

## **The complaint**

Mrs P says that a car supplied to her under a hire purchase agreement with BMW Financial Services(GB) Limited trading as ALPHERA Financial Services (BMWFS) was of an unsatisfactory quality.

Mrs P is represented in this complaint. For ease of reading, I will refer only to Mrs P.

## **What happened**

On 22 June 2020, Mrs P was supplied with a used car through a hire purchase agreement with BMWFS. The agreement was for £11,724 over five years; with 60 monthly repayments of £192. At the time the car was more than three years old and had done around 26,000 miles. She said she took delivery of the car on 29 June 2020.

Mrs P said that on 28 July 2020 she was left stranded at the side of the road because the car's clutch pedal was stuck down. She took it to the garage suggested by the warranty provider. They told her this was a reoccurring fault and had been the subject of a manufacturer recall.

Mrs P complained about this issue to BMWFS by telephone on 18 August 2020. She said they told her they weren't responsible, so she sent them a letter of complaint on 19 August 2020. In this letter she told BMWFS she wanted to unwind the agreement and return the car.

She said that in September 2020 the retailer arranged for the car to be repaired and refunded to her the cost of the diagnostic report she'd obtained. She said that BMWFS wrote to her in October 2020 refusing her request to return the vehicle as they said she's asked for the repair.

Mrs P said that the car then failed its MOT in March 2021. This was due to excessive movement in the steering column. She said she was told by the garage that the car had failed the MOT in March 2020 for the same issue, and then passed the MOT later the same day. She said the garage told her that no work had previously been done to the steering column, so she felt that the MOT wasn't reliable.

She complained to the retailer about what she considered to be a fraudulent MOT. She also complained that they had mis-sold the car to her as she said the MOT failure demonstrated that the retailer couldn't have carried out the "300 point safety check" they said was done on all cars they sold.

She said the retailer agreed to refund her for the repair to the steering column.

Mrs P said that in October 2022 there was a problem with the clutch and master cylinder. She said that she complained about this to BMWFS and asked again to return the car and unwind the agreement. She said they insisted that she obtain a diagnostic report from a main dealer.

She said that she obtained a diagnostic report and submitted this to BMWFS on 10 October 2022. She said that they replied on 30 November 2022, not upholding her complaint, and not allowing her to reject the car because she hadn't told them about the fault soon enough.

BMWFS said that Mrs P had contacted them more than two years after she'd entered into the agreement. They didn't uphold her complaint as they said Mrs P had provided no evidence to confirm that the faults were present or developing within the first six months of the agreement.

Mrs P wasn't happy with BMWFS's response, so she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator was satisfied the car BMWFS provided to Mrs P was of satisfactory quality. She acknowledged that the car had faults, but found the faults were what you would expect to see across the lifetime of a vehicle.

Mrs P didn't agree with the investigator.

She said the car was sold to her without a valid MOT, and she has provided a witness statement from the engineer who removed and inspected the steering column. She said the car developed a fault with the master cylinder (not the clutch), and was diagnosed as needing a new "master cylinder and pipework". She also said that the car was sold with a 90-day warranty and the retailer said they were going to do the work, but no parts were ever replaced. She said the retailer had admitted this in a response to a data subject access request.

Mrs P said that the same fault had returned so it couldn't be considered to be "wear and tear". She asked for an ombudsman to make a final decision.

Because Mrs P didn't agree with the investigator, the matter was passed to me to make a final decision. I sent Mrs P and BMWFS a provisional decision on 12 May 2023. In this decision I explained why I thought the complaint should be upheld. Here's what I said:

*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. Mrs P was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.*

*The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMWFS are responsible. What's satisfactory is determined by what a reasonable person would consider, 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.*

*Mrs P raised her complaint with this service after the clutch failed in October 2022, and BMWFS didn't allow her to reject the car.*

*The clutch initially failed in July 2020. Mrs P said that she wasn't given the opportunity to reject the car at that time.*

*There's no evidence that Mrs P contacted BMWFS about the faulty clutch within 30 days of getting the car. I've reviewed the system notes from BMWFS and can see that she contacted them on 18 August 2020 – more than 30 days after she acquired the car. So, I'm satisfied this means she didn't exercise the short term right to reject under the CRA.*

*This means under the CRA, Mrs P had the right to require BMWFS to repair the fault. As this was done at no cost, and fixed the fault, Mrs P's rights were met. So I'm satisfied that BMWFS didn't need to do anything else at that time.*

