

## The complaint

Mrs T is unhappy that a car supplied to her under a hire purchase agreement with BMW Financial Services (GB) Limited trading as Alphera Financial Services ('BMWFS') was of an unsatisfactory quality.

## What happened

In September 2022, Mrs T was supplied with a used car through a hire purchase agreement with BMWFS. She paid an advance payment of £327.19, and the agreement was for £14,667.81 over 49 months; with 48 monthly payments of £264.55 and a final payment of £7,104.37. At the time of supply, the car was almost four years old, and had done 43,984 miles (according to the MOT record for 16 September 2022).

Mrs T started to have problems with the car – she's said she was getting warning messages that stated 'failure to start in 500 miles', then 'failure to start in 50 miles', and eventually the car stopped working. BMWFS have said that the car went in for repair in February 2023 due to the engine management light ('EML') coming on, in October 2023 due to a diesel particulate filter ('DPF') issue, and in January 2024 due to an AdBlue fault.

In their complaint response letter, dated 22 April 2024, BMWFS didn't uphold Mrs T's complaint. Unhappy with this response, Mrs T brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said there were faults with the car, but the car had passed an MOT in September 2023 with no issues apart from an advisory about tyre wear. As Mrs T had done over 11,000 miles by the time of this MOT, and because there was nothing to show that any issues with the car were present or developing when it was supplied to her, the investigator thought the issues with the car were as a result of general wear and tear. So, they didn't think BMWFS needed to do anything to resolve Mrs T's complaint.

Mrs T didn't agree with the investigator. She said that "*hundreds of people*" have the same problems with the car as she has, and that the garage had 11 chances to fix the car. She's supplied phone tracking details which shows 16 visits to either the supplying dealership or another garage between 14 September 2022 and 14 February 2024 to support this. She also didn't think that, regardless of the age of the car, the dealership should be selling vehicles that weren't fit for purpose, and she's now left with a car she can't use. Finally, Mrs T said that we were ignoring her evidence in favour of the evidence supplied by BMWFS and she's asked for an ombudsman to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete

or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs T was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, BMWFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless BMWFS can show otherwise. So, if I thought the car was faulty when Mrs T took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask BMWFS to put this right.

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here. Mrs T feels we have ignored her evidence and favoured that of BMWFS. I would like to make it clear that the Financial Ombudsman Service is an independent complaint handling organisation. We represent neither the financial business nor the customer, but instead consider each complaint on its own merits and its own individual circumstances. So, I can assure Mrs T that I have considered all the evidence supplied by both parties when making my decision.

Mrs T has also referred to other people having similar issues with the same make and model of car that was supplied to her. While this is noted, a crucial part of our service and the way we consider complaints is that we consider each complaint on its own merits and its own individual circumstances. So, my decision won't be impacted in any way by something another person may or may not be experiencing, no matter how similar Mrs T feels the situation is.

It's not disputed that there is a fault with the car, nor that Mrs T is unable to drive it. This is also confirmed by the fact the car has been registered with the DVLA as being off the road.

When looking at these faults, I've also considered the evidence that Mrs T has provided relating to the visits made to the dealership. While the information she's provided shows the dealership's name, address, and postcode as the search parameters, I can't be satisfied that the tracking function is so precise that it pinpoints the dealership's premises, or just the postcode itself. The postcode covers a number of businesses, and an internet search shows both a petrol station and chain coffee shop very close to the dealership. So, it's possible that some of these recorded visits were visits to the petrol station / coffee shop, and not the dealership.

The evidence Mrs T has provided shows 12 visits between 14 September 2022 and 17 November 2023. Of these, seven visits show the car in the postcode area for between 4 and 11 minutes. I'm satisfied these visits are most likely visits to the petrol station and/or coffee shop, as it's unlikely Mrs T would be able to complete a discussion about issues with the car

in such a short period of time. What's more, as the car wasn't supplied to Mrs T until 16 September 2022, the visits of 14 and 16 September would relate to the supply of the car, and not any post supply issues. This leaves three visits, as follows:

- 1 March 2023 – 54 minutes
- 8 March 2023 – 27 minutes
- 6 October 2023 – 36 minutes

Mrs T has also provided a second tracking search for a garage, where she says she took the car after the supplying dealership closed down. This shows four visits between 15 January and 14 February 2024. An internet search shows this garage is located by a chain bakery and a fast food restaurant. And two of the visits Mrs T has shown lasted five minutes or less. Again, given the short timings, I'm satisfied these are not likely to be discussions about issues with the car. So, this leaves two visits, as follows:

- 15 January 2024 – 1 hour
- 14 February 2024 – 19 minutes

Based on what I've seen, Miss T took the car for repair around February 2023 due to the EML. There's no job card for this as BMWFS have said the dealership couldn't find any fault. The EML was reset, and I've not seen anything to show this came on again. I think that the visits of both 1 and 8 March 2023 most likely related to this issue – both Mrs T raising the matter with the dealership and when it was booked in for diagnostic/repair.

I have seen a job sheet dated 27 October 2023, where the emissions light was investigated and a DPF issue found. This was repaired at no cost to Mrs T. I think it's likely that the visit to the dealership on 6 October 2023 was linked to this issue i.e., Mrs T raising the problem and the dealership booking in a date for diagnosis/repair.

Finally, it's not disputed that there was an AdBlue issue that was dealt with in early 2024. This would account for the visits on 15 January and 14 February 2024.

As such, I'm satisfied the evidence doesn't support the car going in for repair on or around 11 separate occasions between supply and when it became undrivable.

Mrs T has said the faults with the car were consistently the same across all repairs, but the evidence I've seen also doesn't support this. While the car was originally taken back to the dealership within the first six months, this was for an issue that hasn't reoccurred. So, even if I were to conclude that there was a fault that made the car of an unsatisfactory quality that resulted in the car needing repair in February/March 2023; I would also have to conclude that the repair was successful as the EML light hasn't reilluminated. So, I wouldn't be asking BMWFS to do anything more about this.

With regards to the DPF and AdBlue issues, these didn't happen until Mrs T had had the car for more than a year, and she had travelled over 11,000 miles. There's nothing on the job card that shows these faults were present when the car was supplied to Mrs T; and given the mileage travelled I would've expected these issues to occur earlier, had they been present or developing at supply. So, and while I appreciate this will come as a disappointment to Mrs T, I'm satisfied these issues are more likely to be caused by general in-service wear and tear, and not because of an inherent fault with the car when it was supplied. As such, again, I won't be asking BMWFS to do anything more about these issues.

Finally, Mrs T has also provided evidence of the current faults with the car by way of diagnostic fault codes and a report on these codes dated 17 July 2024. This also says that

the car isn't fit for purpose and some nuts on the ECU are missing. While I appreciate this confirms the current issues with the car, it doesn't indicate these were present or developing at the point the car was supplied to Mrs T. Nor does this say when the ECU nuts were likely removed i.e., whether this was before or after the car was supplied to Mrs T. As such, and again because of the time Mrs T had the car before the current fault occurred, and the distance she travelled, I again think it's more likely this is as a result of general wear and tear, so it's not something BMWFS are responsible for. And I won't be asking them to take any further action.

### **My final decision**

For the reasons explained, I don't uphold Mrs T's complaint about BMW Financial Services (GB) Limited trading as Alphera Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 25 September 2024.

Andrew Burford  
**Ombudsman**