

The complaint

Miss W complains that the car she acquired through a hire purchase agreement with BMW Financial Services(GB) Limited ("BMWFS") trading as Alpha Financial Services wasn't of satisfactory quality. She wants to reject the car and be compensated accordingly.

What happened

Miss W entered a hire purchase agreement in December 2022 to acquire a used car. At the time of the acquisition, the car was around four years old and had been driven nearly 45,000 miles. The hire purchase agreement was set up over four years, with monthly payments of £561.22. Miss W told us:

- she began experiencing issues with the car within a few months of acquiring it; engine management lights illuminated suggesting possible faults with the engine;
- during March, April and May 2023, she took the car back to the dealership on several occasions, but attempts to repair the car were unsuccessful and she continued to experience issues with the car;
- she raised a complaint with BMWFS in May 2023 and said she wanted to reject the car. BMWFS agreed to this as the dealership had already accepted the return of the car;
- she's not been given the redress to which she's entitled – some of her deposit has been retained; she's being charged for mileage by both BMWFS and the dealership; and insufficient monthly payments have been refunded to cover the timeframe when she wasn't able to use the car.

BMWFS upheld this complaint and apologised for what had happened. It acknowledged that Miss W had been liaising directly with the dealership over a number of faults and the car had now been returned. It said she would need to return the V5 document, and then it would close her finance agreement; remove its existence from her credit file; and return any refunds due.

BMWFS explained that because Miss W had been without her vehicle for some time – because of the faults and the tests the dealership had been undertaking – it would refund some of her monthly payments. But it did say it would make an adjustment for Miss W's usage of the car based on the miles she'd driven. BMWFS said it would refund Miss W £840.83 and make an additional payment of £159.17 in respect of the stress and inconvenience she'd experienced. These two payments would total £1,000.

BMWFS said it expected the dealership to refund Miss W her deposit in full and it suggested she get in touch with it directly.

Miss W initially said she accepted BMWFS' offer – but she stressed that this was not because she was happy with it; she simply needed the finance agreement closing and her money returning so that she could sort out another car and be mobile again. She'd explained that the problems with the car had prevented her from carrying out the school run and other day to day activities which would have been possible with a working car.

Miss W was unhappy with two aspects of the mileage charge – the charge made for fair usage of the car. In terms of BMWFS' actual charge, she said that although she acknowledged the mileage allowance and the associated excess mileage charges in the agreement, she said that if the car had been of satisfactory quality and she'd not had to reject it, she would've had the option of retaining the vehicle at the end of the agreement or simply paying any excess mileage charges at this time.

Her second point related to *double-charging*; the dealership had not refunded to her in full the deposit. It had instead made a deduction of 45p per mile for her usage of the car and this left her with around half of her deposit. Essentially, both BMWFS and the dealership were making a charge for mileage, and this didn't seem fair.

Finally, she didn't think that £159.17 was the right amount to be paid in recognition of the stress and inconvenience she'd been caused. So, she brought her complaint to this Service.

Our investigator looked at this complaint and said he thought it should be upheld. He explained the relevance of the Consumer Rights Act (2015) in this particular case, and the approach this Service takes when deciding what compensation should be paid when the car that's supplied to a consumer isn't of satisfactory quality. And he set out what he thought BMWFS should do to put things right.

He said that Miss W's deposit should be returned to her in full, and as the supplier of the goods under this type of finance agreement, BMWFS is responsible for a complaint about their quality. The dealership has already refunded some of the deposit, so BMWFS was responsible for refunding the remainder of it. He also asked BMWFS to increase the number of monthly payments it was refunding to Miss W by a further £281.61. And he reminded it of the need to pay simple interest of 8%.

Miss W said she was pleased with our investigator's findings and suggestions, but she said that further consideration should be given to refunding more of her monthly payments.

BMWFS disagreed and said it thought its proposals were fair and reasonable taking into account the provision to Miss W of a courtesy car. And it didn't think it should be responsible for refunding the additional amount of the deposit.

Our investigator considered what both parties had said. He explained to Miss W that it wasn't possible to establish when she had use of the car, and when she did not – there were simply no records of the work that the dealership had undertaken or the advice that she says she was given about not driving the car. He said his suggested compensation was fair and took into account her usage of the car.

The investigator told BMWFS that he'd seen no evidence that Miss W had been provided with a courtesy car, and it should provide evidence of this if it still believed this to be the case. He also advised it that our Service's approach was to require the finance provider to refund the deposit when a vehicle is rejected.

BMWFS did not confirm its acceptance of this advice, so the complaint comes to me to decide.

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.

As the hire purchase agreement entered into by Miss W is a regulated consumer credit agreement this Service is able to consider complaints relating to it. BMWFS is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

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. This says under a contract to supply goods, the supplier – BMWFS in this case – has a responsibility to make sure the goods were of 'satisfactory quality'.

Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods. In this case, I would consider relevant factors to include, amongst others, the car's age, price, description and mileage.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. But, if the fault is identified after the first six months, then it's for Miss W to prove the fault was present when she first acquired it.

Both parties accept that the fair way to settle this complaint is to permit Miss W to reject the car. BMWFS acknowledges and accepts the faults experienced by Miss W, and it accepts her right to reject the car. Because of this, I don't need to make any findings about whether the car was of satisfactory quality when supplied.

The parties do not agree entirely on the redress that should be paid, so this is the focus of my decision and I've considered very carefully the comments from both parties

Because BMWFS was the supplier of the car under this hire purchase agreement, and it's the respondent in this particular case, BMWFS is responsible for any redress that this Service directs should be paid to Miss W.

Taking everything in the round, I'm satisfied that the redress suggested by our investigator is both fair and reasonable in the circumstances of this complaint – it's in line with our approach in cases of this nature; that being, a car that was rejected because it was not, when supplied, of satisfactory quality. And I'm going to direct BMWFS to compensate Miss W accordingly.

Putting things right

For completeness, I'm going to set out all the steps that BMW Financial Services(GB) Limited trading as Alpheria Financial Services needs to follow, mindful that it has already undertaken some of them or given a commitment to undertake others.

If it has not already done so, I direct BMW Financial Services(GB) Limited to:

- Cancel the agreement with nothing further to pay and provide confirmation of this to Miss W.
- Remove all adverse information from Miss W's credit file in relation to this credit agreement.
- Ensure Miss W receives a full refund of her deposit. I understand Miss W has received some of her deposit back directly from the dealership. BMW Financial Services(GB) Limited will pay Miss W an additional amount so that the full refund of her deposit is complete.

- Refund Miss W the monthly rentals it has already agreed to refund together with the additional amount it offered in recognition of the stress and inconvenience caused, plus the additional amount of £281.61 as set out by our investigator.
- pay 8% simple interest on all refunded amounts calculated from the date of payment to the date of settlement.

My final decision

My final decision is that I uphold this complaint, and I require BMW Financial Services(GB) Limited trading as Alpheria Financial Services to pay compensation as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 31 March 2024.

Andrew Macnamara
Ombudsman