection of the car. However, they said the dealership were willing to pick up the car and arrange a full repair. They also agreed to refund all monthly repayments from when the issues were reported up to the time of repair. They also advised they'd consider additional costs incurred.

After some further communication between Mr S, BMWFS and our investigator, BMWFS made an offer to settle the complaint which Mr S agreed to. The details of the offer were as set out below:

- The dealer will collect the car from Mr S
- After inspection, the dealer will send BMWFS settlement funds
- The dealer will refund the deposit
- BMWFS will refund any rentals the customer has paid while the vehicle has been off the road.

In March 2023, Mr S contacted our investigator to say that he'd only been refunded eight rentals despite him making nine. He also said BMWFS wasn't going to re-imburse him the hire car costs. Mr S provided a copy of an email received from BMWFS dated 30 March 2023 confirming this.

As Mr S disputed the settlement offer, our investigator issued their view concluding that the offer from BMWFS was fair and reasonable.

Mr S didn't accept our investigator's view on the basis that he felt all the monthly repayments should have been refunded. Mr S asked that his complaint be referred to an ombudsman for a 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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any 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.

Mr S complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr S's complaint about BMWFS. BMWFS is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering any description of the goods, the price and all the other relevant circumstances. The CRA also explains the durability of goods is part of satisfactory quality.

So, it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

My starting point is that BMWFS supplied Mr S with a used car that had travelled around 65,000 miles. With this in mind, I think it's fair to say that a reasonable person would expect the level of quality to be less than that of a brand-new car with lower mileage; and that there may be visual signs of wear and tear due to its usage. Having said that, the car was priced at £20,750 which isn't insignificant. It also wasn't a particularly old vehicle. So, I think it is fair to say that a reasonable person would expect it could be used free from any major issues for a reasonable period of time.

From the information provided I'm persuaded there was a fault in relation to an oil leak. Although I haven't seen a diagnostic report confirming this, BMWFS system notes confirm on 16 August 2022, a diagnostic report was received from Mr S which they sent on to the dealership. Both parties are also in agreement that a problem exists with an oil leak.

Having considered all the details of this complaint, I don't consider there is a dispute that the car is faulty and that an oil leak has caused the issue. I also don't consider there's a dispute that the car wasn't of satisfactory quality when it was supplied to Mr S.

Mr S complained that this was the case from the moment he raised the issue to BMWFS in August 2022, and BMWFS has processed the rejection. All things considered; I'm satisfied the car wasn't of satisfactory quality on the basis that Mr S reported issues with the oil levels at the same time as when he raised the issue with the brakes. The dealership later arranged to cover the cost of the brakes, but the oil issue was left to develop without a repair. I consider also that the dealership had their opportunity to repair the fault when Mr S raised it to them.

As I've concluded the car wasn't of satisfactory quality when it was supplied to Mr S, and that the dealership was given an opportunity to repair it, under the CRA I'm satisfied that a rejection of the car was a fair and reasonable course of action.

However, although a rejection was carried out in March 2023, what appears to be in dispute now is the redress to put things right.

BMWFS made an offer which our investigator agreed with; however, Mr S says that the settlement wasn't fully honoured because it specified he'd be refunded all monthly repayments from when his car was off the road.

BMWFS system notes show that on 12 August 2022 Mr S confirmed he was told by the manufacturer that the car wasn't safe to drive and that he'd been without a car for a week at that point. I've no reason to doubt what Mr S has said here, for example I've seen no evidence to the contrary, so I'm persuaded Mr S hasn't driven his car from around 12 August 2022.

Having said that, although BMWFS's settlement offer says they'll refund any rentals whilst the car was off the road, I'm in agreement with our investigator that Mr S should pay for the usage he's had. Mr S confirmed in an email to our investigator that the mileage on his car was around 70,000 which was about 5,000 more than when it was supplied to him. It's also recorded on BMWFS's system notes that a week prior to 12 August 2022 Mr S stopped driving the car. This is also consistent with the dates Mr S hired a car, as per the invoice provided.

The evidence suggests that Mr S used the car from when it was supplied to him in May 2022 up to the start of August 2022, so over two months of usage. However, BMWFS only held back one monthly repayment. I think this is fair as the additional monthly repayment would account for any inconvenience Mr S was caused as a result of this situation.

So, all things considered, I'm satisfied that BMWFS are acting fairly by withholding a month's repayment to cover the usage.

I'm also in agreement that it wouldn't be fair to ask BMWFS to also reimburse the hire car costs in addition to the refund of the monthly rentals. Mr S would effectively have benefitted from free motoring if that were the case.

As I've concluded that the settlement offer made by BMWFS was fair and reasonable, I don't require BMWFS to take any further action in respect of this complaint.

### **My final decision**

Having thought about everything above along with what is fair and reasonable in the circumstances, I don't uphold Mr S' complaint against BMW Financial Services (GB) Limited trading as ALPHERA Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 October 2023.

Benjamin John  
**Ombudsman**