

The complaint

Ms K complains about the quality of a car provided to her on finance 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 role resolving disputes with minimum formality.

BMWFS supplied Ms K with a car on Hire Purchase in October 2020. Ms K complained to BMWFS about the quality of the car in 2024. She said faults had been identified and the cost to rectify was about £7,000.

Ms K approached BMWFS about the problem and as a result of interactions with it she ended her finance agreement via Voluntary Termination ('VT'). BMWFS also confirmed that it would not repair, replace or allow her to reject the car (as she had asked).

Our investigator concluded that the car was of unsatisfactory quality. And thought that BMWFS could have done more to look into that for Ms K. In the circumstances, she considered it fair that BMWFS facilitate a similar remedy to that if it had allowed Ms K to reject the car due to its quality. This involves refunding her deposit, monthly rentals paid relating to the time she was unable to use the car, and paying compensation for distress and inconvenience caused.

As the parties were unable to reach an agreement following our investigator's view the matter has been referred to me 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.

I note Ms K has complained BMWFS is asking her to pay general damage charges relating to the condition of the car when she returned it via VT. And any impact of this on her credit file. Our investigator has explained this is being dealt with as a separate complaint. I agree this seems a sensible course of action, noting the complaint Ms K initially brought to BMWFS was focused on how her quality of goods matter had been handled. And the damage charges complaint was made separately at a later stage. I also note that the fairness of any charges applied on return of goods (in accordance with relevant fair wear and tear standards) is generally a distinct issue. And looking at it separately affords Ms K the opportunity to decide if she is willing to accept an outcome on the damage charges independently to the outcome here.

In making my comment above I note Ms K has recently indicated she thinks any finding by an ombudsman that BMWFS unfairly misled her into returning the car via VT (rather than affording her remedies for the quality of goods) means any damage charges would not apply in any event. And effectively render any separate complaint redundant. However, I don't think that is the case. In this decision I conclude goods should have been taken back by BMWFS due to their quality. However, I note this would not prevent it applying fair damage charges in relation to other damage. And even though I consider a repair might have occurred and Ms K may have kept the goods – said car would still suffer devaluation (and loss to Ms K) due to any other damage over and above fair wear and tear. So, I am satisfied that any wrongdoing by BMWFS in respect of the handling of Ms K's complaint about the quality of the car does not preclude a separate assessment about the fairness of particular damage charges.

I now move on to consider the subject matter of this complaint which is the quality of the goods issue Ms K raised with BMWFS.

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 having 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.

BMWFS supplied Ms K with a second-hand car that was around four years old and had done around 33,000 miles at the point of supply. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered a degree of wear and tear – and was likely to require more maintenance than you might see on a newer, less road worn model. However, I note the car was not very old, relatively low mileage and priced at around £30,000 – so I consider the reasonable person would have high expectations around quality overall.

I note when the recent fault was identified with the car it was about three and a half years into the agreement. Which means the car was around seven and a half years old and more significant wear and tear would be expected. However, with that said the car had not done excessive mileage at this point (around 65,000) so a reasonable person would not necessarily be expecting a highly significant component failure at this point.

The diagnostic report that Ms K has obtained shows what appears to be a failure of an 'EME' control unit. The estimated cost of repair is almost £7,000. From the price to repair and nature of the problem it appears to be a highly significant component failure.

I consider it is clear the faulty component was not broken at the point of sale. However, when considering the quality of goods durability is a relevant factor to consider. So, I have turned my mind to whether this component was reasonably durable in all the circumstances.

Particularly noting the age of the car – it is not a clear-cut question to answer. However, here I am assisted by a credible expert assessment which concludes:

- Any failure of the unit would not be down to Ms K's particular use of the car; and
- while the exact cause of the failure cannot be determined without investigation by the manufacturer opening the unit – it can advise *'that it would have been a manufacturing defect/failure of the part over time and was not impacted in any way by the customer through negligence or damage'*.

Despite the age of the car, considering the significant nature of the failure – the comments of the expert – and the lack of persuasive challenge on the matter by BMWFS, I consider on balance that the component was not reasonably durable – and means the car was of unsatisfactory quality when supplied. This breach of contract gives rise to a remedy under the CRA.

The usual remedies under the CRA would be a repair, replacement or rejection. I am aware that now the car has been returned via the VT process (which I will discuss later), but in order to decide what is fair I am firstly going to determine what a fair remedy would have been in the circumstances, had the car not been returned already.

