DRN-5810732

The complaint

Mr C complains that information wasn't disclosed to him when he acquired a used car under a hire purchase agreement with Mercedes-Benz Financial Services UK Limited trading as Mercedes Benz Finance ("MBF").

Mr C appointed a representative to deal with his complaint after it was referred to the Financial Ombudsman, however I'll refer to both throughout.

What happened

The parties are familiar with the background of this complaint so I will summarise what happened here.

In February 2023 Mr C entered into a hire purchase agreement with MBF to buy a used car. The cash price of the car was around £29,700.

In around June 2024 Mr C made enquiries about part exchanging the car. He contacted a buyer I'll call M, and said he was told that the car had previously been reported as stolen and recovered and put through a salvage auction.

He said the car was valued at around £25,000 but M declined to buy it due to the car's history. He complained to the dealer and asked for a return of his deposit, and all of his finance payments. He said that dealer told him this had been missed at the point of sale, and as a gesture of goodwill it would buy the car back at fair market value which it said was £21,000.

Mr C complained to MBF. He said that at no point was previous damage to the car pointed out to him. He said that he wouldn't have bought the car if it had been. He said that the dealer had committed an offence under regulation 6 of the Consumer Protection Act 2008.

MBF said that at the point of sale the car had been free from markers, and no damage was identified. It said that there wasn't any evidence of damage at the point of sale, and the car was fit for purpose. It acknowledged that the dealer had made an offer to buy the car, but it said it wasn't involved in this and didn't uphold the complaint.

Mr C referred his complaint to the Financial Ombudsman. He said the situation had caused him stress and he was left with a car that was devalued. He said that foreseeable harm could have been avoided as he was able to establish the history of the car post-sale, yet the dealer didn't. He said the offer was disgraceful and he wanted a return of his full deposit and all his finance payments.

He added that he had no choice but to use MBF even though he'd been approved with another broker at a lower interest rate.

An investigator here considered the complaint. She said that she didn't think there was a misrepresentation, or misleading omission and she had seen that the dealer had completed relevant checks and were unaware. She didn't uphold the complaint.

Mr C disagreed, his representative provided further submissions. In summary he said:

- The Consumer Protection from Unfair Trading Regulations 2008 (CPUTR) deals with misrepresentations. Negligence is not an adequate defence to an allegation of misrepresentation.
- The dealer failed to carry out adequate provenance checks to establish the true history of the car, specifically that it had been stolen and held in criminal hands for some time before being returned to the road. The dealer had conducted a check, but the third party did not return stolen data.
- The third party had threatened legal action but had made a statement which he said admitted that flagging a stolen car would undermine the value, but that loss would be borne by consumers.
- Another third party's checks were far more robust and cheaper.
- The Association of British Insurers (ABI) code of practice for the Categorisation of Salvage Vehicles acknowledged there was a need to provide the correct information in all cases to consumers and traders alike.
- These types of cars are stolen because they are fast enough to outrun police cars, and they are abused and presumably not serviced during that period.
- He said if a potential buyer was told the car was stolen, he would not buy it.
- He said the correct outcome would be to unwind the agreement and a return of the payments and deposit, less a deduction for use of £0.25 per mile.
- He said the implications of the case not being upheld meant that consumers were exposed to sharp sales practices allowing traders to sell whatever they liked believing sufficient checks had been carried out which undermined the protection of the CPUTR. He said that the case must be referred upward and possibly out of the Financial Ombudsman too.
- He said that it didn't say in any regulations that a dealer must only carry out a check with a specific third party.
- He questioned whether the Financial Ombudsman recommended the specific third party that conducted the checks, or if it was a preferred supplier or paid commission to endorse their services.
- He said the supplying dealer is also a regulated business and must abide by the rules the Financial Ombudsman Service impose upon them and were jointly responsible.
- He pointed out that there were decisions which had upheld the same situation.
- He said that the third-party company had admitted it didn't report stolen/recovered cars with no damage

As an agreement couldn't be reached the complaint has been passed to me to make 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 what is fair and reasonable, I need to have regard to the relevant law and

regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

Firstly, I need to point out the scope of my decision as it seems a number of points have been brought to the Financial Ombudsman that hadn't been made to MBF.

In his referral to our service Mr C said that he had no choice but to use MBF even though he'd been approved through another broker at a lower interest rate. That didn't form part of his complaint to MBF. So, if Mr C is unhappy about that he'll need to make that complaint to MBF as I'm not dealing with it in this decision.

Mr C (through his representative) has also made a number of points which relate to wider industry practice in selling cars and how our service operates. I don't think those points are relevant to the individual circumstances of this complaint, and arguably cover matters that MBF didn't consider before it issued its final response. Materially new information has however been shared with the parties before I've made my decision.

I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

The Financial Ombudsman Service is an impartial organisation. We don't recommend or endorse third parties. We're also not the regulator. That's the Financial Conduct Authority (FCA) insofar as it relates to regulated financial activities and businesses. If Mr C or his representative is concerned about MBF or the broker's conduct they'll be able to discuss those concerns with the FCA. But it won't look into his individual complaint.

Our role is to look into the individual complaint that was made to MBF. It isn't to impose or change legislation, rules or guidance. Our remit is intended to be an informal alternative to the courts. If Mr C or his representative want to look at wider concerns in the industry and bring in other parties, then the most appropriate place to do that might be the court.

