

complaint

Ms B complains that a hire purchase agreement with Mercedes-Benz Financial Services UK Limited was set up in her name when it should've been set up in her company's name. She also complains about some faults with the car.

background

A car was supplied to Ms B under a hire purchase agreement with Mercedes-Benz Financial Services which she signed in June 2015. She complained to Mercedes-Benz Financial Services last year that the agreement should've been set up in her company's name and not in her name. She wasn't satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. She concluded that Mercedes-Benz Financial Services should've set up the agreement in Ms B's company's name. So she recommended that it should cancel the agreement and remove it from Ms B's credit file.

Mercedes-Benz Financial Services has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- Ms B has provided documents relating to a vehicle supplied by another manufacturer – so they don't support this case in any way;
- its agreement with Ms B was initiated at the dealership and Ms B would've only signed a delivery notice when the car was delivered – all other documents would've been gone through with her at the dealership;
- the order form shows Ms B's name and address and has been signed by her;
- Ms B provided her driving license and proof of her identification;
- an "adequate explanations" document was signed by Ms B and contained her name and address;
- the hire purchase agreement was signed by Ms B and contained her name and address; and
- the direct debit mandate was for Ms B's bank account.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms B and to Mercedes-Benz Financial Services on 22 February 2017. In my provisional decision I said as follows:

"Ms B signed an order form for the car in early June 2016. The order form shows her name and address. The car was delivered to Ms B eight days later. At that time Ms B signed an adequate explanations document and the hire purchase agreement. Both of those documents were made out in Ms B's name and showed her address. The adequate explanations document says, immediately above Ms B's signature: "By signing this Customer Declaration, you are confirming to us that you have been made aware of the circumstances of your finance contract." And the agreement says, immediately above Ms B's signature: "This is a Hire purchase Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by its terms."

Although Ms B says that the direct debit was taken from her company's account, the direct debit mandate which she signed gives her name as the account holder. The invoice for the car is in Ms B's name and shows her address. And Ms B provided her driving licence and counterpart. None of these documents refers to Ms B's company. And I've not seen enough evidence to show that she provided the detailed information about her company that would've been necessary before finance would've been provided to it.

Mercedes-Benz Financial Services says that the agreement was initiated at the dealership and Ms B would've only signed a delivery notice when the car was delivered – all other documents would've been gone through with her at the dealership. But it hasn't provided enough evidence to clearly show that it did so. But I'm not persuaded that Ms B was put under any duress to sign the documents. It was her responsibility to check that the contracts set out the terms that she had expected. And if she was particularly concerned about the contracting party, I would've expected her to check that closely. Ms B signed the agreement – and other documents – to accept the terms that they contained. If she didn't accept those terms she shouldn't have signed the documents. I'm not persuaded that there's enough evidence to show that the agreement should've been set up in the name of Ms B's company or that Mercedes-Benz Financial Services has acted incorrectly in setting it up in Ms B's name.

Ms B has also complained about some faults with the car. Mercedes-Benz Financial Services has provided evidence to show that an oil leak was repaired by fitting a new seal in May 2016 and a reported rattle inside the cabin that was investigated and resolved in October 2016. It has provided copies of the warranty invoices for those repairs. Ms B didn't return the car for repairs from June 2015 to May 2016. So I'm not persuaded that there's enough evidence to show that the car wasn't of satisfactory quality when it was supplied to her. And the evidence shows that the faults have been repaired under warranty.

So I find that it wouldn't be fair or reasonable for me to require Mercedes-Benz Financial Services to cancel the agreement – or to take any other action in response to Ms B's complaint."

Subject to any further representations by Ms B or Mercedes-Benz Financial Services, my provisional decision was that I wasn't minded to uphold this complaint.

Ms B has responded to my provisional decision in detail. She has provided Particulars of Claim which set out the reasons that she considers that her complaint should be upheld.

my findings

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 – and having considered Ms B's Particulars of Claim in detail – I'm not persuaded that I should change my provisional decision.

I'm not persuaded that there's enough evidence to show that the agreement should've been set up in the name of Ms B's company or that Mercedes-Benz Financial Services has acted incorrectly in setting it up in Ms B's name. And I'm not persuaded that there's enough evidence to show that the car wasn't of satisfactory quality when it was supplied to her. So

I find that it wouldn't be fair or reasonable for me to require Mercedes-Benz Financial Services to cancel the agreement – or to take any other action in response to Ms B's complaint.

But nothing that I've said in this decision would prevent Ms B continuing with the court proceedings against Mercedes-Benz Financial Services that she's started – and of which the Particulars of Claim form part.

my decision

For the reasons set out above, my decision is that I don't uphold Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 10 May 2017.

Jarrold Hastings
ombudsman