

The complaint

X complains about the quality of a car she has been financing through an agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services, who I'll call "BMWFS".

What happened

I issued a further provisional decision on this complaint last month. An extract from that provisional decision is set out below.

X acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then BMWFS, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is 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 like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to X. The car here was about seven years old and had completed about 52,777 miles so I don't think a reasonable person would expect it to be fault free, as would perhaps be the case with a brand new car.

The relevant legislation gives the business one opportunity to repair a fault that is present or developing when the car is supplied to the consumer. The business doesn't get one chance to repair each different fault, simply one chance to repair the car. I think the business had that chance when they completed repairs to the tyre pressure module and the roof latch in January 2022, a month after X took receipt of the vehicle.

X may have had the option to reject the car at that point, but I haven't seen evidence to suggest she asked to do so. I think a repair was likely to have been sanctioned. The car broke down again in May 2022 and was recovered to a third party garage who suggested the engine and turbo would need replacing. An independent inspector looked at the car in June 2022 and said:

"We note that the vehicle has covered more than 7,000 miles since purchase. As such, we do not consider the fault to be present or developing at the point of sale/inception. Consequently, the selling agents have no responsibility in this matter."

When we consider whether a car has been of satisfactory quality the relevant legislation says we should consider whether it has been durable. I think a car's engine would be expected to last the lifetime of a car if it was serviced correctly. I can see the car X has needs to be serviced every year or every 10,000 miles (whichever comes soonest). The independent inspector identified that services had been completed in 2017, 2018, and 2019. I haven't seen evidence the car was serviced in 2020, or in 2021 before it was supplied to X.

So, the evidence suggests the car wasn't serviced between October 2019 and May 2022 and that during that time the car had completed 12,072 miles.

I've considered whether a reasonable person would therefore think the engine had been durable, taking into account that partial service history. I don't think they would. I think it's fair to suggest that the wear on the engine would have been impacted more by the number of miles completed during which components of the engine would be wearing, than by the time that had passed between services. The car had only completed about 2,000 more miles than it should have, and I don't think a reasonable person would consider that likely to have such a catastrophic impact on the life of the engine. So, I think BMWFS should allow X to reject the car because it's not been durable and because they've already carried out a repair on the car.

And, even if I'm wrong about that, I think there's evidence the repairs completed to the convertible roof latch, in January 2022, weren't successful. I say that because BMWFS's call logs from May 2022 show X told them the fault hadn't been resolved. Despite being alerted to that I can't see that the first independent inspector was asked to look at the issue by BMWFS and, given the fact the fault had arisen so soon after X had taken receipt of the car, I think the onus was on them to do so.

X has explained that the roof latching problem is intermittent, so it's no surprise that it wasn't identified by the second independent inspection. The fault code log generated by a main dealer tells a different story, however; there are five "Control Top Module" errors registered between 55,000 and 59,000 miles and I think that supports X's assertion that the roof top latching problem was never properly resolved. So, I think that's another reason why the relevant legislation would support X's rejection of the car, as there's been a failed repair attempt on a fault that was likely to have been present when the car was supplied.

Putting things right

BMWFS should collect the car at no cost to X and they should end the finance agreement.

They'll need to refund any deposit X has paid and, as she's been deprived of that money, they will need to add interest to that refund.

The relevant legislation allows BMWFS to retain some of the finance instalments that were paid in respect of the use the consumer has had from the car. I don't think the issues with the roof latch and tyre monitor would have impaired X's use of the car so it's fair she pays for the car until the engine failed on 20 May 2022. Thereafter, X couldn't use the car until she had it repaired. I think BMWFS should therefore refund any finance instalments paid from 20 May 2022 until the date of the repair. They'll need to add interest to that refund. The second independent inspection suggested that repair had been successful and I'm not therefore asking BMWFS to refund any further finance instalments. As I'm asking BMWFS to refund the instalments X paid whilst she was off the road, I don't think it would be fair to ask them to fund any expense X incurred for a replacement vehicle or for fuelling that car.

X appears to have funded the engine repairs herself so BMWFS should refund that expense on provision of proof of payment, and they should add interest to the refund.

In January 2023 X had to commission a report on the car's condition in order to support her claim. I think that cost has been incurred as a consequence of the car being of unsatisfactory quality. So, BMWFS should refund the cost of that report on provision of receipts from X. If X has now paid for the earlier, June 2022, independent report, BMWFS should refund that cost as well. They should add interest to those refunds.

If any storage costs have been incurred these should also be paid for by BMWFS. If that means they have to reimburse X they'll need to add interest to the refund.

X has explained that she also incurred costs shipping the car to the dealership and back and replacing the battery when the car had been left standing. BMWFS should refund those costs as well as I think they've been incurred as a consequence of the car being of unsatisfactory quality.

X has been inconvenienced by these issues. She's had to have the car recovered when she was stranded on the motorway, and she has had to arrange an independent inspection. She's also had to take the car for repairs and has had to source an alternative car to get her to and from work. X has also had to escalate her complaint to this service when I think it could have been resolved earlier. In those circumstances BMWFS should pay her £400 compensation for the distress and inconvenience she's experienced.

