

The complaint

Miss L complains that the car she acquired through a hire purchase agreement with BMW Financial Services(GB) Limited trading as ALPHERA Financial Services (BMWFS) wasn't of satisfactory quality. She wants to reject the car.

What happened

Miss L acquired a used car through a hire purchase agreement with BMWFS in May 2022. Miss L made an advance payment of £250 and under the agreement, Miss L was required to make a first repayment of around £322 followed by 58 monthly repayments of around £322 and then an optional final payment of £6,490 if she wished to keep the car.

Miss L took delivery of the car on 28 May 2022 and contacted the dealer on 30 May 2022 about cosmetic issues with the car. She was told these were considered wear and tear which she accepted but said she needed to list these with the finance provider. She provided BMWFS with a list of imperfections on 22 June 2022.

In July 2023, Miss L experienced issues with the car and took it to a garage for inspection. It was identified that the timing chain and tensioners needed to be replaced as well as the exhaust gas temperature sensor. Miss L also says she was told that the car was ex-rental which she wasn't made aware of previously and that while she had asked for the service history prior to her acquisition she had only been provided with the details on a service completed by the dealer before supply. She said that the lack of servicing had contributed to the issues with the car. Miss L then identified that there was a discrepancy with the mileage. Miss L raised these issues with BMWFS in August 2023 and asked to reject the car.

BMWFS issued a final response letter dated 18 October 2023. It said that under the Consumer Rights Act 2015 (CRA 2015), if a fault arises more than six months after acquisition the onus is on the consumer to show that the fault was present or developing at supply. It said it hadn't seen evidence to show this was the case. It said that the exhaust gas temperature sensor was part of the diesel emissions control system, and the sensor could fail due to wear and tear and also insufficient usage. It noted Miss L had driven the car 5,000 miles since acquisition which would be considered low and could have contributed to the fault.

Regarding the other issues Miss L raised, BMWFS contacted the dealer which confirmed the mileage was likely to vary slightly due to the delivery mileage and this was included in the terms and conditions. The dealer also said that the terms and conditions stated that the car may have been used previously for lease or rental. It said the faults listed in the MOT history were unrelated to the faults Miss L had reported and had been rectified prior to acquisition. BMWFS also said the dealer had confirmed that the car had been serviced in February 2021, February 2022 and March 2022.

Miss L referred her complaint to this service.

Our investigator noted that the MOT history was public information and Miss L could have accessed this before she acquired the car. She was satisfied that the mileage recorded on

the MOTs was accurate and while noting the difference in the dealer's service record and advert she didn't think this was significant enough to impact the price or performance of the car. Regarding the car's service history, our investigator said there was no evidence to suggest the previous services hadn't taken place and the dealer had confirmed when these happened. She noted the car wasn't advertised with a full service history and said that had this been important to Miss L she could have checked this. Our investigator didn't find evidence that the car was ex-rental but also noted Miss L accepted the dealer's terms which included the statement that cars can be ex-rental. Given this, our investigator didn't require BMWFS to do anything further in response to these issues.

Our investigator then considered the CRA 2015 and whether the car supplied was of satisfactory quality. She considered the evidence provided and accepted that there were faults with the car. She noted that the timing chain and exhaust gas temperature sensor weren't serviceable parts. She contacted the garage that carried out the diagnostics and it said both parts had a lifetime service expectancy and the faults weren't due to wear and tear. The garage said both parts should have lasted longer in a car of Miss L's age and mileage. Based on the evidence provided, our investigator thought on balance that the car wasn't of satisfactory quality when supplied because it wasn't sufficiently durable.

Our investigator initially suggested the BMWFS should carry out repairs at no cost to Miss L, refund her the cost of the diagnostics and pay Miss L £250 for the distress and inconvenience she had been caused.

