

## The complaint

Mr S has complained about the quality of a car provided on finance by BMW Financial Services (GB) Limited trading as Alphera Financial Services (BMWFS).

## What happened

BMWFS supplied Mr S with a used car on a hire purchase agreement in September 2021. The cash price of the car was around £14,000 and it had covered around 57,600 miles since first registration in April 2016. The hire purchase agreement required payments of around £210 for 47 months followed by a final payment of around £5,700. Mr S paid a deposit of around £1,600.

Mr S said the car's engine management light (EML) came on during a test drive before he acquired the car. He said the dealer, who I'll call C, agreed to make a repair before he entered into the agreement.

Mr S said the EML came on again and the car went into limp mode. He said that C agreed a repair but when the car was returned the issue recurred.

Mr S said that between March and October 2022 the car went into limp mode and the EML was on. He said that C didn't respond, and he continued to drive the car without any help. By October 2022 the mileage was around 68,000 and C had told him they needed a diagnostic report. Mr S said he wasn't willing to pay for the report.

Mr S said that he drives on the motorway in limp mode, but he can't accelerate or overtake. He said he is concerned about the safety of the car and what damage has been caused to the engine.

Mr S said that he didn't have the option of another car it was a necessity, so he carried on driving the car. The EML light would go on and off intermittently.

Mr S eventually made a complaint to BMWFS in October 2023. BMWFS said that they liaised with C who said that they hadn't seen the car since March 2022. BMWFS said that they were responsible for supplying goods of satisfactory quality. They went on to say as the fault had occurred after the first six months it was not assumed to be present at the point of sale. BMWFS confirmed they would need a diagnostic report to confirm the faults were present or developing at the point of sale.

Mr S brought the complaint to our service and an investigator looked into it. She issued an opinion in February 2024 and said that she was satisfied there was evidence of a fault. She said that there was evidence of two failed repairs for the same issue in September 2021 and March 2022. Our investigator recommended rejection of the car with a partial refund of payments plus an award of £200 in compensation. Mr S broadly agreed.

BMWFS didn't agree. They said that the job cards showed two unconnected repairs, and due to the absence of a diagnostic report, it hasn't been established that the fault Mr S was now experiencing was due to a failed repair. BMWFS went on to say that Mr S had completed significant mileage since taking possession, and the onus was on him to

demonstrate, with an independent report, that the fault was present or developing at the point of sale.

I issued a provisional decision which said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.*

*The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. BMWFS is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.*

*The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".*

*The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances might include things like the age and mileage at the time of supply and the car's history.*

*The CRA says 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.*

*BMWFS aren't required to supply a working car for the whole of the agreement. Unfortunately due to the nature of mechanical engineering sometimes things go wrong that can't be anticipated, and it is the consumer's responsibility to pay for maintenance and repairs. But the goods do need to be of satisfactory quality at the point of supply.*

*When Mr S acquired the car in September 2021 the mileage was around 57,600 and the cash price was around £14,000. The car was first registered in April 2016. The mileage at supply was average considering its age, but it wouldn't be unreasonable to expect the car to be showing some signs of wear and tear, and that might include the underlying components. In September 2021, shortly after taking possession of the car, Mr S told C the EML was on. C agreed to a repair. The job card indicates that a Diesel Particulate Filter (DPF) sensor was replaced in September 2021.*

*In November 2021 Mr S contacted C and said that "rear sensor lost" and "missing wheels sensor" kept coming up on the car dashboard. In January 2022 he contacted C again and said "the sensor was popping up on my dash and the engine management light keeps coming on and staying on been doing it for a couple of month". [sic]*

*In March 2022 a further repair was completed. The job card said "check and report EML on dash intermittent fault since sale – loss of power at 4000 revs". The job card indicated that a NOx sensor was replaced, and the car had completed around 62,500 miles. BMWFS were not made aware of the problems, however I mention it here for context about the fault that is now reported.*

*What I have to bear in mind is that just because I've seen there were faults with the car that came about within the first six months, this doesn't necessarily mean the car wasn't of satisfactory quality when it was supplied to Mr S – which is what I need to decide. I'd need to see sufficient evidence the faults made the car of unsatisfactory quality when it was supplied to Mr S. The problem I have is that I've not seen enough evidence to determine that's the case. I take on board Mr S' view that the previous repairs have failed. But I've not seen any independent evidence that the current issues with the car were present or developing at the point of sale.*

*As a starting point I don't think it was disputed that there were two faults with the car within the first six months. However this was a used car and there is an expectation that there is likely to be some wear and tear on the components of a car with that age and mileage. Both the sensors that were replaced were serviceable parts and I'm not persuaded that their failure at an early stage necessarily made the car not of satisfactory quality at the point of supply.*

