

The complaint

Mr L complains about the quality of a car he has been financing through an agreement with BMW Financial Services (GB) Limited, trading as ALPHERA Financial Services ("Alphera").

What happened

Mr L took receipt of a used car in October 2023. The car was about four years old and had already completed about 25,000 miles. Mr L financed the deal through a hire purchase agreement with Alphera.

In December 2023 Mr L says the engine management light started to illuminate intermittently. When the car went into limp mode, he contacted the warranty company, and the car was taken to a third party garage in April 2024. They diagnosed a fault with the Diesel Particulate Filter (DPF) that was allowing soot to be cycled into the Exhaust Gas Recirculation (EGR) valve and causing a low flow fault. Mr L paid £120 for the fault to be diagnosed.

In May 2024 the car was repaired. The DPF and EGR were cleaned, and new gaskets fitted. Mr L paid £532.60 for the repair. He complained to Alphera a few days later as he wanted them to cover the repair costs but when they were unresponsive, he referred his complaint to this service in July 2024.

In August 2024 Mr L experienced further problems with the car. It was inspected again, and it was confirmed that there were still problems present that related to the exhaust system. In October 2024 the car failed its MOT because of exhaust emissions.

Alphera didn't uphold Mr L's complaint but when our investigator looked into it he thought that was unreasonable. He felt it was likely the fault with the exhaust system had been present when Mr L had taken receipt of the car. He suggested Alphera should allow him to reject it, refund any instalments paid since the car became undriveable in October 2024, pay Mr L £200 in compensation and refund the cost of the initial repair and the diagnostic test Mr L had paid for.

BMWFS didn't agree with the investigator's view, and they asked for a final decision by an ombudsman.

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.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on

board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr L acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then BMWFS, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is 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 like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr L. The car here was about four years old and had completed about 25,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

The relevant legislation explains that if the fault occurs within the first six months, we are to assume it was present at the point of supply, when BMWFS were responsible for the car's quality, unless they can demonstrate otherwise. It seems likely this fault was present within six months because:

- The MOT completed before the car was supplied to Mr L confirms there were exhaust emissions issues at that point.
- The fault was first diagnosed a few days after six months had elapsed, but a text message shows Mr L was trying to arrange a repair before that time, and within six months.
- Mr L has explained there was an intermittent engine management light illuminating as early as December 2023. His testimony is consistent with the problems he subsequently experienced and I find no reason to dispute it.

The relevant legislation allows a business one opportunity to repair a car in those circumstances. I think BMWFS had that opportunity in May 2024 or at least they had the opportunity to fund the repair Mr L had had completed. They could have asked to inspect the car at that point as the onus was, in my opinion, on them to demonstrate the fault wasn't present at the point of supply. It seems likely to me that the repair has failed, and I think it would, therefore, be fair for BMWFS to now allow Mr L to reject the car.

And even if I'm wrong to suggest BMWFS can be held liable for a repair they didn't sanction. The relevant legislation says that when we consider whether goods are of satisfactory quality, we should also consider whether they have been durable. I don't think this car has been durable. It seems to me that despite the car's age and mileage Mr L could still have expected it to be fit for the road and the MOT failure demonstrates that isn't the case here.

Putting things right

BMWFS should now allow Mr L to reject the car. They should collect it and end the finance agreement.

Mr L has been able to drive the car an appreciable mileage while he's had it, despite the problems he's experienced, so I'm not asking BMWFS to refund any instalments in respect

of loss of use before the car broke down in October 2024. But, thereafter, Mr L has been unable to use the car as it hasn't been roadworthy. I don't think it is fair for Mr L to pay for a car he can't use, so BMWFS should refund any finance instalments he's paid since 17 October 2024; the date that the MOT confirmed the car wasn't fit for the road.

Mr L has evidenced to this service that he paid £120 for the initial diagnostic and a further £532.60 for the DPF/EGR repair. He wouldn't have had to do that if the car had been supplied in a satisfactory condition so BMWFS should refund that cost with interest as Mr L has been deprived of the money.

Mr L has experienced some distress and inconvenience here. He's had to take the car to be repaired and he's had to refer his complaint to this service when I think it could have been resolved earlier. He's also had to wait some time for BMWFS's view on the matter although he was able to refer his complaint to this service to minimise that disruption. Overall, I think it would be fair for BMWFS to pay him £200 in compensation.

My final decision

For the reasons I've given above I uphold this complaint and tell BMW Financial Services (GB) Limited to:

- Allow Mr L to reject the car and end the finance agreement.
- Collect the car at no cost to Mr L.
- Refund any deposit that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund all finance instalments paid since 17 October 2024 in respect of loss of use. Add 8% simple interest* per year from the date of payment to the date of settlement. Waive any payments that were due in that time but haven't been paid.
- Pay Mr L £200 to compensate him for the distress and inconvenience he's experienced.
- Refund the £652.60 it cost Mr L to have the car repaired and the fault diagnosed. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr L's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest, they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 31 March 2025.

Phillip McMahon
Ombudsman