Following our investigator's view, Miss L provided evidence of further faults that had been identified. Taking into account the new issues and the total costs of repairs and delays and inconvenience that could be caused our investigator said the fair outcome was for Miss L to be allowed to reject the car and have her deposit refunded. She noted that Miss L had been able to drive the car but that the car hadn't been performing as it should have and she recommended that Miss L be refunded 10% of her repayments from August 2023. She noted the costs Miss L had incurred for repairs and diagnostics and said these should be refunded as well as Miss L being paid the £250 compensation she had previously recommended.

BMWFS didn't accept our investigator's view. It provided further comments from the dealer which said insufficient evidence had been provided to show that the faults were present or developing at supply. It noted the evidence of faults that had been supplied but didn't accept this was enough to show the faults were present at supply. The dealer also said that tests can be run to see if the timing chain needed to be replaced and also to show if the car had reached sufficient temperatures to burn off the soot that could enter and damage the diesel particulate filter. It said that even if the complaint was upheld then it should be allowed an opportunity to carry out repairs in line with the CRA 2015. The dealer also said that Miss L hadn't serviced the car until 18 months after acquisition, but Miss L provided evidence that she had the car serviced in April 2023.

Our investigator considered the responses to her view but these didn't change her conclusions, specifically that Miss L should be allowed to reject the car.

As a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman, to issue a decision.

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.

Miss L acquired a used car through a hire purchase agreement with BMWFS. Under the

regulations, BMWFS can, in certain circumstances, be held liable if the car was mis-sold or wasn't of satisfactory quality at supply.

Miss L raised concerns about the car's mileage, it potentially being ex-rental and the service history. Our investigator addressed these issues and based on the evidence I have seen, I agree that BMWFS isn't required to do anything further in response to these issues. I say this because while there are some minor discrepancies in the mileage figures recorded in the dealer information, I do not have evidence to suggest that the mileage figures recorded on the MOTs is incorrect. MOT history is available online and had Miss L had concerns she could have checked this prior to acquisition. The differences Miss L has noted in the mileage figures are relatively minor and I do not find that these will have had a material impact on her and as Miss L was aware of the mileage of the car at acquisition and I have nothing to suggest this was incorrect, I do not uphold this part of her complaint.

Miss L was concerned about the car's service history. I have looked at the copy of the advert provided and I can't see this referred to the car having a full service history and had Miss L been concerned about this I would have expected her to have asked for further details before acquisition. The dealer has provided the dates of the services that took place before Miss L acquired the car which I find reasonable. Miss L was also concerned that the car may have been ex-rental. However, the dealer's terms and conditions state that cars may be ex-rental and while I do not have evidence that this is the case for Miss L's car, I cannot say that BMWFS had done anything wrong even if the car supplied was ex-rental.

The outstanding issue in this complaint relates to whether the car supplied to Miss L was of satisfactory quality. The CRA 2015 sets out a definition for satisfactory quality and in cases involving cars it is reasonable to consider factors such as the car's age, mileage and price. In this case, Miss L acquired a car that was over three years old and had been driven around 60,800 miles. As Miss L acquired a used car, it is reasonable to expect it to have suffered some wear and tear. However, the assessment of satisfactory quality includes the need for the car to be sufficiently durable.

Miss L raised some cosmetic issues with the car shortly after supply. The dealer said these were reasonable wear and tear given the car's age and mileage. Miss L noted this but said she would have expected the issues to have been identified in the advert. I understand why Miss L wanted to flag the issues, but I note that when she contacted BMWFS about these she didn't require any further action to be taken which suggests she accepted the car with the issues she had identified.

In July 2023, Miss L experienced issues with the car and took it to a garage for an inspection. The garage identified that there was a noise coming from the engine which it said was due to the timing chain and failing tensioners/guides. It also found a faulty exhaust gas temperature sensor. I note the comments the dealer has made about these parts and about identifying whether the timing chain was noisy or stretched and as such whether this posed a risk for engine problems down the line. But in this case the inspecting garage first identified the noise as potentially being the timing chain and recommended further technical evaluation. This was then undertaken at which point the garage confirmed the issue and said this needed to be addressed to prevent future damage to the engine. In regard to the exhaust gas temperature sensor it also confirmed this to be faulty. So, while I have considered the dealer's comments, I find, on balance, the evidence shows there are faults with the car.