*The difficulty here is that the evidence points to two unconnected repairs, and there isn't any expert evidence on the current fault. I would need to be satisfied that the evidence presented to me shows that the current fault is linked to a previous failed repair for a fault which made the car of unsatisfactory quality.*

*The DPF and the NOx sensor are part of the exhaust system, but they aren't the same thing. Without further evidence and a report on the issue it is difficult for me to link the two faults to the current issue Mr S is experiencing. Mr S has told us that the car has been in limp mode intermittently since the problem started. Looking at emails and job cards from the time it isn't clear that limp mode was one of the faults or symptoms that were reported.*

*Mr S hasn't been able to provide evidence such as an independent report which indicates that the current problem with the EML was present or developing at the point of supply. The EML is an indicator that something needs attention, and not a fault in itself. There could be a number of issues which cause the EML to illuminate.*

*Similarly limp mode is an indication that something might be wrong but not a fault in itself. The car's computer receives signals from all the different components of the car. When something is wrong, the car may revert to limp mode to prevent further damage. This could be due to any number of different parts of the car, including items that naturally wear through use of the car, so it can't be assumed that it relates to a failed repair.*

*The mileage at the last repair in March 2022 was reported as around 62,400 and I can see by August 2023 it had reached around 79,500. I've noted Mr S provided further evidence of continuing to contact C from March to October 2022, but then he didn't contact BMWFS to let them know about the problem until October 2023.*

*C wasn't acting as an agent for BMWFS when Mr S contacted them after the sale of the finance agreement. BMWFS were unaware of the issues he was experiencing. Mr S was in contact with BMWFS in April 2023 to request a settlement quotation and he had an opportunity to mention any concerns at this point, but I can't see any record that he did.*

*Had the car been in limp mode consistently, I think it is unlikely that Mr S would have been able to cover more than 17,000 miles before taking further action and contacting the finance provider. It might have been reasonable for him to seek expert advice, not only because it could be something simple to fix, but also as limp mode is a safety feature which is designed to indicate issues which could be detrimental and would need to be fixed immediately.*

*BMWFS is responsible for the quality of the car when it was supplied and not ongoing issues. In this case as around two years had elapsed since the goods were supplied to Mr S, given the age and mileage of the car, and that there is no evidence linking earlier faults, I find it unlikely the goods were not of satisfactory quality when supplied.*

*BMWFS said the burden was on Mr S to prove the fault was present or developing at the point of supply. The legislation doesn't specifically say that the burden is on Mr S, however as a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality.*

*Mr S says that there were continual faults from the start of the agreement. But the evidence shows that each fault was dealt with by a repair, which it seems he agreed to. So the car was brought back to conforming to the contract by the repairs, which is the requirement under the CRA. The most recent fault hasn't as yet been shown to be related. Even if a report was now produced it might be difficult to demonstrate any faults were present or developing at an earlier stage due to the time that has elapsed and Mr S' use of the car. Mr S has confirmed the current mileage is around 93,000, so he's been able to cover around 35,000 miles since he took possession of the car.*

*Given the age and mileage of the car when it was supplied and taking into account how long Mr S has been in possession, and the mileage covered, I think it was for Mr S to show that the fault he reported in October 2023 was present or developing at the point of supply. Without that and having considered the available evidence and what is most likely, I don't think BMWFS' response to the complaint was unfair.*

*I appreciate my decision will be disappointing to Mr S, but I don't currently find I have the grounds to instruct BMWFS to cover repair costs or allow him to leave the agreement at no further cost.*

BMWFS didn't respond to my provisional decision. Mr S responded and disagreed. In summary he said:

- When he bought the car, it had an EML light on and was driving rough
- Mr S said that he was told the problem would be fixed before he took possession of the car
- Shortly after he took possession, the car was still running rough with the EML on
- Mr S said he had been back and forth to C for two years
- He had to drive the car as he had no other means of transport, and had been paying £200 a month plus insurance. He had to drive his son in the car, and it isn't safe

### **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.

I'd like to thank Mr S for responding to my provisional decision. I appreciate why he has restated his arguments and evidence. However, I haven't seen any particular arguments which materially change my mind about the decision that I've reached.

I understand he's disappointed by my findings. I can assure him that I've carefully taken into consideration all the information and evidence he's provided along with that provided by BMWFS. Having considered Mr S' response, I don't consider he has provided any new

information or evidence that would change my overall outcome. I've already addressed the points he's raised in my provisional decision, so I don't intend to repeat them again here.

On the basis I don't consider I've been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances.

As a reminder Mr S doesn't have to accept my decision. He's free to pursue the complaint by other means, such as through the courts, if he wishes.

Therefore, my final decision is the same for the reasons set out in my provisional decision

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 October 2024.

Caroline Kirby  
**Ombudsman**