

The complaint

Ms M complains about the quality of a car she has been financing through an agreement with BMW Financial Services (GB) Limited, trading as Alphera Financial Services (“BMWFS”).

What happened

Ms M took receipt of a used car in August 2021. The car had, at that time, completed about 20,743 miles and was almost four years old.

In July 2023 the crankshaft seized. Ms M was told that the engine needed to be replaced. She complained to BMWFS saying that the car was of unsatisfactory quality.

BMWFS didn’t uphold Ms M’s complaint and Ms M, therefore, referred her complaint to this Service.

Our investigator noted comments supplied by BMWFS and by a third party garage they had consulted. He thought the car hadn’t been suitably durable and he suggested that BMWFS should allow Ms M to reject it, refund finance instalments that Ms M had paid while the car had been off the road and provide some compensation for the distress and inconvenience caused.

As BMWFS didn’t agree the complaint has been referred to me, an ombudsman, for a 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.

I know it will disappoint BMWFS, but I don’t think this vehicle was of satisfactory quality when supplied. I’ll explain why.

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.

Ms M acquired her car under a hire purchase agreement. This is 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 Ms M. The car here was about four years old and had already completed about 20,743 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 when we consider whether goods are of satisfactory quality we should consider whether they have been durable. I don't think a reasonable person would expect the engine to fail on a car after it had completed less than 60,000 miles. But here BMWFS have suggested there were extenuating circumstances as they say Ms M didn't look after the car as well as she should have. They have noted that services were completed later than they should have been. They have also suggested that fuel and air filters weren't replaced during those services and it's BMWFS's assertion that, had it not been for those issues, the car's engine would have lasted for longer than it did.

I've thought about those issues but, on balance, I'm not persuaded BMWFS have been reasonable to reject Ms M's complaint.

The first service should have been completed in February 2022 but was actually completed in August 2022 and over 5,000 miles late. A subsequent service was booked for August 2023 but in the meantime the car failed having completed about 19,000 miles since it was last serviced. There have, therefore, been some delays in completing services and the third party garage and my own research suggests that those delays and the additional degradation of the oil could have contributed to the premature failure of the engine.

There is also a suggestion that a failure to replace the air and fuel filters may have contributed to the dilution of oil and the resultant premature failure of the engine. That seems less likely on the evidence I've seen as the filter appears to be a pollen filter and the evidence I've reviewed would suggest a failure to exchange a fuel filter would be more likely to damage the fuel pump than to cause any extensive damage to the engine. I think it unlikely that Ms M would have been aware of any potential failing to replace the air and/or fuel filters. She simply paid to have the car serviced and it would to me, seem unreasonable to hold her liable for the quality of that service where it wasn't clearly evident it was substandard, and she wasn't compelled to have it completed at a main dealership.

I note that the third party garage explained that there were known problems with the crankshafts on these cars. They explained that they had seen many examples where crankshafts failed prematurely despite the cars being adequately serviced. They also explained that those faults would happen suddenly and without much warning, and that in many cases the manufacturer would contribute to the costs of repairs.

On balance I think it's more likely than not that this car's engine failed prematurely because of an inherent crankshaft problem. I'm not persuaded that a delay of only 5-6000 miles and six months in the servicing, especially given that the dealership completed an interim service before supplying the car to Ms M in July 2021, was likely to have made such a dramatic difference to the engine's longevity.

Putting things right

The relevant legislation allows the business one opportunity to repair a fault in these circumstances but here, as I think there have been significant delays that could have been avoided, and because Ms M wants to reject the car and BMWFS had at one stage been considering allowing that, I think rejection would be a more reasonable option.

BMWFS should collect the car at no cost to Ms M. They'll need to return the cherished number plate Ms M has had fitted, and they should end the finance agreement.

They should refund any deposit Ms M has paid and, as she's been deprived of that money, they will need to add interest to that refund.

Ms M had to have the car recovered when it broke down. BMWFS should refund the cost of that recovery on provision of a receipt from Ms M. They should add interest to that refund too.

Ms M has been inconvenienced by these issues. She's had to have the car recovered, has had to escalate her complaint to this Service when I think it could have been resolved earlier, has had to arrange alternative transport, and has faced some financial difficulties as a result of BMWFS's stance. In those circumstances I think BMWFS should pay her £500 to compensate her for the distress and inconvenience caused.

Ms M has been unable to use the car since it broke down on 13 July 2023. BMWFS should, therefore, refund any finance instalments she has paid since then. They'll need to add interest to the refund as Ms M has been deprived of the money.

I understand that there may have been storage fees charged. Those fees wouldn't have been levied if the car was of satisfactory quality and it's not fair for Ms M to be asked to pay them. If charges are made BMWFS will need to cover the costs.

My final decision

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

- Allow Ms M to reject the car and end the finance agreement.
- Collect the car at no cost to Ms M and return her cherished number plate.
- Refund any deposit or part exchange contribution that has been paid and add 8% simple interest* per year from the date of payment to the date of settlement.
- Refund any finance payments that have been made since 13 July 2023 in respect of loss of use. Add 8% simple interest* per year from the date of payment to the date of settlement.
- Cover the cost of any storage fees that may have been incurred.
- Refund the cost of the vehicle recovery (£150) and add 8% simple interest* per year from the date of payment to the date of settlement.
- Pay Ms M £500 to compensate her for the distress and inconvenience she's experienced.

- Remove any adverse reports they may have made to Ms M'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 Ms M to accept or reject my decision before 7 August 2024.

Phillip McMahon
Ombudsman