

complaint

Miss A bought a car on hire-purchase through Black Horse Limited in February 2009. She complains that she was misled about its previous owner. She says she only found out it was previously owned by a rental company when she tried to sell it. That sale fell through and she has been unable to sell the car since.

background

Before agreeing to buy the car Miss A says she asked the dealer about the original registered keeper. She says she was told that it was a subsidiary company of the manufacturer. She says this was the most significant factor in her decision to buy the car, as she had previously been misled into buying a former rental car.

Miss A says she tried to sell the car in August 2011. She says she told the prospective buyer what she had been told by the dealer in 2009. The prospective buyer asked for clarification, which Miss A sought from the dealer. The dealer replied that the car had been purchased direct from the manufacturer and that the registered keeper was understood to be its subsidiary company. Based on this information, a sale was agreed at £31,500 and the buyer paid a deposit. However, after Miss A delivered the registration document, the buyer withdrew, as she realised that the name of the previous registered keeper belonged to a car rental company. The rental company has also confirmed that the car was used for daily rental purposes. I understand it was leased to the manufacturer for use by the latter's customers.

Although the dealer accepts it gave inaccurate information to Miss A in August 2011, it does not accept that it did so in 2009. Black Horse says the dealer was not required to give information about the previous owner. It also argues the previous keeper's identity would have been apparent as soon as Miss A received the registration document. Black Horse also does not believe that Miss A's ability to sell the car has been affected.

my provisional findings

In my provisional decision issued in April 2013, I explained why I was not proposing to uphold Miss A's complaint.

I invited both parties to let me have their further comments. Black Horse has not responded to my provisional decision. Miss A's representative has made further representations about the value of the car and has provided a letter from the person who offered to buy the car in 2011.

my findings

I have considered all the available evidence to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, my decision remains the same. I accept there was a misrepresentation which influenced Miss A's decision to take the car, but I do not consider there is sufficient evidence that she has suffered a financial loss.

Miss A's representative agrees with what I have said about the misrepresentation. Black Horse has not made any further comments. Therefore, I do not change my findings that a misrepresentation occurred. I set out my findings again below. However, I will address the

additional information provided and comments made by Miss A's representative about redress.

misrepresentation

I shall explain at the outset the basis upon which this service is able to consider the complaint against Black Horse. As Miss A bought the car under a regulated hire-purchase agreement, the Consumer Credit Act 1974 provides her with certain protections. In particular, section 56 of the Act effectively makes Black Horse responsible for negotiations conducted by the dealer, which arranged Miss A's loan with Black Horse, although the dealer continues to be responsible in its own right as well. For the purposes of section 56, negotiations began when Miss A entered into communications with the dealer and include any representations made by the dealer to Miss A and any other dealings between them before she entered into the agreement.

I have therefore considered what I think is more likely than not to have happened at the time Miss A agreed to buy the car, based on what the parties have said and provided.

I consider the August 2011 correspondence between Miss A and the dealer to be useful evidence when determining what is more likely than not to have happened in 2009. In 2011, Miss A wrote to the dealer to say that she had a buyer for the car. She said:

"I have told the prospective buyer that the vehicle was owned from new by (name of manufacturer) prior to my ownership, but at the time of my purchase I was not sure whether you meant your company or the manufacturer.

Because the buyer has asked me to clarify this point would you please clarify as to whether the company (name withheld), as shown in the vehicle's V5C document relates to yourselves or (the manufacturer)."

As the names of people and organisations who are not party to this complaint are being withheld, I will explain that the manufacturer's name also appears in the dealer's company name, though they are not connected.

The response was as follows:

"I have spoken to (name withheld), the salesman concerned, and we can confirm that we purchased this vehicle direct from (the manufacturer). The previous registered keeper shows as (name withheld) and we understand that they are a subsidiary company of (the manufacturer)."

In my view, this exchange indicates that a discussion about the previous ownership of the car is more likely than not to have taken place at the time Miss A agreed to buy it. Miss A clearly refers to such a discussion. The response does not contradict her. Given the author of the response spoke to the salesman concerned, it was open to him to correct any false recollection on Miss A's part about point of sale discussions. However, he does not. I also consider the fact that inaccurate information is provided in the above response about the link between the previous registered keeper and the manufacturer, tends to confirm that Miss A was indeed given similar inaccurate information at the time.

The salesman has since provided a statement confirming that he told Miss A that the car had been purchased from the manufacturer. He says it is not common practice to discuss previous keepers of vehicles when selling used cars, unless requested by the customer. However, he does not deny that previous ownership was discussed with Miss A. Indeed the dealer's solicitors can only say that their client does not admit that Miss A was told that the original owner was a subsidiary of the manufacturer. They go on to say that if Miss A was so informed it was a genuine mistake.

On balance, I am satisfied that Miss A was wrongly told that the first registered keeper was a subsidiary company of the manufacturer when in fact it was an unconnected car rental company. I see no reason why she would have queried the acronym on the registration document. I do not think the identity of the rental company would have been apparent from the acronym to an ordinary consumer. Indeed, the dealer's solicitors appear to suggest that their client's own salesman was mistaken about the identity of the original keeper.

