

complaint

Mr K complains that an agreement he made with Mercedes-Benz Financial Services UK Limited (trading as Mercedes-Benz Finance) to lease a car was misrepresented to him. He says that without the misrepresentation he would have been left with £11,000 of equity in the car at the end of the agreement.

background

Mr K agreed to hire the car in 2012, for two years. Before signing the agreement he had sent the dealer an email on 11 February saying he wished to go ahead subject to a number of conditions. One was that at the end of the agreement he either kept the car and paid the residual value to Mercedes-Benz Finance or he handed over the car over and owed nothing. In 2014, when the agreement was ending, he was told that the car had to be returned to Mercedes-Benz Finance.

Our adjudicator did not recommend that the complaint was upheld. She said that the conditions specified by Mr K on 11 February had not formed part of the agreement he had signed. There was no evidence that Mercedes-Benz Finance had agreed to those conditions. The terms of the agreement explained that the car did not become Mr K's property. She noted that a salesman had emailed Mr K saying that at the end of the contract the car could be purchased or returned. But she did not accept that that meant he had accepted Mr K's conditions. The salesman could simply have been explaining that the dealer could purchase the car at the end of the agreement and sell it to Mr K. She did not accept that the agreement had been mis-sold.

Mr K disagreed and asked for an ombudsman to review the complaint. In summary, he said that his requirements had been made quite clear in the 11 February email. They had been discussed and agreed by the dealer. The dealer had accepted his deposit on that basis. He argued that the parties had entered into a contract on 11 February, and the deposit had been taken as a direct result of that email. The conditions he had specified had formed part of the later contract to obtain the car. He questioned whether we had any evidence that the dealer had not accepted his conditions. He said he had later signed the credit agreement in good faith that it represented the conditions he had specified. He argued that the dealer had had a duty to highlight any changes in that agreement from what had been agreed under the contract made on 11 February. He had entered into the credit agreement because of misrepresentations made by the dealer. He said he had not received any proper response when he raised his concerns with the dealer and Mercedes-Benz Finance, because they knew they were at fault. He said he had been seriously misled, and because of the misrepresentation we should uphold his complaint and award full damages and compensation.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The email of 11 February which Mr K sent to the dealer when negotiating about the car said he was happy to proceed with "purchase" subject to conditions which included:

“At the end of the Agreement, either I keep the vehicle and pay the residual value to the Mercedes-Benz Finance or I hand over the vehicle, I owe nothing. I am under no obligation to pay to keep the vehicle once the agreement comes to an end.”

That email ended by Mr K giving his credit card details and authorising the dealer to take a £500 deposit.

Before this, on 2 February, in an exchange of emails during the negotiations, the sales consultant had said in an email to Mr K that “At the end of the contract the car can either be purchased or returned to Mercedes-Benz finance.”

The hire agreement, signed in March 2012, made no reference to any right to purchase the car at the end of the two year hire period. However when Mr K first complained to the dealer, in January 2014, the dealer said that if Mr K wished to keep the car at the end of the term, it would purchase it from Mercedes-Benz Finance and sell it to him. Mr K said that he could not settle the existing finance, and as far as he was concerned there would be considerable equity left which he would use as his deposit for the purchase of a new car. When Mr K complained to Mercedes-Benz Finance, it repeated the offer made by the dealer.

I can understand why Mr K might have been concerned that the right to buy the car at the end of the hire period was not included in the credit agreement with Mercedes-Benz Finance: he had made that clear that he wanted to be able to do that and he had been told that it would be possible. But, when he raised his concern he was told (in adequate time before the contract ran out) that in fact he could arrange to buy the car, through the dealer which would buy it from Mercedes-Benz Finance. So in fact he was able to purchase the car as he had wished.

When I tried to clarify with Mr K why he thought he should have had equity in the car at the end of the hire period, he said that that had been the case every previous time he had leased a car from Mercedes-Benz. At the end of the term he had been able to part-exchange the car for a new one, and there had always been a large amount of equity left which he had used as a deposit for the new vehicle. The dealer had known he expected that from the outset.

While I haven't seen any credit agreements Mr K had for previous cars, from what he says it sounds to me as though they might have been *hire purchase* agreements, rather than *hire* agreements (sometimes known as finance leases) like this one. However even in the condition he sought, he accepted that he would have to pay the “residual value” for the car if he wanted to keep it. The term residual value is used in car leases to mean the estimated value of the car at the end of the lease, and is used to calculate the payments when the lease is being set up.

It seems that Mr K assumed that he would have equity in the car at the end of the agreement, because of the way previous agreements had worked. But each agreement is separate. I have not seen anything in the exchange of emails, at the time Mr K paid the deposit or signed the agreement, to show that Mr K had been told he would be left with any equity in the car if he signed the agreement - only that he could purchase the car. Even his own email suggested that he expected to pay the residual value ie what the car was then worth, if he wanted to keep it. So it seems to me that the offer made by the dealer and Mercedes-Benz Finance to let him to buy the car was a fair and reasonable response, even if there had been any mis-representation about whether the agreement would give him an entitlement to purchase the car. Therefore I cannot see that it

would be fair or reasonable for me to expect Mercedes-Benz Finance to do more or to pay Mr K any damages.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 9 November 2015.

Hilary Bainbridge
ombudsman