I don't consider replacement was a practical option here under the CRA due to the challenge with sourcing a car of exact same specification, age and mileage. And even if it was possible to source a like-for like car I consider it is unlikely this would have been possible within a reasonable time and without causing significant inconvenience.

Repair was possibly a fair option here – noting that under the CRA the supplier will usually have one attempt to repair goods before rejection becomes an option. However, although a consumer can elect to have a repair, they cannot require the supplier to carry one out where that remedy is a disproportionate one. And here it could be argued that due to the cost or repair the remedy is disproportionate. It could also be argued that if the required fix/parts were going to take an unreasonable time/cause significant inconvenience– then it would give rise to a right of rejection for Ms K in any event. With that said I think it is certainly possible a repair was a reasonable way forward here.

It would seem the most practical option would have been rejection of the car. Therefore, I consider it fair that the redress reflects the situation had Ms K been allowed to reject the car. However, I have also considered if that redress is fair considering Ms K was prima facie entitled to a repair remedy.

I recognise later in May 2024 Ms K decided to VT the finance agreement after complaining to BMWFS about the quality of the car. This took effect on 27 May 2024. For me this gives rise to three main issues:

1. Whether BMWFS made an error that led to Ms K taking this route;
2. if this has disadvantaged Ms K in light of the remedies available for breach of contract that would have ordinarily been available to her; and
3. what fair redress would be in the circumstances.

I have looked at the initial communication from Ms K to BMWFS. I have looked at correspondence, system notes and our investigators notes of the content of calls (as well as listening myself to parts of calls). After doing so it is clear that when Ms K approached BMWFS in April 2024 she did so to notify it of a fault with the car and see what her options were. She did not approach it looking to VT the agreement.

However, I can see that the first call she had with BMWFS on 29 April 2024 steered her toward VT. This was a mistake. Ms K was clearly making a complaint about the quality of the car. And although she advised she wanted to return it – this was in the context of its quality – so should not have been treated as a usual enquiry about ending an agreement early via voluntary means. Ms K questioned whether she was being given the correct advice multiple times and was assured she was. As a result of this BMWFS sent her a letter confirming that she had made an enquiry about VT and provided her the quotation to do so (£0).

During the call the agent did say that BMWFS could look into the fault. Which appears to be what prompted Ms K to provide further details of the fault (including diagnostics) in early May 2024. However, I consider the agent was misleading about the proper process for investigating the quality of the car in accordance with Ms K's consumer rights, and unclear that VT was not part of this process. The agent on this call appeared to be confusing this with the end of contract damages process. And Ms K was passed to another agent who did not clarify matters either. From this communication Ms K is clearly under the impression that she doesn't have any options other than effecting VT, even if she wants BMWFS to consider the quality issues she had brought up.

I note BMWFS on a later call clarify that Ms K should not have been offered VT while a complaint about quality had been raised. This call is labelled as taking place on 5 May 2024 but I think this is a mistake and it was actually the 5 June 2024. I say this because it marries up with a call on the contact notes from 5 June 2024 (there is no call record from 5 May 2024) and I note from the content of this call it appears Ms K had already effected VT at this stage. So it was too late to change things even if BMWFS clarified matters. And even if I am mistaken and it wasn't too late – by that stage I think sufficient confusion had been sewn by Ms K's initial interactions with BMWFS for it to at least accept some responsibility for Ms K's decision to VT the car when she did. Had it not been for this confusion I don't think she would have done this.

The question is how VT has disadvantaged Ms K. I would say she has been deprived of the possibility of now having the car repaired – and then keeping it. While there are of course potential issues with the remedy of repair (which I have detailed above) it was not a clearly unreasonable way to have put matters right here. And while it isn't certain Ms K would have kept the car at the end of the agreement (she would still have to pay a balloon payment) she had indicated on her initial call with BMWFS that she wanted to keep the car – so it seems more likely than not she would have done so. So in factoring fair redress I have kept this in mind.

I also note more generally, that although BMWFS looked into the quality issues for Ms K the whole emphasis on VT and the process of VT was somewhat of a distraction. Had matters been more focused on the quality of goods investigation I consider it likely that BMWFS would have received the additional expert information that this service obtained to clarify the likely cause of the electrical fault (which I refer to above). Which I think likely would have led to a more favourable outcome for her.

