

complaint

Mr H complains that Mercedes-Benz Financial Services UK Limited asked him to pay an excess mileage charge when he voluntarily ended a hire purchase agreement.

background

In June 2011, Mr H acquired a car financed by a hire purchase agreement. In October 2014, he voluntarily terminated it. Mr H returned the car. He was later asked to pay excess mileage charges of £1,406.04. Mr H is not happy with this. He says he had paid all he owes under the agreement. Mr H was not asked to pay this amount when he returned the car. All he should have to pay is 50% of what he owed under the agreement. Mr H brought a complaint to us to consider.

The adjudicator did not recommend that the complaint should be upheld. She considered that Mercedes was entitled to charge an excess mileage charge even when Mr H had paid 50% of the sums due under the agreement. This was set out in the terms of the hire purchase agreement. This position is not affected by the Consumer Credit Act 1974 (CCA).

Mr H does not agree. He says that the agreement says that once he has paid off 50% of the total sums, his liability ends. The termination clause does not refer to an excess mileage charge. Mr H made all his payments on time under the agreement. This means he does not have any accrued liabilities which he had to pay under the agreement.

The adjudicator responded to say that the 50% meant that Mr H did not have to pay early termination fees.

Mr H says he has taken reasonable care of the car and so should not have to pay a mileage charge. He says it is contrary to section 100 of the CCA. Mr H points out that he has paid over 50% of the sum due under the agreement, and so he should not have to pay anything else.

my findings

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

I note that Mr H made all the payments due under the agreement before he terminated it. He says in these circumstances, no liability has accrued during its term. He took reasonable care of the goods, and so Mr H says he should not have to make any additional payment. Mr H says this is confirmed under the termination clause in the agreement.

I do not however consider that this clause can be read in isolation in the agreement. Other terms make it clear that if Mr H exceeded an annual mileage allowance of 10,000, he would be charged a fee on termination. Mr H went over this figure. In lines with the terms of the agreement he signed, Mercedes is entitled to ask him to pay an excess mileage fee.

I have seen no evidence to show that Mr H did not exceed the allowed mileage or that the excess mileage charge has been calculated incorrectly.

Mr H strongly believes that he is not legally liable for excess mileage in the event of voluntary termination. This appears to be a significant part of his argument for not paying the

excess mileage. Mr H says that legally he is not liable to pay excess mileage if he voluntarily terminates the agreement and has paid more than 50% of the payments due under it. He says that the mileage he has travelled is reasonable wear and tear. However, the contract specifies a mileage allowance and it is therefore fair and reasonable that this is taken into account when interpreting the reasonable condition of the car on its return.

I do not consider that Mercedes has acted incorrectly in applying the excess mileage charge and do not consider that it would be fair or reasonable for me to require it to write-off the outstanding amount of the charge. I find that the excess mileage charge was clear, and that Mr H agreed to be bound by it when he signed the hire purchase agreement.

I appreciate Mr H will be unhappy with my decision as I know he feels very strongly about this matter. However, he is not bound by it. If he does not wish to accept my decision, he can choose to consider alternative action against Mercedes, for example through the courts.

my final decision

For the reasons I have explained, my decision is that I do not uphold this complaint.

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

Rosemary Lloyd
ombudsman