

## **The complaint**

Miss E is unhappy with a car supplied under a hire purchase agreement provided by BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ('BMWFS').

## **What happened**

In January 2022, Miss E acquired a used car funded in part with a hire purchase agreement with BMWFS. The car was a little under three years old and the mileage on the agreement is recorded as 5,901. The car cost £25,750 and Miss E paid an advance payment of £1,000.

Miss E says the car broke down in November 2022. It was recovered to a third party garage who specialised in the make of Miss E's car. The mileage was recorded as 18,986. A diagnostic was performed and then the dual mass flywheel replaced, which involved the removal of the gearbox. Miss E paid £1,650 for the work and complained to BMWFS around this time.

But, the next day the car broke down again and was recovered costing £48. It appears it was initially taken back to the same third party garage, but Miss E was advised to take it to a manufacturer's garage to look at.

I've then seen an 'estimate' from December 2022, from a manufacturer's garage, which explains that the 'dual-clutch transmission auxiliary oil pump' needed to be replaced along with associated work, with a cost of £1,222.58. Miss E says the work was completed and paid for. But, she said this again didn't resolve the issue.

BMWFS issued its final response in January 2023. This explained, in summary, that BMWFS didn't believe any issues with the car were present or developing at the point of supply. And it said Miss E's driving style could've led to the faults.

Around a week after BMWFS issued its final response, the manufacturer's garage saw the car again. It was noted the car had broken down and a gear couldn't be selected. An estimate was given to Miss E for £2,426.70. This detailed work required to replace the 'electrohydraulic controller unit' for the dual clutch transmission along with various other transmission parts and associated work. Miss E says this work wasn't completed and the car remained at the garage.

Our service began to look into Miss E's complaint and our investigator issued an opinion.

She said, in summary, that she didn't think the car was of satisfactory quality when it was supplied. She said she thought Miss E should be entitled to reject the car, get back any repayments since she stopped driving the car in January 2023 and get back the money she'd spent so far on the attempted repairs and recoveries. Our investigator also said BMWFS should pay Miss E £400 to reflect what happened.

Miss E responded. She agreed with the opinion, but said she'd stopped driving the car in November 2022, which was earlier than noted by our investigator.

BMWFS also came back to us. It said, in summary, that it thought the initial repairs were probably a misdiagnosis and so it shouldn't be responsible. It queried the delivery mileage of the car. And it said if the issues were present at the point of sale they would've appeared sooner.

Another investigator picked up the case and reviewed things along with BMWFS' comments. She explained she still thought the case should be upheld.

BMWFS again disagreed, so the complaint was passed to me to decide. I sent BMWFS and Miss E a provisional decision on 26 July 2023. My findings from this decision were as follows:

*I should start by explaining to both parties that I'm going to focus on what I think are the key facts and the crux of Miss E's complaint. Where I haven't commented on something, this doesn't mean I haven't considered it, nor that I think it unimportant. I've thought carefully about all of the available information, and my approach here reflects the informal nature of our service.*

*Miss E complains about the quality of a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts like this as a lender is a regulated activity, so I'm satisfied I can consider Miss E's complaint against BMWFS.*

*When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – BMWFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. It's important to note in this case that the CRA specifically says that the durability of goods should be considered as part of satisfactory quality.*

*I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. It's important to note that Miss E's car was used. So, I don't think a reasonable person would expect it to be in the same condition as a new one. But, that being said, Miss E's car was under three years old, cost over £25,000 and I think it's fair to say had a lower than average mileage for its age, of under 6,000. So, I think a reasonable person would've expected it to be in good condition, free from anything other than very minor issues and would expect trouble free motoring for some time.*

*What I need to decide in this case is whether the car was of satisfactory quality or not. The first thing to consider is whether the car developed a fault.*

*I've seen an invoice from the third party garage from November 2022 that says:*

*"Vehicle recovery"*

*"Supply and fit genuine ('car make') dual mass flywheel"*

*So, I'm satisfied the car broke down in November 2022 and the garage believed this was due to a fault with the flywheel.*

*Miss E explained the car broke down again the day after this was repaired, and I've seen an invoice for £48 for a recovery on this day. So, I'm satisfied this was the case and that the initial repair failed.*

*The manufacturer's garage then saw the car and noted:*

*“REPLACE DUAL-CLUTCH TRANSMISSION AUXILIARY OIL PUMP”*

*Miss E has explained this didn't repair the car. This appears to be backed up from the notes from when the manufacturer's garage saw the car again, as these say:*

*“BREAKDOWN – CAN'T SELECT GEAR”*

*The estimate then goes on to say:*

*“REPLACE ELECTROHYDRAULIC CONTROLLER UNIT OF DUAL-CLUTCH TRANSMISSION”*

*So, considering all of this, I'm satisfied the car had an underlying issue with the transmission/clutch system that wasn't repaired despite two attempts.*

*I've then gone on to consider if this meant the car was of unsatisfactory quality. In its final response, BMWFS said it had considered the car's durability. But, I don't think its outcome was reasonable here. I say this as I think it's quite clear that on a car that cost over £25,000 the transmission shouldn't develop a fault and require quite major repairs when it had covered under 19,000 miles.*

*It follows this that I'm satisfied the car wasn't durable. And so I'm also satisfied a reasonable person would not consider it to have been of satisfactory quality when it was supplied to Miss E.*

