

The complaint

Miss D complains that a car supplied with finance from BMW Financial Services (GB) Limited trading as Alphera Financial Services ("BMWFS") wasn't of satisfactory quality.

What happened

In May 2021 Miss D was supplied with a car and entered into a hire purchase agreement with BMWFS. At the point of supply the car was around 1 year old and had covered around 4,699 miles.

Miss D experienced some issues with the car. In May 2022 the gearbox broke. The gearbox kept jumping out of second gear. The car was recovered to a garage and repairs were carried out under warranty at no cost to Miss D.

In July 2022 the gearbox broke again. The gearbox kept jumping out of second and third gear. The car was recovered to a garage and the gearbox was replaced under warranty at no cost to Miss D.

Following this, the manufacturer released a Technical Service Bulletin (TSB) for this repair with modified parts.

In November 2022 the gearbox broke again. The gearbox kept jumping out of first and second gear.

The car was recovered to a garage and the parts of the gearbox which didn't contain the modified parts as per the TSB were replaced, along with the clutch.

When Miss D collected the car in November 2022, she noticed that it was making a loud grinding noise which hadn't been there before.

Miss D raised a complaint with the supplying dealer. The supplying dealer said that Miss D had covered over 21,000 miles in the vehicle since it was supplied in May 2021 and that the grinding noise was the brake backing plate touching the discs on full lock. It said that this work wasn't related to the work it had carried out.

Miss D raised a complaint with BMWFS and asked to reject the car. BMWFS didn't uphold the complaint. It said there wasn't any evidence that the car was of unsatisfactory quality at the point of supply.

Miss D wasn't happy with the response and brought her complaint to this service.

Our investigator upheld the complaint. They said that because the car was almost new with low mileage when it was supplied it was unlikely that the gearbox failure was due to wear and tear. The investigator also said that the gearbox had been repaired more than once but this hadn't resolved the issue. The investigator said they didn't think the car was of satisfactory quality at the point of supply and that it would be fair to allow Miss D to reject the car.

BMWFS didn't agree. It said that since making her complaint, Miss D had continued to use the car which suggested that it was of satisfactory quality. BMWFS accepted that the gearbox requiring multiple repairs was unacceptable but said the last repairs in November 2022 had been carried out with modified parts after the TSB had been issued by the manufacturer. BMWFS said that the TSB was a modification that wasn't present or identified at the point of supply so it would not have known about this. BMWFS made a counter offer to resolve the matter as follows:

Refund 5% of rentals from 22 May 2022 to present

Refund £150 for inconvenience

This service communicated the counter offer to Miss D. Miss D declined. She said she'd started having issues in May 2022 and there had been two attempts at repair before the TSB was issued, which she said she'd never received in any event.

Following this, Miss D contacted this service and said that first gear was starting to jump out again. She also provided evidence from a garage which stated that there was play and knocking coming from the steering rack. She said the only reason she hadn't got rid of the car was because she was waiting for the outcome of this complaint in case she had to hand the car back.

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.

The Consumer Rights Act is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the car and the price paid. The legislation says that the quality of the car includes its general condition, as well as things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Miss D was around one year old and had covered under 5000 miles. So although the car wasn't brand new, it was nearly new and I'd expect it to be of a very high standard and not to develop faults within a reasonable period of time.

Under the Consumer Rights Act 2015, where a fault occurs with a car within the first six months of the point of supply, it's assumed that the fault was present or developing at the point of supply and it's generally up to the business to put things right. The business is allowed one opportunity to repair the car. If the repair isn't successful, the consumer can reject the car.

Where a fault occurs after the first six months of the point of supply, the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality when supplied.

I've reviewed the available evidence about the issues which Miss D experienced with the car. Based on what I've seen, I'm satisfied that the car had a fault. I say this because I've seen evidence that the gearbox has been repaired three times.

I've gone on to consider whether the car was of satisfactory quality when it was supplied.

BMWFS has said that it's up to Miss D to show that the car wasn't of satisfactory quality at

the point of supply because she'd been driving the car for over a year when the fault occurred. Whilst I agree with this analysis of the relevant legislation, I don't agree that Miss D needs to provide any further evidence to prove that the car wasn't of satisfactory quality when it was supplied. I'll explain why.

The car supplied to Miss D was only one year old and had covered less than 5000 miles when it was supplied. As I've already said, I expect the car to remain fault free for a reasonable period of time. The fault with the gearbox occurred after only 12 months. This was a major fault which ultimately required the gearbox to be replaced on the second repair. When considering satisfactory quality, I need to consider durability. I don't think a reasonable person would expect a gearbox to fail and require replacement in a car of this age and mileage. So I need to consider whether the car was sufficiently durable. A well-maintained gearbox can generally be expected to last around 100,000 to 150,000 miles. Miss D's car had covered less than 20,000 miles. Based on what I've seen, I don't think I need to ask Miss D for any further evidence in order to safely conclude that the car wasn't sufficiently durable and that it therefore wasn't of satisfactory quality.

There have already been several attempts to repair the fault. The relevant legislation says that the business is allowed one opportunity to repair a fault. In my view, Miss D should have been allowed to reject the car after the first failed repair. Instead, she's had to endure repeated attempts at repair, which BMWFS themselves has acknowledged isn't acceptable.

I appreciate the point that BMWFS has made regarding the TSB and the modified parts being used when the gearbox was repaired in November 2022. I agree that this is a point to be considered, because BMWFS wasn't aware of the modification at the time when the car was supplied to Miss D. If the repair in November 2022 had been successful, then this would be a stronger point. However, Miss D has told this service – and provided video evidence to show – that the gearbox is jumping out of first gear again. Because this has happened after the (modified) repairs, I can safely conclude that these repairs as well weren't successful.

Taking all of the available information into account, I'm persuaded that the car wasn't of satisfactory quality when it was supplied, and that the various attempts to repair the fault with the gearbox have been unsuccessful. Miss D should be allowed to reject the car.

Putting things right

Miss D has been provided with a courtesy car on the occasions when her car was in the garage for repairs, so I won't be asking BMWFS to refund monthly payments for the time that Miss D was without her own car. However, this fault has been ongoing for some time and Miss D's use of the car has been impaired as a result, I think it's fair to ask BMWFS to refund 5% of all of the monthly rentals Miss D has paid from 22 May 2022 to reflect this.

It's clear that Miss D has been caused some inconvenience as a result of the issues with the car. BMWFS should pay compensation to reflect any trouble and upset caused to Miss D.

To put things right, BMW Financial Services (GB) Limited trading as Alphera Financial Services must:

- End the agreement with nothing further to pay
- Arrange for the car to be collected at no cost to Miss D
- Refund the deposit/contribution of £4,613
- Refund 5% of rentals from 22 May 2022 to the date of settlement
- Pay 8% simple interest per annum 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 the complaint. BMW Financial Services (GB) Limited trading as Alphera Financial Services must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 24 April 2024.

Emma Davy
Ombudsman