

The complaint

Miss T complains that that BMW Financial Services (GB) Limited (“BMWFS”) rejected her claim that she had been mis-sold a car.

What happened

In September 2021 Miss T acquired a second hand car at a cost of £28,450. This was funded in part by a hire purchase agreement with BMWFS. The car was some 2 ½ years old and had covered 36,369 miles.

Miss T complained to the dealer that the car had not been serviced as promised and the second key was missing. She also said the car had been advertised as having covered 33,274 miles, but it had done 36,369 miles. She also pointed out some marks and scuffs which she said the dealer had offered to repair.

She complained to BMWFS that the advert had been misleading due to the wrong mileage being reported and there was no record of the service the dealer had claimed to have had carried out. It responded in May 2022 to say the service had been carried out but the dealer didn’t have access to the manufacturer’s electronic data system to record it. It also noted the mileage shown on the sales invoice was correct.

Miss T brought her complaint to this service where it was considered by one of our investigators. Initially she thought it should be upheld due to the lack of evidence that the service had been undertaken, but BMWFS supplied further information which showed that it had.

Miss T didn’t agree and said she still didn’t have a record of the service. She also supplied a photo of a filter which she said showed that it hadn’t been changed by the dealer. She said the dealer hadn’t fixed the cosmetic issues.

I issued a provisional decision which read as follows:

“The finance agreement, that is the hire purchase 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 relevant law says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all 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 the mileage at the time of sale and the vehicle’s history.

Under the relevant law 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 the goods.

Miss T claims there was misrepresentation by the dealer by including an inaccurate mileage figure in the advert. I don't agree. I do not know how long the car was held by the dealer before it was sold. However, I think it reasonable to presume the mileage was accurate at the time the advert was created, but that it was used subsequent to that. I would have had concerns if the mileage shown on the sales invoice was wrong, but I have seen nothing to suggest that this was the case. The information about the mileage was available to Miss T before the sale and I do not consider there was any misrepresentation.

I have noted the lack of a second key. I see the advert is silent about this and I have read the various exchanges between Miss T and the dealer. I believe it is clear that Miss T was led to believe the second key would be supplied. Later the dealer said that it had bought the car with only one key and it would try and get the second one. I believe the dealer would have sought the second key when buying the car and would have known that it only had one at the time of the sale. It is normal for a car to come with two keys and given this was not the case I would have expected the dealer to have drawn attention to this. It is not mentioned in the advert and from the exchanges I do not think it was brought to Miss T attention before the sale. As such I consider BMWFS should ensure a second key is provided at no cost to Miss T.

On the matter of the service which the dealer said it carried out I understand the MOT was done at the same time and there is a record of that. The dealer has also provided evidence to support its claim that the service was done, but it hasn't supplied details of the work carried out. I think it only fair that Miss T is given a full record of the work carried out even if it is not added to the electronic history of the car.

On the matter of the cosmetic damage I have not seen any evidence that would allow me to conclude that there was an agreement with the dealer that any further work would be done. The car was second hand some wear and tear is to be expected and I cannot say the car wasn't of a satisfactory standard. So I do not consider I can uphold this aspect of Miss T's complaint."

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.

Miss T accepted my provisional decision. BMWFS supplied a checklist which the dealer says shows what work had been done to the car prior to sale. It also said that the dealer had not agreed to provide a second key.

The record of work done does not appear to show a full service but rather a detailed inspection which includes a number of service items. Having reviewed it I am satisfied that it sets out in some detail the work which was carried out. However, I consider BMWFS should arrange for written confirmation from the dealer to be sent to Miss T that a service as required by the manufacturer was carried out by it prior to the sale plus details of the work done. If it is unable to provide confirmation that a service as required by the manufacturer was carried out BMWFS should pay Miss T £250.

As for the matter of the key I have noted that the dealer says it didn't offer to provide one. However, as I have set out in my provisional decision it is usual for cars to come with two keys and if one was missing I would expect it to have brought that to Miss T's attention. Therefore I consider BMWFS should arrange for a second key to be provided.

Putting things right

Miss T should be given confirmation of the service carried out and a second key.

My final decision

My final decision is that I uphold this complaint and I direct BMW Financial Services (GB) Limited to arrange for Miss T to receive written confirmation that a service as required by the manufacturer was carried out shortly prior to the sale with details of the work done. If that cannot be provided it should pay Miss T £250. It should also arrange for a second key to be provided to Miss T.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 19 January 2023.

Ivor Graham
Ombudsman