*Mrs P is unhappy that BMWFS aren't able to supply a copy of the telephone call she made in August 2020. She's raised this issue more than two years later. I don't think it's unusual that BMWFS don't have the call recordings for this specific case given the time period. And in any case, I don't think listening to the call would change my outcome. I say that because I'm satisfied that she was given a fair remedy: the repair of the clutch as I've explained above.*

*Mrs P said the clutch failed again in October 2022. And she's supplied an invoice from a main dealer garage that says the clutch pedal is sticking to the floor, and the car requires a "master cylinder & full electronic bleed". The invoice doesn't describe the reason for this failure. The issue I have to consider is where or not the latest fault is linked to the repair in September 2020.*

*And I think it is. I also think it's unreasonable, without any obvious reason, to think that the clutch, particularly the master cylinder component, would fail just two years, and 13,399 miles after replacement.*

*I've noted that this car was subject to a vehicle recall around January 2019. This said that the brake master cylinder could be contaminated by debris from the clutch slave cylinder sealing. The recall involved changing the hydraulic fluid in the system and connected components – those were the brake master cylinder (BMC), clutch master (CMC) and slave cylinders (CSC), along with the associated piping, as the systems are connected. This was to ensure all debris had been removed.*

*The invoice from August 2020 indicates that the recall had been completed prior to replacing the CMC again – "E181803130 recall confirmed completed by Vauxhall." With such a short period of time between replacements, I feel it's likely there were still contaminants within the hydraulic system, the CMC installed was faulty, or not all parts were replaced.*

*A CMC should last between 50-100k miles depending on the number of gear changes/clutch usage. The lifespan is dependent on pedal use, not time. The most common reason for CMC failure is hydraulic fluid contamination, which damages the seals in the system. If there's a leak, the system can't hold pressure, which is why the clutch pedal wouldn't return.*

*I've also considered whether or not driving style could have caused the fault. I don't think it would have – aggressive driving, poor gear changes/operation of the clutch, or over loading the vehicle with weight, would only affect clutch plate wear, not the hydraulics. And I haven't been shown any evidence to suggest this caused the issue.*

*I'm satisfied that the car supplied to Mrs P wasn't of satisfactory quality as I think the issue with the clutch was present or developing at the point of supply. I'm also satisfied that the attempted repair to this didn't resolve the issue, and so the car remains of an unsatisfactory quality. As BMWFS has had the opportunity to repair, Mrs P has the final right to reject the car under the CRA.*

#### **Steering column and MOT**

*Mrs P has provided a statement from an engineer that says that in his opinion the steering column had not been previously replaced. The statement also said that he believed the previous MOT pass may "possibly not be legitimate".*

*I'm not able to comment on the legitimacy of the MOT. That's for the appropriate authority and I note that this has been referred to the DVSA.*

*But I am satisfied that Mrs P had been treated fairly. I say this because the necessary repairs were done, and she was refunded the cost of those repairs.*

*I've also carefully considered her complaint that the car was mis-sold to her. She said this was because the retailer said it had carried out a 300 point check. She said it couldn't have done so, because if it had, it would have discovered that the steering wasn't safe. I'm not going to comment on this point, as there's a lack of evidence here and this doesn't affect the outcome I've reached.*

*Putting things right*

*As Mrs P has the final right to reject the vehicle, BMWFS should collect the car at no cost to her, and at a time and date suitable for her.*

*They should also end the agreement with nothing further to pay and remove any adverse information from Mrs P's credit file about this agreement.*

*Mrs P said she was unable to drive the car from October 2022. The MOT history shows this to be the case. So BMWFS should return all payments made towards the agreement from October 2022\*.*

*BMWFS should refund the advance payment of £200 Mrs P paid from 23 June 2020\*.*

*I've also considered the distress and inconvenience this has caused to Mrs P. She had to take time to obtain her own diagnostics, for repairs that she believed to have been done previously. She was also left without a reliable car for her work and was worried that she could be stuck at the side of the road again with a failed clutch pedal – especially when carrying a young child. BMWFS should pay Mrs P £300 to reflect this.*

*\*These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If BMWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs P how much it's taken off. It should also give Mrs P a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.*

Both parties responded to my provisional decision.

Mrs P accepted my decision. She said she wanted to unwind the entire finance agreement and receive a full refund, or be compensated to cover the cost of repairs so she could then sell the car herself and settle the debt.

BMWFS responded without indicating whether or not they accepted my provisional decision. They informed us that Mrs P had raised a money claim through the courts. Mrs P later confirmed she'd withdrawn the court papers.