Had BMWFS supported Ms K with the quality of goods investigation, also giving her clear and consistent information about what she needed to do to assist with this – I think it would have resulted in a better experience and less overall distress and inconvenience. Our investigator has referred to the 'Consumer Duty' introduced by the FCA in respect of the support and information BMWFS provided to help Ms K. I agree this is relevant here and sets a higher standard for firms in its interactions with its customers. However, I consider that even if BMWFS were to argue that it met the required standard as set out by the Consumer Duty – I consider that my findings here would not differ in any event, based on the customer service it provided and what is overall fair and reasonable in the circumstances.

Fair Redress

I have thought about fair redress in all the circumstances. The agreement is already ended and the car has been collected so I am not going to direct BMWFS to do these things. However, on Ms K's credit file it should reflect that the agreement ended but not via VT. I don't think this is an accurate reflection of what the situation really was here – and had it not been for the way BMWFS approached the investigation I don't consider Ms K would have ended the agreement this way. BMWFS should also remove all adverse information in relation to the agreement (if applicable – there has been no indication Ms K missed payments due to the quality of the car) up to the point the agreement came to an end.

Ms K says because of the fault with the car she wasn't able to use it from 29 February 2024. BMWFS has not disputed this. And I note this is consistent with the testimony she gave BMWFS on the call she had with it on 29 April 2024. So it is fair that all rentals she has paid to the finance from this date should be refunded as she has not had use of the car since then due to a breach of contract by BMWFS in respect of the quality of the car. However, as she has had considerable use of the goods I don't consider a refund of other monthly rental payments under the finance is fair here.

However, I do think Ms K should also get back her deposit paid towards the finance. I appreciate BMWFS says that Ms K was nearing the end of her agreement so doesn't consider it fair she gets this deposit back. However, it should be borne in mind that Ms K was deprived of the ability to retain the car at the end of the agreement (and which she had already paid a lot towards) because she wasn't offered a repair option by BMWFS originally – and repair is now no longer possible because she carried out a VT. I also note that even if it could be argued repair was not a viable option (say because it was disproportionate) a rejection remedy still leaves Ms K in a similar position for reasons that were not her fault.

My redress isn't a science but factoring in the stage Ms K was at during the agreement – and the persuasive evidence which indicates she was going to pay the balloon payment and keep the car – I think refunding her deposit (£7,000) is not unfair. I also note Ms K has referred to what she could have sold the car for had she kept it. But looking at the approximate market value of the car, and remaining amount Ms K would have to pay on the agreement to own the car – I don't consider she is clearly out of pocket by the redress I am directing here in any event.

Ms K has said she paid £70 to have the car taken to the garage to diagnose the fault. I think it fair she gets this back as it appears connected to the breach of contract in relation to the quality of the goods. Ms K will have to provide evidence of this payment to BMWFS if it requires this.

I have also thought about the overall distress and inconvenience caused to Ms K because of the issues with the faulty goods. An amount of annoyance and inconvenience is expected in everyday life – but by supplying faulty goods – and not supporting Ms K in the best way to have the goods repaired or rejected BMWFS has caused greater trouble and frustration than was necessary. I can see Ms K contacted BMWFS multiple times about the issue – and there was a lack of clarity about what her options were – including misleading information that was a significant factor in her going down a process of VT that led to unnecessary inconvenience.

I have considered the sorts of awards this service makes for distress and inconvenience. After doing so I note there has been notable annoyance and inconvenience here that has gone on for some time. I think the £300 suggested by our investigator is broadly fair so I will endorse that here.

It is now up to Ms K if she wishes to accept my decision to resolve her complaint about the quality of goods. If she does not, she can reject it and consider her options for pursuing the matter more formally (such as via court action).

Putting things right

See below.

My final decision

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

- Refund the deposit of £7,000;
- amend Ms K's credit file as I have directed above;
- refund all rentals paid to the agreement from 29 February 2024;
- on production of proof of payment refund Ms K for the £70 recovery charge;
- pay 8% simple yearly interest on all refunds calculated from the date of payment to the date of settlement; and
- pay £300 for distress and inconvenience.

If BMWFS considers it should deduct tax from the interest element of my award it should provide Ms K with a certificate of tax deduction so she may claim a refund if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 29 April 2025.

Mark Lancod
Ombudsman