

The complaint

Miss A is unhappy that a car supplied to her under a hire purchase agreement (HP) with Mercedes-Benz Financial Services UK Limited (MBFS) was of an unsatisfactory quality.

What happened

In March 2023, Miss A was supplied with a used car through a hire purchase agreement with MBFS. She paid an advance payment of £9,000 and the agreement was for £47,245 over 48 months; with 48 monthly payments of £860.26 and a final payment of £23,925. At the time of supply, the car was around two years old, and had done 17,850 miles.

When Miss A collected the car she noticed that it had a dent and scratch on the paintwork, which she arranged with the dealer to have rectified at a later date and took the car from the dealership. Shortly after, Miss A was pulled over by the police and following some initial investigations they advised her it was likely that the car had been cloned. Due to a police identifying marker having been registered against the car, she was advised that this may happen again. Miss A states that she was stopped again on a subsequent occasion.

Miss A contacted the dealership to discuss the issue. Following this, the dealership confirmed that all the required checks had been completed prior to Miss A collecting the car. She arranged for her own checks on the vehicle to be carried out, which identified the fact that the car was showing as having been seen at a salvage auction in July 2022. Miss A states that she attempted to sell the car privately but was unable to due to the history showing for the vehicle, and when she asked the dealership to retake the car they refused.

Miss A complained to MBFS. The basis of her complaint was that the vehicle she had purchased had had its identity compromised prior to her purchasing it and she therefore wished to reject the vehicle.

In May 2023 MBFS provided their final response to Miss A's complaint. They confirmed that at some point during the time that the car was held in the possession of the approved used car dealer, after having been purchased from Mercedes-Benz UK Ltd, the identity of the vehicle was compromised with the vehicle chassis number being switched for a similar or same model vehicle and as a result, the vehicle subsequently purchased by Miss A has also gained a police marker. MBFS stated that as they had come to the conclusion that the event happened while the vehicle was held in the possession of the approved used car dealer, it was not something that they could have controlled or foreseen. They did not uphold the complaint.

Miss A wasn't happy with what'd happened, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that the issues relating to the car weren't about a physical fault with the car, but rather related to the way that information about the car had been recorded, both by the police in terms of the marker that had been placed against the car and also a salvage marker that was placed on the car's record on the HPI register. He stated that in terms of the police marker, he did not believe that it was anything that MBFS (or the supplying dealer)

would have been aware of, or could have done anything about. In relation to the salvage marker on the HPI check, the investigator stated that he was of the opinion that this was not present when the car was supplied to Miss A. He concluded that he didn't think the car MBFS supplied to Miss A was of unsatisfactory quality, and had not seen anything that could be considered as a false statement of fact to support an argument that the car or the agreement was misrepresented. He therefore did not uphold the complaint and didn't think it would be fair or reasonable to ask MBFS to do anything to put things right.

Miss A didn't agree with the investigator and stated that some of the information used by the investigator had been incorrect. She said that the salvage marker had been on the car when it was sold to her, and had been cloned a year previously. She stated that she had trusted the HPI check provided with the car and therefore she did not agree with the decision.

Because Miss A didn't agree, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 (if appropriate) what I consider was good industry practice at the time. Miss A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

In this instance, it's not disputed there was a problem with the car when it was purchased by Miss A in March 2023, that problem being the fact that the car chassis number appears to have been compromised and a car with the same details was seen at a salvage auction in July 2022. Further to this, it is also not in doubt that this has resulted in issues for Miss A such as being stopped by the police and having difficulties in selling the car should she wish to do so. As such, I'm satisfied that I don't need to investigate this element further. What is in question here is whether MBFS should have carried out checks that would have identified that the car had been seen at a salvage auction in July 2022 and alerted Miss A to this prior to her entering into the hire purchase agreement.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, MBFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. The Act specifically considers "what a reasonable person would regard as satisfactory taking account of description, price and other relevant circumstances.

I have considered whether the fact that the vehicle's identity had been compromised and a vehicle with the same chassis number had been seen at a salvage auction could reasonably be considered to be a relevant factor in the vehicle's history. I am satisfied that it could. I have therefore considered whether the fact the vehicle had been seen at a salvage auction

previously would have an impact on whether a reasonable person would consider it to be satisfactory, taking into account all the relevant circumstances. The vehicle purchased by Miss A was only two years old, and purchased from an approved used car dealer. I am therefore not persuaded that having a history such as this could be considered to be satisfactory.

I have then considered whether the history of the car was misrepresented to Miss A in any way. There is no evidence to suggest that this is the case.

I have considered whether MBFS should reasonably have had cause to believe that the identity of the car had been compromised, and therefore whether it was appropriate for them to carry out an additional level of checks. As part of their submissions to this service, MBFS have provided details of the checks that were completed prior to Miss A entering the hire purchase agreement and taking ownership of the car in question. This shows that the vehicle was clear of finance, was not registered as stolen and was not imported. They have also provided this service with a document outlining their Minimum Vehicle Condition Standards in place for approved used cars at the time that Miss A purchased the vehicle. This document outlines the fact that in addition to physical checks being carried out to the vehicle, they would also require;

- The vehicle Registration Document (V5/C)
- The HPI or Experian clearance form
- Odometer Change Record
- Independent Mileage Verification if first owner is not MBFS or an official Retailer
- Mileage Plausibility checks

It is noted that the checks carried out did not include a check to identify whether the car had been previously been seen at a salvage auction. I have considered whether it is reasonable for this check not to be carried out. It is relevant here to consider the history of the specific vehicle in question. Having been registered as new by MBFS in March 2021, the car was purchased by the approved used car dealer to be used as a demonstrator. Given the fact that the vehicle had been in the possession of the approved used car dealer from the point of sale to the time it was sold to Miss A, I am satisfied that it is reasonable for MBFS not to have had any reason to consider that it was possible that the vehicle's identity had been compromised or to have reason to believe that further checks may have been necessary.

I have therefore concluded that MBFS could not have been aware of the adverse history of the car at the time the ownership was transferred to Miss A, and I do not uphold her complaint.

MBFS have already offered Miss A £200 as a gesture of goodwill for the time it took for them to issue their response to her. I would expect MBFS to honour the payment should Miss A wish to accept it.

My final decision

For the reasons explained, I don't uphold Miss A's complaint about MBFS.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 9 July 2024.

Joanne Molloy
Ombudsman