

The complaint

Mr S complains that BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ("BMWFS") supplied him with a car that wasn't of satisfactory quality.

What happened

In January 2024, Mr S acquired a used car with BMWFS using a hire purchase agreement. The car was nearly six years old at the time it was acquired; its mileage recorded on the agreement was 56,614; and its cash price was recorded as £29,174. An advance payment of £2,000 was made, 47 monthly repayments of £451.75 were to be paid and there was an optional final repayment of £16,831.

Within a couple of months of being supplied the car, Mr S said he noticed an intermittent light knocking sound at low speed. In April 2024, Mr S took the car to a third-party to be serviced and to investigate the knocking sound, but they couldn't find a fault. The car was serviced at 58,823 miles.

In May 2024, Mr S said the knocking sound became more apparent and he had to stop and get the car towed to his work address due to a suspected loose timing chain. Since 14 May 2024, Mr S said he was advised not to drive the car and so complained to BMWFS.

Mr S said he enquired with several third-party garages to obtain quotes to repair the car. And he said he also asked both BMWFS and the supplying dealership for advice on how to proceed, but didn't receive a response.

Mr S said that in July 2024, BMWFS asked him for details of where the car was located so an inspection could be completed on it. Mr S responded providing the necessary details, but he said he didn't hear back from them.

As Mr S didn't receive a final response from BMWFS, he referred his complaint to our service.

Mr S told our service that BMWFS had since been in touch with him. In August 2024, a third-party company commissioned by the supplying dealership inspected the car and concluded the fault with it wasn't present or developing at the point of sale.

Mr S also said that BMWFS offered him a no cost repair due to the fault presenting itself within six months of the car being supplied to him. Mr S went on to explain that he wished to reject the car due to BMWFS not acting within a reasonable time. Mr S supplied our service with a photo of the car's dashboard which showed a date of 20 May 2024, and a mileage of 59,304.

In September 2024, BMWFS issued their final response to Mr S and explained they didn't believe they supplied him with a car that was of unsatisfactory quality at the point of supply. They believed the car was "*displaying the common symptoms of a loss of relational valve timing, which could have been prevented with earlier intervention.*". To recognise for the delays Mr S experienced in waiting for a final response from them, they offered him £300.

Mr S commissioned a diagnostic test in September 2024 by a different third-party at a cost of £75.

The mileage of the car recorded on the report was 59,304. The diagnostic said:

“Obvious [engine model] issue manufacturing fault of stretched timing chain leading to chain jumping; timing issue and engine loud knocking when running... Advised would have been deteriorating (stretching) over a prolonged period of time. (since original build)”

Mr S arranged for another garage to see the car a few days later who investigated the engine further to assess the damage caused by the stretched timing chain. The inspection cost Mr S £300, which included the recovery and transport of the car. The mileage of the car recorded on the report was 59,304. The report said:

“...The most efficient way to repair is to replace the engine. In our opinion a car of this age and mileage given it has a full service history, should not need a major engine repair or new engine at [sic] the given age.”

Our investigator upheld this complaint. In summary, he said he didn't think the car was of satisfactory quality at the point of supply and thought Mr S should be able to reject the car. He concluded that BMWFS should, among other things:

- End the agreement with nothing further to pay and arrange for the collection of the car.
- Refund the advance payment Mr S made.
- Refund monthly payments from when the car broke down on 14 May 2024 up until when the car is collected.
- Refund the costs Mr S incurred for breakdown attendance, recovery and inspection of the car.
- Pay £250 for the distress and inconvenience caused.

Mr S accepted our investigator's findings and reiterated he felt strongly the fault with the car was present or developing at the point the car was supplied.

BMWFS didn't respond to our investigator's outcome and so the complaint was passed to me to decide.

Mr S provided further comments and explained that he felt the £250 the investigator directed BMWFS to pay in his view for the distress and inconvenience caused wasn't enough. In addition, Mr S explained the impact the undriveable car has had on him. He explained that he had to purchase another car to help support his family. And he also explained the time and effort he has had to make in trying to resolve things directly with BMWFS.

