

The complaint

Ms S complains about the quality of a car supplied to her on hire purchase by BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ('BMWFS').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my remit resolving disputes with minimum formality.

Ms S says she had issues with the car at an early stage (suspension)– and then a year later (suspension and tyres). Ms S says she had to pay for repairs but she says this has caused her a lot of emotional distress about the safety of the car.

As a result of our service being involved BMWFS agreed to pay £270 to cover the repairs and also £400 compensation for distress and inconvenience.

Ms S does not agree with this – she considers the compensation is not enough to reflect her situation. So the matter has been passed to me to consider for 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

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 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 Consumer Rights Act 2015 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') 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 can be aspects of the quality of goods.

At the end of June 2022 BMWFS supplied Ms S with a second-hand car that was around four years old and had done around 10,500 miles at the point of supply. The dealer priced it at £24,300 which is less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered some wear and tear – and was likely to require more maintenance than you might see on a newer, less road worn model.

However, despite this, the car was not extremely old or high mileage when supplied, and was relatively expensive. So I don't consider a reasonable person would expect notable issues at an early stage. But that is what appears to have occurred here.

Ms S has provided credible information to show that she had problems with the car just a couple of weeks after supply. I can see that she messaged the dealer about a noise when steering that was progressively getting louder. And as a result it carried out a repair (which is evidenced by a job sheet from July 2022). From this evidence it appears the problem was suspension related, specifically related to the 'ball joint'.

I wouldn't be expecting such suspension related issues in such a short time after supply, noting its relatively low age and mileage and high cost. I consider this means the car was not of satisfactory quality when supplied. And under the CRA Ms S was entitled to a repair, which the dealer appeared to have carried out at no cost to her.

However, I can see that an MOT in May 2023 shows the suspension arm ball joint in apparently the same position was identified as a 'major defect' and needed to be replaced as it was excessively worn. I note that Ms S had travelled about 8,000 miles herself in the car at this stage – but it does seem questionable why something that was meant to have been repaired recently was needing replacement at this early stage. To me it indicates that the original repairs were not carried out properly – to the extent that they remedied the noise but not the underlying need to replace parts.

Shortly after the MOT Ms S then paid for a repair to the suspension to remedy the issue once and for all. And she has shown this with a job sheet. I think that it fair she get a refund for this suspension repair as it appears to relate to the car not being of satisfactory quality at the outset. I understand this repair cost Ms S £180.

I note that at the time Ms S got this repair to the suspension carried out she also paid £90 to change two tyres which were identified by the MOT as needing changing due to low tyre tread depth. I am not completely persuaded this is something BMWFS should pay for as tyres are a wear and tear item that reasonably need changing from time to time. And at that stage Ms S had taken supply of a second-hand car (so would not be expecting brand new tyres) and had covered notable mileage. However, I recognise there is an argument that suspension issues can cause accelerated tyre wear, and I note that BMWFS has agreed to cover this cost following our investigators view. So I am not going to tell it not to pay it here.

Our investigator has recommended £400 compensation overall. BMWFS has agreed with this. Ms S considers her compensation should be much more, primarily due to the 'severe impact this entire ordeal has had on my family and me'. In summary, she has mentioned that the heart of her complaint is not the financial repercussions of the faulty car and repairs – but 'the constant fear and anxiety that have shadowed me since discovering the extent of the vehicle's issues'. She has said that the thought her children's safety was compromised is a source of 'indescribable anguish' and the situation 'transcends financial loss – it strikes at the very core of my responsibilities and fears as a parent'.

Firstly, can I say that I am very sorry to hear about what Ms S and her family have been going through. However, I have to point out that as an ombudsman I am only able to make awards for her distress and inconvenience (and not family members). And I cannot make an award for any impact on her quality of life going forward ('loss of amenity'). So the ongoing anguish and anxiety Ms S has described, while something I am very sorry to hear about isn't something I will be considering here. If Ms S is planning any action to recover such losses she should consider taking advice on the potential ramifications of accepting my decision on any other claims.

I acknowledge that Ms S had notable short term distress in discovering the safety issues when she had the MOT in 2023. I think in the moment this would have been a shock and caused notable upset – particularly noting that she thought the suspension issue was remedied shortly after she took the car. And while I recognise that in hindsight she felt she was driving in around an unsafe car for a year, I can't fairly say the award for distress should be for all that time as Ms S discovered the issue in May 2023 and had it remedied shortly after.

There was also a level of frustration and inconvenience for Ms S in having the initial and then later repairs carried out. This appears to have been compounded with what Ms S has described as poor customer service from BMWFS when approaching it for help. She says she had been spoken to on the phone by its operatives in a rude way. She also mentions not having her complaint raised by the operative as requested. BMWFS has not disputed this or provided evidence that shows otherwise so I consider it fair to rely on Ms S's testimony that she received poor customer service by it.

I think BMWFS need to do something here to remedy the issues caused by the car and its poor customer service. However, I don't agree that a fair way of putting things right is to refund Ms S a year of finance payments as she wants. She has had use of the car during that period. However, I do agree that a payment of compensation is due.

Deciding fair compensation is not a science but I have taken into account the sort of considerations as mentioned on our website. I note that BMWFS has agreed to pay £400 – and I think that in the circumstances it wouldn't be fair for me to recommend more. This is the sort of award made where the impact of problems caused 'considerable distress, upset and worry' as I think is the case here.

I know Ms S feels very strongly that she should have more compensation and is unlikely to agree with me. However, she is free to reject my decision and seek this by other means (such as a more formal route like court) if she wants. I now leave it to her to decide how she wants to resolve this matter.

Putting things right

BMWFS should put things right as I have set out below.

My final decision

I uphold this complaint and direct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to:

- Refund Ms S £270 for repairs and pay her 8% simple yearly interest on this amount from the date of payment to the date of settlement; and
- pay £400 compensation.

If BMWFS deducts tax from the interest element of my award it should provide Ms S with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 31 October 2024.

Mark Lancod
Ombudsman