

## **The complaint**

Mr P complains about the quality of a car supplied to him by BMW Financial Services (GB) Limited trading as Alphera Financial Services ("BMWFS").

## **What happened**

Mr P acquired a used car under a hire purchase agreement with BMWFS in December 2022. The car cost £21,650 and Mr P paid a deposit of £2,165. Under the agreement, Mr P was required to make 48 monthly payments of £373.94, followed by a payment of £8,758 if he wanted to keep the car. The car was four years old and had travelled 42,236 miles at the point of supply.

In June 2023, Mr P said the car broke down. He called a recovery company – that I'll refer to as "S" - who noted that the car's warning lights were illuminated and fault codes were recorded. S cleared the fault codes.

In July 2023, the MOT failed due to issues with the headlamp. Mr P says he contacted the broker. The broker said Mr P let it know about an issue after the 90 day warranty period and after six months of the car being supplied to him. So it asked Mr P to obtain a diagnostic report. It said it wouldn't cover the cost of the diagnostic report.

In January 2024, Mr P had repairs carried out to the car which totalled £4,192.36. As a result of these repairs, the car passed its MOT. Mr P complained to BMWFS.

BMWFS issued its response to Mr P's complaint in February 2024. It said it requested a report from Mr P as the fault with the car occurred after six months. It said the headlamp passed the MOT test that occurred in July 2022. BMWFS requested the part number for the headlamp. It also said the report didn't provide details about why any of the issues were caused. It also said that it's likely the fault codes that appeared would have been appearing for some time, as Mr P had been able to travel 10,000 miles in the car in around six months. It said this could have led to further damage being caused. It didn't uphold Mr P's complaint.

Unhappy with this, Mr P referred his complaint to this service.

Our investigator looked into the complaint and said she was satisfied the car was not of satisfactory quality when it was supplied to Mr P. She said the repair garage suggested that the wrong headlamp was fitted when repairs were carried out. She said the original photographs supplied with the car confirmed there was a difference between the two front headlamps. She said she thought the issue was present or developing at the point of supply and she didn't think the car should have the issues that it did, given its age and mileage. She recommended BMWFS refund Mr P's rentals from July 2023 and the repair cost of £4,142.36, plus 8% simple interest.

Mr P agreed. BMWFS didn't reply.

As BMWFS didn't reply, the case has been passed 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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mr P has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

What I need to decide in this case is whether the car supplied to Mr P was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. BMWFS is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers conditional sale agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mr P acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

In this case, Mr P reported that the car broke down in June 2023. This was around six months after it was supplied to him, during which he had been able to cover around 10,000 miles in the car.

After the car broke down, Mr P contacted S who reviewed the car. A job sheet from S confirms there were around 13 fault codes for items varying from the transmission to the engine. It confirmed the car had warning lights on the dashboard and that S cleared all the codes. Mr P said following this, the car was running normally.

However, in July 2023, the car failed an MOT test. The reason for the failure and the major defects identified were:

- *"Supplementary restraint system warning lamp indicates a fault (7.1.6(a))*
- *Engine MIL inoperative or indicates a malfunction (8.2.2.2 (g))"*

In January 2024, repairs were carried out totalling £4,192.36. The technician's notes confirmed the car cut out as soon as it started and that the nearside headlamp was incorrect and that there were wiring issues. The nearside headlamp was replaced, the wiring was corrected, the body control module ("BCM") and remote function actuator ("RFA") were replaced and reprogrammed and the all-wheel drive ("AWD") module was reprogrammed.

Having carefully considered this, I'm satisfied the car supplied to Mr P had faults as S, the MOT and the repair garage confirmed this. I now need to consider whether these faults make the car of unsatisfactory quality.

I've reviewed the MOT history for the car. Having done so, I can see that the car's MOT failed in July 2022. The major defects identified were:

- *"Nearside front headlamp aim too low (4.1.2 (a))*
- *Offside front headlamp aim too low (4.2.2 (a))*
- *Headlamp levelling device inoperative (4.1.5 (a))."*

The car passed its MOT around seven days after the initial MOT was carried out in July 2022. From this, I think it's fair to assume that some repairs were carried out which is why the car passed its MOT in July 2022. The repairs were carried out to both the headlamps and a headlamp levelling device.

The subsequent issues that transpired in July 2023 were also related to the headlamp. Specifically, the repair garage said, *"Noticed NS headlamp incorrect For car removed bumper to replace headlamp and on removal found wiring incorrect and insecure corrected wiring fitted the new headlamp Communication then returned to most modules still unable to communicate with BCM and AWD modules these both have corrupted data and cannot be reprogrammed BCM and RFA replaced and reprogrammed these are Security modules have to be replaced as a pair Replaced AWD module communication returned reprogram tested OK"*.