Section 56 of the Consumer Credit Act 1974 has the effect of holding MBF responsible for any antecedent negotiations between Mr C and the broker, who acted as MBF's agent when setting up the hire purchase agreement. What this means is that anything the broker said or did when arranging the hire purchase agreement, I can consider against MBF.

I've not seen any persuasive evidence that Mr C was told something that turned out to be false, so I don't think that that there's a clear false statement of fact or that the agreement was misrepresented to him. But I think the information about car's history could be relevant and if key information about the history of the car wasn't disclosed that can be a misleading omission.

I've reviewed relevant guidance issued by the Chartered Trading Standards Institute (CTSI)[1]. That information sets out to the motor trade steps to take in terms of compliance with relevant law[2], such as avoiding misleading actions or omissions, and poor or unfair practices.

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[1] Car traders and consumer law – Guidance for dealerships – can be found at https://www.businesscompanion.info/focus/car-traders-and-consumer-law

[2] Among other things, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Rights Act 2015, and the Consumer Contract Regulations 2013

The guidance says that making a misleading omission could be unfair. An example given is that of failing to provide information relating to the car's previous accident or write-off history if the credit broker is aware of it. Their awareness of it is a key consideration here.

I've considered the guidance alongside the checks that were carried out before Mr C entered the agreement, and whether those checks should have alerted the broker to the history of the car. And in this case, I don't think they should have done. The credit broker has shown they carried out a check with a third party prior to referral to MBF. This check is used to assess a number of things about the car in question – including whether or not the car has previously been in an accident or written-off – as well as any previous finance agreements and the number of previous registered keepers. I'm satisfied that it's likely these checks wouldn't have led the credit broker to make any additional enquiries about how the car had been used, or how it had been recorded on other databases. I say this because having seen the evidence of the check, it didn't report any concerns with the car. It didn't show the car had been classified as stolen, or had any other markers applied to it. The third party that supplied the check is recognised in the industry although clearly other third parties can produce similar checks. As such, I don't think the credit broker needed to continue to make enquiries about the previous history of the car, as there wasn't anything contained in their checks that would have alerted it about any other database information.

I appreciate more checks could have been carried out by the broker, and Mr C has shown that it's possible to find out the car was previously sold at a salvage auction. But just because other checks could have been completed, it doesn't mean that MBF have misled Mr C or treated him unfairly by undertaking the checks they chose to at the point of supply. I'm more satisfied than not that the checks completed prior to Mr C entering the agreement were adequate in this case. There's no obligation on a trade seller making further checks, with specific providers, although equally there's nothing stopping a potential buyer from doing so.

Mr C found out that the car was the subject of a salvage sale. I think all the parties accept that. I've thought about the definition of an insurance write off under the Association of British Insurers (ABI) code of Practice[3] which only requires categorisation of recovered vehicles that have sustained damage. The code doesn't apply to vehicles that have minimal or no damage. It says:

"*Recovered stolen vehicles that are undamaged or with only minor non-structural damage fall outside of this code of practice. All recovered vehicles must be notified to* [the Motor Insurance Anti-Fraud Theft Register]. *The record must not be deleted*."

The evidence that's been provided to me doesn't show that any of the ABI specified salvage categorisations apply to Mr C's car. The alternative check provided by Mr C's representative also indicates that the car was not recorded as stolen. It seems to only show that the car was previously sold through a salvage auction.

Mr C has supplied the details of the car when it went through the salvage auction. I can see that it is described as stolen/recovered with a retail value of £35,990. The mileage at the sale was 8,101, and the description says, "*damage to this vehicle is side and normal wear*". The images don't show any obvious damage and there's no indication the car has been written off for insurance purposes. Based on the retail value, which I've checked and matches average retail valuations at the time, I'm more persuaded that the car was sold at auction after an insurer settled a claim and recovered the car with light or no damage.

I know Mr C also has concerns that the re-sale value of the car has now been adversely impacted by the salvage status. I'd like to remind him that the car is the asset of MBF for the

[3] ABI Code of practice for the categorisation of motor vehicle salvage – November 2019

duration of the agreement. Mr C needs to seek their consent before attempting to sell the car – and as the car hasn't yet been sold, it doesn't appear that loss has happened.

I've noted that the selling dealer also made an offer to buy the car back albeit at a different price to the quote that Mr C originally obtained from M. The evidence he's supplied indicated M quoted £22,375 before declining to buy it. However, I've also noted that M's offer was based on inspecting the car, so it was also subject to change. The valuation of a car is also based on a number of other factors such as mileage, service history and market fluctuations. But, it seems Mr C had an opportunity to mitigate any further losses or depreciation by considering the offer of £21,000 from the selling dealer.

I'm sorry that Mr C feels he's lost out. I accept that M might have used the information to reduce its offer to him. But the amount it quoted for the car isn't necessarily its true market value, and it was subject to change after it inspected the car. The dealer was willing to buy the car, and I've not seen anything to show that offer wasn't a true reflection of market values and the condition of the car at the time. Mr C might also be able to sell the car privately, with permission from MBF, and he'll be able to negotiate a fair price that he's happy with. He could also use the car as part exchange value or simply hand it back instead of paying the optional final payment.

I've not seen any evidence which shows that the issue has affected Mr C usage of the car. So, considering all the individual circumstances of this complaint I find I don't have grounds to direct MBF to allow him to reject the car or to compensate him.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 November 2025.

Caroline Kirby
Ombudsman