BMWFS has provided comments from the dealer saying that sufficient evidence hasn't been provided to show that any faults were present or developing at the point of supply. I appreciate why this has been focussed on given the issues were identified more than a year after Miss L took delivery of the car. However, part of the assessment of whether a car was

of satisfactory quality at supply is whether the car is sufficiently durable. Our investigator upheld this complaint as she didn't consider the parts that had failed were sufficiently durable. Alongside the identification of the faults, discussions have been held with the garage to understand whether, given the car's age and mileage, it was reasonable that these parts would need to be replaced. The garage said that the parts were expected to last the lifetime of the car and that given Miss L's car's age and mileage the failure was unusual.

When considering a complaint, I take all relevant rules, regulations and guidance into account but my decision is based on what I consider to be fair and reasonable given the unique circumstances of the complaint. Where the evidence provided is inconclusive or contradictory I make my decision based on the balance of probabilities. In this case, I accept that the evidence shows there are faults with the car and while noting the comments made by the dealer, I find, on balance, that the faults mean the car supplied wasn't sufficiently durable. I note the concerns raised about Miss L not having a service for 18 months but she has provided evidence that additional to the service the dealer noted she also had the car serviced in April 2024. Because of this I uphold this complaint that the car supplied to Miss L wasn't of satisfactory quality.

When a car isn't of satisfactory quality, there are different options for redress. BMWFS has said that it should be allowed the opportunity to repair the faults. This would be a reasonable outcome in certain circumstances. However, since the initial faults were reported further faults have been identified. Given the extent of the repairs that are required, the potential cost of these and the inconvenience that would be caused to Miss L, I find that the fair resolution to this complaint is for Miss L to be allowed to reject the car. In making this decision I have considered Miss L's comments about her need for a safe and reliable car to take her child to hospital appointments.

When a car is rejected, we would expect it to be collected at no cost to the consumer, the hire purchase agreement to be cancelled with nothing further owing and any adverse information regarding the agreement to be removed from the consumer's credit file. I find this reasonable redress in this case.

Additional to the above, I agree that Miss L should be refunded the costs of the diagnostics and attempted repairs she had carried out costing £1,134.20 and be paid £250 compensation for the distress and inconvenience she has been caused by being provided with a car that wasn't of satisfactory quality.

Our investigator noted in her view dated 16 April 2024, that Miss L's use of the car had been impaired due to the issues and recommended that Miss L be refunded 10% of her repayments due to this. I find this fair. Miss L had use of the car up to May 2024, when she contacted the garage about issues she was experiencing and was told the car was no longer safe to drive. I can see that Miss L has since had the car SORN. So, I find that Miss L should have any payments she made from 21 May 2024 refunded as she no longer had use of the car (or these payments waived if Miss L didn't make these).

Putting things right

BMW Financial Services(GB) Limited trading as ALPHERA Financial Services should:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Miss L;
- refund Miss L any deposit she paid (noted as £250 in the hire purchase agreement);

- refund 10% of rentals from August 2023 to 21 May 2024 to cover any loss of use, or impaired use, of the car because of the quality issues;
- refund any rentals paid (or waive any unpaid rentals) from 21 May 2024 as Miss L no longer had use of the car from this time;
- refund the Miss L £1,134.20 for additional expenses which have been incurred as a result of the issues with the car;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement*;
- pay a further amount of £250 for any distress or inconvenience that's been caused due to the faulty goods; and
- remove any adverse information from the Miss L's credit file in relation to the agreement.

HM Revenue & Customs requires BMWFS to take off tax from this interest. BMWFS must give Miss L a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that BMW Financial Services(GB) Limited trading as ALPHERA Financial Services should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 14 November 2024.

Jane Archer
Ombudsman