BMWFS referred to a number of issues they'd seen in the official MOT History. They highlighted the advisories and an issue with the suspension arm ball joint. They suggested that this showed that the car had not been adequately maintained by Mrs P in the 15,585 miles she'd done since the point of sale in June 2020.

After receiving these responses I asked BMWFS if they would accept:

- *If Mrs P wants to keep the car and submits her evidence of the repair/ quote of the repair, then BMWFS should refund reasonable cost of repair. Mrs P will resume payments from the date of the repair.*
- *Or if BMWFS can provide a settlement quote should Mrs P wants to sell her car and repay the outstanding balance.*
- *Mrs P is still not liable to pay for missed payments from October 2022 as she was unable to drive the car from this period.*
- *BMWFS to remove adverse information from credit file*
- *Award D&I as per ombudsman provisional decision*

BMWFS confirmed the outstanding amount owed by Mrs P was £4,455.64. They said they would reduce this amount by the amounts I suggested. This included eight monthly payments of £192.08, plus 8% simple interest, and the £300 I'd suggested for the distress and inconvenience caused.

This left a revised amount to settle of £2,578.76.

Mrs P, via her representative, said that she couldn't afford to pay for the repairs up front. She asked that BMWFS pay her the full amount of redress, £1,876.90. She would then arrange for the car to be repaired and the full balance to be paid to BMWFS "*promptly*".

She also asked that BMWFS refund the hire payments she said she'd paid to the representative on this case. She said that BMWFS told her not to drive the car while they investigated the complaint for 8 weeks, and that they would cover the cost of a hire car. The representative said that they arranged for Mrs P to borrow their car every day at a cost of £10 a day.

### **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 thought about everything carefully again, I still think this complaint should be upheld. This is for the same reasons I explained in my provisional decision and which I've set out above.

BMWFS have provided no new information or evidence for me to consider. They've highlighted some issues that had arisen during the time Mrs P was able to use the car. These appear to me to be typical wear and tear issues, and not evidence of any lack of care by Mrs P.

So I remain satisfied that the car BMWFS supplied to Mrs P wasn't of satisfactory quality. That's because I think the issue with the clutch was present or developing at the point of supply, and the attempted repair to this didn't resolve the issue. So the car remains of an unsatisfactory quality.

The only issue I have to consider is what is the appropriate redress, and how that should be awarded.

## **Putting things right**

As I said in my provisional decision Mrs P has the final right to reject the car under the CRA. But she would prefer to sell the car and settle the agreement from the proceeds. But the car would need to be repaired before she can sell it. And Mrs P has told us that she cannot afford to pay for the repairs up front.

BMWFS has agreed to repay the monthly payments Mrs P made for the period she was unable to use the car. And to pay £300 for distress and inconvenience.

I understand and accept that it's likely that she doesn't have the funds available to pay for the cost of the repair to the clutch. And I don't think it's unreasonable to ask BMWFS to pay for the necessary repair to a car that they supplied.

So to put things right, BMWFS should:

- Refund the eight monthly payments of £192.08 Mrs P paid for the period from October 2022 when she was unable to drive car, plus 8% simple interest as set out in my provisional decision. This amounts to £1,576.90
- Pay Mrs P £300 to reflect the distress and inconvenience caused as set out in my provisional decision
- BMWFS must also remove any adverse information from Mrs P's credit file about this agreement.
- BMWFS should pay the reasonable cost of repair to the clutch upon receipt of a legitimate quote supplied by Mrs P.

It's for Mrs P to arrange for a quote for the cost of the repair to the clutch and submit this to BMWFS. If she chooses to have the car repaired it is then her choice whether or not she keeps the car, or sells it and settles the agreement at that point.

I've given Mrs P the option to reject the car and end the agreement with nothing further to pay.

She said she doesn't want to do that. That means that the agreement will continue, and she'll be liable for payments until she settles the agreement. I think it's reasonable that BMWFS recommence payments from 30 July 2023.

It also means the settlement figure quoted by BMWFS may be different when she is ready to end the agreement. So she'll need to ask for a new figure at that point.

Finally, Mrs P has asked that I include the hire payments she made to the representative in the redress I offer. I'm not including that payment. That's because I've already asked BMWFS to refund the payments she made for the period she wasn't able to drive the car. Those payments should cover any extra costs she incurred to keep her mobile, including the arrangement with the representative.

## **My final decision**

For the reasons explained, I uphold Mrs P's complaint and BMW Financial Services(GB) Limited trading as ALPHERA Financial Services should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 14 July 2023.

Gordon Ramsay  
**Ombudsman**