I also accept Miss A's testimony that she probably would not have bought the car had the ownership not been misrepresented to her.

Miss A has said as follows:

"...I had no thoughts as to precisely what (registered keeper's acronym) stood for, the vehicle was sold to me as an ex (manufacturer's name) vehicle...I therefore had no reason to query this, as I had always assumed that it was part of (the manufacturer), as I had been told on two occasions.

Owning a vehicle belonging to (the manufacturer) was for me a confirmation that it would have been maintained to the highest standard with little or no consideration as to expense and that it would have been driven by a company executive..."

Miss A was making an assumption about who had driven the car before she bought it, given its previous corporate ownership. She was also making an assumption, which may be unfounded, that rental cars are generally not well-maintained. However, it is a credible reason for why Miss A may have been content to buy an ex-business, but not necessarily ex-rental car, particularly if she was thinking of selling it to a private buyer in the future, as seems to have been the case.

The Office of Fair Trading has issued guidance for second hand car dealers to aid compliance with the Consumer Protection from Unfair Trading Regulations 2008, including avoiding creating a misleading impression about the previous usage of a vehicle. The example set out in the guidance is giving the impression that a vehicle has one previous user when it is an ex-business use vehicle that has had multiple previous users, such as an ex-rental vehicle. Whilst the guidance was not published until 2010, the regulations have been in force since 2008. It is precisely because previous use as an ex-rental car might put a buyer off that the OFT warns against such practices, which supports Miss A's statement that she would not have bought the car had she been given accurate information about its ex-rental history.

redress

Miss A wants to be put in the position she would have been in had she not been misled. Miss A says she would not have bought the car, but has asked for compensation based on the sale she missed out on in 2011. This would put her in the position she believes she would have been in had the car not previously been used for hire. It is not the position she would have been in had she not been misled about the car.

The usual remedy when a person has been induced to enter into a contract they would not otherwise have entered into is to restore the parties to their pre-contract position. However, this is not always possible or appropriate.

I have considered whether it would be fair and reasonable to 'undo' the agreement, so that the parties are returned to their pre-contract position. Miss A would have to return the car, but I would be unable to ask Black Horse to return the monthly payments she has already made because this would mean she would have paid nothing for the car for the time she has had it. This would leave Miss A in an unsatisfactory position, particularly as she is approaching the end of the hire-purchase agreement and has already paid the majority of her monthly repayments.

I have therefore considered whether Miss A has suffered financial loss for which she can be compensated.

Black Horse argues the value of the car is unaffected by its previous ownership. Miss A's representative believes ex-rental cars are poorly maintained, which puts off buyers. However, he does not allege that Miss A's car was in poor condition when she bought it. The car had been serviced, albeit its first service was late. Also, Miss A has not complained that she experienced any problems with the car associated with its previous use, having covered about 59,000 miles by October 2011.

Miss A's representative says the car's three-year warranty would have been invalidated because it had not been serviced in its first year. I have not seen the terms of the warranty, but when Miss A tried to sell the car in August 2011 the warranty would have expired in any event.

Miss A's representative has also provided a further letter from the person who offered to buy the car in 2011. The prospective purchaser says she had worked in the administration department of a car auctioneer many years ago and was aware that in many cases cars that were owned by taxi or self drive hire companies achieved a lower price. She says before she made her decision she consulted a former auctioneer colleague who advised her that she

should not buy the car unless it was priced between £3,000 and £5,000 less than an equivalent model. She withdrew from the transaction as a price reduction was not possible.

Miss A's representative, who says he has 40 years experience in the wholesale car market, agrees and considers a compensatory award of between £3,000 and £5,000 should be made.

Whilst I accept the buyer's reason for withdrawing from the transaction, I do not think there is sufficient evidence that Miss A's car was worth £3,000 to £5,000 less because of its ex-rental history. This information is anecdotal and too general. It does not take into account that Miss A's car had covered only 16,000 miles when she bought it, had been serviced, albeit late, and, according to her representative, was not in poor condition. It also does not take into account that Miss A had covered approximately 59,000 miles by October 2011, without experiencing any problems.

When the dealer inspected the car with a view to offering to buy it back in around October 2011, it found the condition to be poor. Miss A's representative disagrees although he does not dispute that it was overdue a service, or that the brakes needed to be replaced. However, it cannot be disputed that Miss A's own use of the car was heavier in the two and a half years she had it before trying to sell it than in its initial one and a half year ex-rental history.

In all the circumstances, I am not satisfied that there is any real evidence that Miss A suffered financial loss because she was sold an ex-rental car.

my final decision

For the reasons given, my final decision is that I do not uphold Miss A's complaint against Black Horse Limited.

I appreciate that Miss A will be disappointed with this outcome. She is not bound by my decision if she does not accept it. Her legal rights remain unaffected.

Athena Pavlou
ombudsman