*I've then gone on to consider what else BMWFS said here. It explained it thought Miss E's driving style could've affected things. But I don't think this is likely. I say this as the car is an automatic. I'm satisfied this means the clutch and transmission are much less likely to be affected by any driving style compared to a manual car. And I don't think it's likely an automatic should suffer wear and tear to the point of failing under 20,000 miles.*

*These opinions are backed up by both the third party and manufacturer's garage who said in communication with Miss E:*

*“I have just spoke to (‘name’) and he has advised he wouldn't of thought this is down to wear and tear and down to vehicle failure.”*

*“as discussed this is no relation to your driving style this is a fault found internal to the gear box”*

*“I can confirm that this fault has not occurred as a result of your driving style and that in now way (sic) can the clutch be ridden on an automatic car as this is electronically governed”*

*Thinking about all of this, I haven't seen enough to make me think how Miss E was driving the car has affected things.*

*I've also considered what BMWFS said about the initial repairs being a misdiagnosis and that it should not therefore be responsible here. And I accept these repairs weren't successful.*

*But, this doesn't tell the whole story. What I need to consider here is not the outcome of the repairs. I firstly need to decide whether Miss E acted reasonably by taking it to the garages she did, and then decide if the garages acted with reasonable care. I don't think it's fair to say just because the repairs failed this means the garages were 'wrong' to attempt them.*

*I've considered the third party garage Miss E took the car to. This garage was a specialist in the make of Miss E's car, has been in business for a number of years and I can see it carried out a diagnostic before it attempted repairs.*

*So, I'm satisfied Miss E acted in good faith when she took the car here, and I haven't seen enough to make me think the garage did anything wrong when it attempted a repair.*

*The car was then taken to a manufacturer's garage. Thinking about this, I think they would most likely be in the best position to diagnose and repair the car. So, again, I think Miss E acted reasonably by taking the car here, and again I am not persuaded the garage acted unreasonably when it attempted repairs.*

*Importantly, I also haven't seen anything to persuade me the supplying dealer would've attempted anything different to repair the car. It follows I'm satisfied that the fact the repairs were unsuccessful doesn't mean BMWFS should not be responsible here.*

*I've also considered what BMWFS said about the mileage of the car when Miss E got it. But whatever the mileage was on delivery, the key thing to consider is the mileage when it failed – which isn't in dispute. I still don't think the car should've failed when it did. So, this doesn't change my opinion.*

*Having reached the conclusion the car wasn't of satisfactory quality, I now need to consider what would be fair and reasonable to put things right.*

*Thinking about Miss E's rights under the CRA, I don't think a further repair would be appropriate. I say this as this situation has been going on for several months, and the CRA says in relation to repairs that these must be done:*

*“within a reasonable time and without significant inconvenience to the consumer”*

*So, considering this, I agree with our investigator that Miss E has a right to reject the car. Miss E explained in response to the investigator's view that she stopped driving the car at the beginning of November 2022. I think this is likely, as on an 'initial quick test log' which I believe was from the manufacturer's garage from the end of December 2022, the mileage is less than 100 more than when the car was looked at around six weeks prior. So I'm satisfied it's reasonable Miss E is reimbursed any repayments made since the car initially broke down rather than from January 2023.*

*I think Miss E acted reasonably and in good faith when she took the car for the repairs. So, I think these should be reimbursed, along with the recovery costs. While I have no reason to doubt Miss E's version of events, I have noted that the 'invoice' for the work she says was paid for at the manufacturer's garage is headed 'estimate'. So, while I think it's reasonable BMWFS should cover this, it only needs to do so when Miss E provides it with evidence this was paid – such as a bank statement or receipt. And I also think the same should apply for the diagnostic/collection cost of £230 a few days before.*

*I also agree with our investigator that Miss E has suffered significant distress and inconvenience because of what's happened. She's explained the car has left her stranded at the roadside for a long period while awaiting recovery, at a time she was looking after a young family member. She's explained having to resolve things has led to financial difficulty.*

*She's had to take time and effort to try to get the car repaired and to organise other transport. And this situation has been ongoing for some time. I think BMWFS should pay Miss E £400 to reflect this.*

I gave both parties two weeks to come back with any further comments or information.

Miss E got in touch and said she agreed with the decision. And she sent in some further evidence of costs.

BMWFS didn't respond.

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

I should note to Miss E that the further evidence of her costs she provided in response to my provisional decision could only be partly seen due to formatting issues – so she'll still need to provide these to BMWFS.

### **My final decision**

My final decision is that I uphold this complaint. I instruct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to put things right by doing the following:

- End the agreement with nothing further to pay
- Collect the car at no cost to Miss E at a time and date suitable for her
- Reimburse Miss E's advance payment of £1,000\*
- Reimburse Miss E all repayments made to the agreement from November 2022\*
- Reimburse Miss E £1,650 from the repair on 17 November 2022\*
- Reimburse Miss E £48 for the recovery from 18 November 2022\*
- Reimburse Miss E £230 for the diagnostic/collection from 16 December 2022 \* \*\*
- Reimburse Miss E £1,222.58 for the repair from 19 December 2022 \* \*\*
- Pay Miss E £400 to reflect the distress and inconvenience caused
- Remove any adverse information from Miss E's credit file

\* 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 Miss E how much it's taken off. It should also give Miss E a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

\*\* On production of proof of payment, such as a receipt or bank statement

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 11 September 2023.

John Bower  
**Ombudsman**