I issued a provisional decision on 28 October 2024 where I explained why I intended to uphold Mr S's complaint. In that decision I said:

“Mr S complains about a car supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr S's complaint about BMWFS.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 (“CRA”) is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – BMWFS here – has a responsibility

to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors. It's important to point out in this case that the CRA specifically explains that the durability of goods can be considered part of whether they are satisfactory quality or not.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note that the car Mr S acquired was used, nearly six years old and cost around £29,000. I think a reasonable person would accept that it would not be in the same condition as a new car and was likely to have some parts that are worn. But a reasonable person would still expect the car to be free from larger faults and would've expected trouble free motoring for some time.

What I need to consider is whether the car was of satisfactory quality when it was supplied. And in order to do that, I first need to consider whether the car developed a fault.

I don't think it is in dispute here that the car initially developed a fault with its timing chain. I say this because I have seen copies of diagnostic reports completed on the car outlining the fault and BMWFS acknowledged the fault in their final response to Mr S.

So, I'm satisfied there was a fault with the car, and specifically the timing chain was stretched leading to the chain jumping.

What I now need to consider is whether this means the car was durable.

In BMWFS's final response, they referred to an independent inspection completed on 6 August 2024, that was commissioned by the supplying dealership. It's worth noting that I haven't been provided a copy of it. But the garage Mr S took the car to on 11 September 2024 said:

"...The most efficient way to repair is to replace the engine. In our opinion a car of this age and mileage given it has a full service history, should not need a major engine repair or new engine at the given age."

I've thought about what the report said, and I'm persuaded by its comments. I say this because, the car broke down when it had been driven around 59,300 miles. Considering everything here, I don't think a reasonable person would have expected the timing chain issues to have presented themselves before it had been driven less than 60,000 miles, particularly when one of the reports mentions the car had a full-service history.

Thinking about everything, I'm satisfied the car wasn't durable. And so, I'm satisfied a reasonable person would not consider it to have been of satisfactory quality when it was supplied to Mr S.

I have noted Mr S's comments on how he strongly feels that the fault with the car was likely present or developing at the point of sale. I appreciate what Mr S has said here, and I accept it is likely the fault was present or developing at the point of supply. I say this because, the comments from a diagnostic test Mr S had completed on the car in September 2024 said:

"Obvious [engine model] issue manufacturing fault of stretched timing chain leading to chain jumping; timing issue and engine loud knocking when running... Advised would have been deteriorating (stretching) over a prolonged period of time. (since original build)"

I've also considered that the car had only covered around 2,700 miles since Mr S got it when it broke down, and this occurred after only four months.

However, I don't think I need to make a finding on whether the fault was present or developing at the point of supply, as I have already concluded the car wasn't of satisfactory quality when it was supplied to Mr S due to the durability of the timing chain.

I've gone on to think carefully about the remedies available to Mr S under the CRA. I've also thought carefully about the time that has elapsed and the opportunity Mr S has given BMWFS to repair the fault with the car.

In addition, section 24(5) of the CRA says:

"A consumer who has... the final right to reject... may only do so in one of these situations...

(c) the consumer has required the trader to repair... the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer."

Mr S has explained he has waited several months for the fault with the car to be resolved, during which he didn't have use of his car. I have seen emails Mr S has sent BMWFS where he asked them on how best to proceed and whether he should obtain quotes from third-parties to have the car repaired. Considering things here, I'm satisfied BMWFS have not completed any repairs within a reasonable time, nor without significant inconvenience to Mr S. So I think it is fair and reasonable for Mr S to be allowed to reject the car.

Mr S says the car hasn't been used since it broke down in May 2024 and had to be parked at his work for some time, and then later at his home address. I'm satisfied the car hasn't been used, considering the fault with the car and the mileage recorded on various reports and inspections, including a photo of the car's dashboard showing its mileage when it had broken down. So, I think it is fair that Mr S is reimbursed for monthly repayments he has made to the car from when it broke down in May 2024 to when it is collected, and the agreement ends.

Mr S has also incurred additional costs as a result of the car's fault. Specifically, I have seen a:

- Copy of Mr S's bank statement which shows two transactions on 15 May 2024 totaling £339.25. One transaction was for £171; and the second transaction was for £168.25. Mr S has explained he needed to upgrade his third-party recovery membership to allow for national recovery and to cover the mileage of the recovery.*
- Diagnostic test completed on 5 September 2024 at a cost of £75.*
- Report completed on 11 September 2024 at a cost of £300. This included recovery and transport of the car for it to be inspected again.*

I've considered what Mr S has said about the breakdown recovery transactions he made. I don't think it is fair that BMWFS pays for the upgrade Mr S says he made to his breakdown recovery membership (£168.25). I say this because it was Mr S's choice to upgrade his membership and Mr S has had the benefit of the membership for additional cars throughout the year. But I do think BMWFS should reimburse Mr S for the costs incurred in having the car towed (£171) due to the car's fault.