My provisional decision

For the reasons I've given above, I'm expecting to uphold this complaint and to tell BMW Financial Services (GB) Limited to:

- *Allow X to reject the car, collect it at no cost to X, and end the finance agreement.*
- *Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Refund any finance instalments paid from 20 May 2022 until the car was repaired. X will need to evidence the repair date. Add 8% simple interest* per year from the date of payment to the date of repair.*
- *Refund the cost of the engine repair on provision of receipts from X. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Refund the cost of the independent report (or reports) on provision of receipts, and add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Pay X £400 to compensate her for the distress and inconvenience experienced.*
- *Refund any storage costs X has paid, adding 8% simple interest* per year from the date of payment to the date of settlement. Pay those costs for X if they are due and haven't been paid.*
- *Refund the costs X incurred shipping the car to the dealership and back, and the cost of the replacement battery on provision of receipts. Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Remove any adverse reports they may have made to X's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments

BMWFS didn't provide any further comments or evidence, but X did. She provided receipts for the engine repair, transporting the car to and from the dealership, the independent inspection report, and the battery replacement. X also explained that:

"The car breaking put me in a financial hole and I was forced to borrow money from a friend to repair the engine that I couldn't pay back. I have had to re-mortgage my house to pay back the debt, coming out of my mortgage deal early that carried a penalty.

After the engine was repaired it did not drive 1000 miles before it broke again. Thankfully it was repaired under warranty, but I have since sold it on 23rd of May as I couldn't take the risk of it breaking again. I have essentially only driven it home from the garage and sold it at a loss, clearing the Finance with BMWFS first from the equity released in my house."

X provided a copy of the mortgage redemption that showed she had paid in excess of £7,000 in early redemption charges. She said those charges had therefore been incurred as a consequence of the car being of unsatisfactory quality.

What I've provisionally 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've not been provided with any additional information on the car's quality and I'm therefore still of the opinion that the car wasn't of satisfactory quality and BMWFS need to take some action to put things right for X. But as the car has been sold and the finance has been settled the action I was expecting to order needs to be amended.

I've considered whether it would be fair to ask BMWFS to refund the early redemption fee X paid but I don't think it would be. It was X's decision to redeem her mortgage and to incur those costs to repay the money she'd borrowed. It was also X's decision to repay the finance and sell the car. I don't think it would be fair to suggest there is sufficient evidence she had to do that as X has explained that when the engine failed again it was repaired under warranty, and I think it's therefore reasonable to suggest it was in working order when X sold it. I'm therefore expecting to have BMWFS refund the cost of the engine repair, with interest, but not the mortgage redemption costs.

X hasn't provided any evidence of storage costs, incurred or paid, so I will remove that from the redress I'm expecting to order and that I've set out below.

My provisional decision

For the reasons I've given above, I'm expecting to uphold this complaint and to tell BMW Financial Services (GB) Limited to:

- *Refund any deposit that X paid and add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Refund any finance instalments paid from 20 May 2022 until the car was repaired (X's bank statements suggest that was 28 March 2023). Add 8% simple interest* per year from the date of payment to the date of repair.*
- *Refund the £3,705 X paid to repair the engine (receipt supplied). Add 8% simple interest* per year from the date of payment (28 March 2023) to the date of settlement.*
- *Refund the £240 X paid for an independent report (receipt provided), and add 8% simple interest* per year from the date of payment (14 December 2022) to the date of settlement.*
- *Pay X £400 to compensate her for the distress and inconvenience experienced.*
- *Refund the £581 it cost X to ship the car to the dealership and back (receipts provided), and the £300 it cost to replace the battery (receipt provided). Add 8% simple interest* per year from the date of payment to the date of settlement.*
- *Remove any adverse reports they may have made to X's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

Further comments or evidence provided on my second provisional decision

X said:

"After a whole year passed since the car engine broke, I had given up hearing back from the Ombudsman and did not expect a decision in my favour based on the first decision, and so sold the car 10 days before I received the provisional feedback.

This is rather unfortunate for me as I made a £5.5K loss on the value of the car and had to pay half the interest on the finance paying it back early - when I should have been allowed to return the car and avoid these losses.

You have not considered or mentioned these points in any detail so I wanted to clarify that these losses are to be absorbed by me as part of the financial exchange with BMWFS?"

BMWFS confirmed that they had no further evidence or comments to make.

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 understand X's decision to sell the car, but that was her decision to make, and she had been made aware that the ombudsman may come to a different view than the investigator had. I'm not therefore persuaded that it would be fair to tell BMWFS to compensate X for any loss she may have made when selling the car.

Putting things right

My second provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I uphold this complaint and tell BMW Financial Services (GB) Limited to:

- Refund any deposit that X paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund any finance instalments paid from 20 May 2022 until the car was repaired (X's bank statements suggest that was 28 March 2023). Add 8% simple interest* per year from the date of payment to the date of repair.
- Refund the £3,705 X paid to repair the engine (receipt supplied). Add 8% simple interest* per year from the date of payment (28 March 2023) to the date of settlement.
- Refund the £240 X paid for an independent report (receipt provided), and add 8% simple interest* per year from the date of payment (14 December 2022) to the date of settlement.
- Pay X £400 to compensate her for the distress and inconvenience experienced.
- Refund the £581 it cost X to ship the car to the dealership and back (receipts provided), and the £300 it cost to replace the battery (receipt provided). Add 8% simple interest* per year from the date of payment to the date of settlement.

- Remove any adverse reports they may have made to X's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 9 August 2023.

Phillip McMahon
Ombudsman