

The complaint

Miss W complains that BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMW) misrepresented the car they supplied her with.

What happened

In October 2021 Miss W acquired a used car through a hire purchase agreement with BMW.

Shortly after entering the agreement, Miss W asked the dealership if there was a warranty in place, how to activate it and whether the service documents were with the car. The dealership told Miss W they'd set up the warranty and send her the paperwork, and that the service records were electronically held.

In March 2022 Miss W contacted a local manufacturer dealership and asked to purchase an extended manufacturer warranty for her car. The manufacturer dealership told Miss W that her car hadn't been serviced in line with the recommended service schedule, and so they wouldn't be able to provide an extended warranty.

Miss W complained to BMW. She said when she acquired the car it was advertised as having a full service history, but this wasn't the case, and she now couldn't obtain an extended warranty.

BMW sent Miss W their final response to her complaint in March 2022. They said the service had been carried out on time. They said the original manufacturer warranty had expired in September 2020, with Miss W acquiring the car in October 2021. And in order to purchase an extended manufacturer warranty, this would need to be done before the original expired, so she wouldn't have been able to obtain this anyway. They didn't uphold her complaint.

Unhappy with this, Miss W brought her complaint to this service for investigation. She said when she acquired the car a full service history was very important to her, as she was looking for her dream car and she wanted it to be reliable. Miss W wanted to return the car as it wasn't what she thought she'd purchased.

Our investigator gave his view that the car was misrepresented to Miss W, because it had been advertised as having a full service history, but this wasn't the case as the most recent service had been carried out late. He also thought the most recent service wasn't in line with the manufacturer guidelines for what needed to be checked and what parts needed to be used.

Our investigator said he was persuaded that Miss W was induced into the agreement by the misrepresentation, and so she should be able to reject the car. He recommended that BMW collect the car at no cost to Miss W, refund her deposit plus 8% interest and remove the agreement from Miss W's credit file. Our investigator said that Miss W had use of the vehicle, and so he thought it was fair for BMW to keep the monthly payments that Miss W had made to reflect this use.

BMW didn't agree. They said the service was completed in time going from the date the car was registered, and the car wasn't sold with a full manufacturer service history, so the parts would be used not new, and potentially not in line with what the manufacturer would use. They said Miss W wouldn't have been able to purchase an extended manufacturer warranty anyway, because the initial manufacturer warranty had already expired.

As an agreement can't be reached, the case has been passed to me 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.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Miss W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. Miss W complains that the car was misrepresented to her, and so there are two key things for me to consider here:

1. Was there a false statement of fact?
2. If there was a false statement of fact, did it induce Miss W to enter into the agreement.

False statement of fact

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It sets out that goods are to be as described, and that any information provided by the trader about the goods is to be treated as included as a term of the contract. The CRA goes on to say that any change to that information is not effective unless it's expressly agreed between the consumer and the trader.

I've seen the advertisement for the car that Miss W acquired, and it states "*It comes with a full service history*"

I think a reasonable person would expect a full service history to mean that the vehicle has been serviced in line with the manufacturer's recommended servicing intervals.

I've seen the service history for Miss W's car, and this shows that the car was first registered in September 2017. It was serviced January 2019 having covered 11,670 miles. The dealership say they serviced it again in August 2021 prior to Miss W acquiring the car in October 2021.

The manufacturer of Miss W's car set out their recommended service intervals as every two years or 21,000 miles.

BMW have said that Miss W's car was serviced at the right interval, as it was registered in September 2017 which is when the intervals begin to run, and so the service in August 2021 was in line with every two years from the registration of the vehicle.

I don't agree that the August 2021 service was in line with the recommended service intervals.

The recommended service intervals are every two years or 21,000 miles. Not every two years from the date of first registration. The service is designed to check critical vehicle components to make sure they're working as they should, and to attempt to avoid serious problems. So, whilst a car may be serviced early, as it was here, the next service is due at the recommended interval after its last service.

So, I'm satisfied that Miss W's car was due for its next service in January 2021, two years after the one completed in January 2019. As this wasn't completed until August 2021, some eight months later, I'm satisfied that there was a false statement of fact as the vehicle didn't have a full service history when it was supplied to Miss W as the advert said.

Our investigator said that the service completed by the dealership didn't follow the recommended checks that the manufacturer would expect to be done. BMW said the car wasn't sold with a full manufacturer service history, and so there's an expectation that the checks will be different or the parts for repairs would be used and not new.

I haven't considered this further, as it doesn't change my decision that there was a false statement of fact based on the timeline of the service history as set out above.

Inducement to enter the agreement

As I'm satisfied that there was a false statement of fact, I've gone on to consider whether Miss W was persuaded to enter the agreement as a result of relying on the false statement of fact.

Miss W has said that a reliable car was very important to her, and she looked for one with a full service history, and with a warranty in place.

I can see that Miss W emailed the dealership asking about the warranty and the service history documents prior to the car being delivered, and they confirmed the service history would be electronic.

When the six month warranty that the dealership provided expired, Miss W approached the manufacturer to see if she could purchase an extended manufacturer warranty for the car. It was at this stage that Miss W realised that the car didn't have a full service history, and she complained to BMW shortly afterwards.

BMW have said that Miss W wouldn't have been able to obtain a manufacturer extended warranty, because this would need to have been purchased prior to the initial manufacturer warranty expiring in September 2020.

I've seen the communication between Miss W and the manufacturer, where they've explained that they're unable to offer her a warranty because the car hasn't been serviced in line with their recommendations. So, I'm persuaded that if the car did have a full service history, it's possible that Miss W may have been able to purchase the warranty she wanted.

Even if Miss W couldn't have purchased the warranty she wanted, I'm persuaded by Miss W's testimony and evidence that if she'd known the car didn't have a full service history, she wouldn't have chosen it. So, it follows that I'm satisfied that the false statement of fact about the service history induced Miss W into entering the agreement.

Putting things right

BMW should put Miss W back in the position she would've been in had the misrepresentation not been made. I'm satisfied that Miss W wouldn't have entered the

agreement, and so BMW should end the agreement, collect the car with nothing further for Miss W to pay, refund Miss W's deposit plus 8% simple interest from the date of payment to the date of the refund, and remove the agreement from Miss W's credit file.

Miss W has had full use of the car, and so I think it's fair for BMW to keep the payments that Miss W has made toward the agreement, up until the car is collected to reflect this use.

My final decision

My final decision is that I uphold this complaint, and BMW Financial Services (GB) Limited trading as ALPHERA Financial Services must:

- End the agreement and collect the car with nothing further for Miss W to pay
- Refund Miss W's deposit of £6,000 plus 8% simple interest from the date of payment to the date of settlement
- Remove the agreement from Miss W's credit file

If BMW considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss W how much it's taken off. It should also give Miss W a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 13 January 2023.

Zoe Merriman
Ombudsman