I also think BMWFS should reimburse Mr S for the cost of the initial diagnostic report and the additional report completed on the car, including its recovery and transport for it to be inspected again as these costs were incurred because of the fault with the car and to demonstrate the fault to BMWFS.

I think it must have been frustrating for Mr S to have to deal with the car's fault. It meant that after a few months of acquiring the car, Mr S could no longer drive it and had to rely on family or friends when travelling. And on occasions, Mr S said he had to rely on buses or taxis to get around. Mr S has explained he has a family which relied on him having a car, which meant that he later had to purchase another car while waiting for things with BMWFS to be resolved. And I can see Mr S regularly contacted BMWFS to get him mobile again.

Thinking about all this, I think it would be fair and reasonable for BMWFS to pay Mr S £450 in total to reflect the distress and inconvenience he suffered in relation to this complaint. I recognise BMWFS has already offered Mr S £300 for some of the delays he experienced. But I think an additional £150 fairly reflects the level of distress and inconvenience Mr S experienced throughout this complaint as explained above."

Responses to the provisional decision

Mr S responded and said, among other things, that he would not have upgraded his third-party recovery membership if he did not have to. He said he couldn't be towed home without upgrading the membership to cover national recovery as he was further away from his home on this occasion when the car broke down.

Mr S also explained that he now has to place his personal cherished number plate on retention when the car is returned and asked to be reimbursed this cost.

Mr S also explained that the car acquired was insured and he should be reimbursed the cost of this while he was unable to drive it. Mr S also said that his warranty and road tax should be reimbursed.

BMWFS didn't respond before the deadline I set in my provisional 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'm not persuaded to change my opinion from the provisional decision I made.

I appreciate the further comments Mr S has made about his recovery membership. But I still don't think it would be fair for BMWFS to reimburse him for the upgrade amount. Breakdown cover is generally purchased to cover the needs of the member holder, which is why some breakdown providers provide options such as national recovery. Mr S was aware that he would be travelling long distance on the occasion the car broke down, so I don't think BMWFS are at fault for the membership cover Mr S had selected prior to travel.

Turning my attention now to the cherished number plate. Mr S says there will be a cost to removing the cherished number plate from the car. This is a charge which is payable to DVLA. I don't think BMWFS should reimburse this cost as it is something Mr S would have always had to pay for if the car was returned or when he chose to reassign it to another vehicle.

Mr S has explained that he had to continue paying for insurance towards the car when he didn't have use of it. I don't think it would be fair to ask BMWFS to reimburse Mr S for the insurance costs he's made here. I say this because it is a legal obligation for Mr S to insure the car. And Mr S has benefitted from the protection his insurance policy has brought him from damage or theft of the car while it hadn't been in use.

Mr S has also asked for his road tax to be reimbursed. If Mr S feels this should be reimbursed, I would suggest him to contact the DVLA directly to enquire about a refund. Similarly, I would suggest Mr S contacts the provider of his warranty service as it is a third-party company who had provided it and isn't part of the agreement with BMWFS that I have considered.

In summary, I think BMWFS needs to do more in this instance to put things right. I'm satisfied the outcome reached is fair and reasonable given the circumstances.

My final decision

For the reasons I've explained, I uphold this complaint and I instruct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to put things right by doing the following:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Mr S.
- Refund Mr S's advance payment towards the agreement of £2,000. If any part of this advance payment was made up of funds through a dealer contribution, then BMWFS is entitled to retain that amount. *
- Reimburse Mr S monthly repayments made towards the agreement from when the car broke down in May 2024 to when the agreement ends and the car is collected. *
- Reimburse Mr S the additional costs he has incurred in getting the car towed and having diagnostic reports and inspections completed on it. Payments were on:
 - 15 May 2024 - £171 *
 - 5 September 2024 - £75 *
 - 11 September 2024 - £300 *
- Pay Mr S £450 to reflect the distress and inconvenience caused. **
- Remove any adverse information from Mr S's credit file in relation to the agreement, if any.

* These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If BMWFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

** If BMWFS has already given compensation in relation to this specific complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 December 2024.

Ronesh Amin
Ombudsman