The repair garage also provided further commentary on the fault. It said:

*"your car BCM (body control module) has failed and stopped transmitting CAN bus and LIN Data. This is the data the car needs to run Security and PCM modules. This module needs to be replaced, the most likely cause of this is the module overheating. It feels excessively hot when the ignition is on. On further investigation we noticed the NSF headlamp is not the correct lamp. It is a halogen type lamp which draws a much higher current than the correct LED type lamp fitted to the OSF. We removed the front bumper to inspect for accident damage as a possible reason for the incorrect lamp fitted. On removal we found evidence of body repairs and wiring loom incorrectly routed but no damage to wiring. I suspect the wrong headlamp was fitted at this point and caused the issues"*.

So, thinking about this, I'm satisfied that it's more likely than not that there was an underlying issue with the headlamp at the time the car was supplied to Mr P. I've seen a copy of the sales advert from the time Mr P acquired the car. The photograph of the car shows two different front headlamps. The repair garage has also confirmed the nearside front headlamp was incorrect and this caused the issues.

I note that the mileage at the time the MOT was completed in July 2022 was similar to at the time Mr P acquired the car in December 2022. This suggests that following the repairs to the headlamp in July 2022, the car wasn't used until it was acquired by Mr P. Around six months after this, the car had further issues with one of the headlamps.

The car was around four years old at the time it was supplied and the mileage was around 42,000. One of the considerations of whether goods are of satisfactory quality is durability. Here, the headlamp needed repairing and major wiring and reprogramming was required when the car was around five years old and at around 52,000 miles.

Having thought about this, I think a reasonable person would consider that a headlamp would last longer than this. Whilst Mr P has been able to travel extensive mileage in the car over around six months, I'm not persuaded that the issue with the headlamp is intrinsically connected to the mileage the car has travelled. I think a reasonable person would consider that a headlamp would last a considerable amount of time after a repair had been carried out. I don't think it's reasonably expected that the headlamp on a car would fail six months after issues were identified with it and repairs appear to have been carried out.

Instead, on balance, I'm persuaded by the repair garage's comments that the repairs that appear to have been carried out in July 2022, didn't repair the underlying issue with one of the headlamps, which has led to the subsequent issues. I appreciate that the MOT was passed in July 2022 after repairs were carried out, but this confirms that the car is roadworthy. An MOT doesn't confirm whether a car is of satisfactory quality.

There is also no suggestion the issue occurred due to the way in which Mr P maintained the car and BMWFS hasn't provided any independent information to show the fault with the headlamp wasn't present or developing at the time the car was supplied to Mr P. In light of

all this, I don't think the headlamp was sufficiently durable. It follows that I don't think the car was of satisfactory quality when it was supplied to Mr P.

I've gone on to think about what BMWFS needs to do to put things right.

Mr P arranged for the car to be repaired. He said this was carried out in January 2024 and the repair has fixed the issues with the car. He's provided evidence to show the cost of the repair was £4,192.36. An MOT was also carried out at the time at a cost of £50. Mr P would always be liable for the cost of the MOT, so I'm not satisfied that BMWFS should cover the cost of this. I think BMWFS should pay Mr P £4,142.36 with applicable interest for the cost of the repair, upon him providing a receipt to show the amount has been paid.

The car broke down in July 2023 and the repair was carried out in January 2024. The mileage for the MOT in January 2024 after the repair was carried out was only 20 miles more than when the MOT failed in July 2023. I'm satisfied that Mr P had little or no use of the car between July 2023 and January 2024. So BMWFS should refund any payments Mr P made towards his hire purchase agreement during this time, with applicable interest.

I've also considered the impact of Mr P being without a car for around six months. I can see in email correspondence between BMWFS and Mr P, he said he had to borrow a car from a friend for five months which helped him save costs. I also note he had to liaise with the repair garage and the different parties involved on a number of occasions in an attempt to resolve the issue. I can see that delays were caused due to parts being unavailable or the specialist being unable to look at the car for eight weeks. This was not down to any fault of Mr P.

Having considered the impact Mr P detailed, I'm persuaded he was caused distress and inconvenience as a result of being without a car for around six months and due to the faults with the car. And so, I think BMWFS should pay Mr P £150 to reflect the distress and inconvenience caused.

### **My final decision**

My final decision is that I uphold Mr P's complaint. I instruct BMW Financial Services(GB) Limited trading as Alphera Financial Services to put things right by do the following:

- Pay Mr P £4,142.36 for the cost of repairs, upon Mr P providing a receipt to show this amount was paid;
- Pay Mr P a refund of any payments he made towards the hire purchase agreement between July 2023 and January 2024 to cover the loss of use of the car;
- Pay Mr P 8% simple interest on these amounts from the date of payment until the date of settlement\*;
- Pay Mr P £150 for the distress and inconvenience caused\*\*; and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

\* If BMW Financial Services(GB) Limited trading as Alphera Financial Services considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

\*\*If BMW Financial Services(GB) Limited trading as Alphera Financial Services does not pay this £150 compensation for distress and inconvenience within 28 days of the date on which we tell it Mr P accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 21 August 2024.

Sonia Ahmed  
**Ombudsman**