

complaint

Miss H and Miss M complain about a car hired under a hire purchase agreement with Mercedes-Benz Financial Services UK Limited (trading as Mercedes-Benz Finance).

background

In April 2015 Miss M signed a hire purchase agreement with Mercedes-Benz Finance. This was for a car for her daughter, Miss H, who is the registered keeper. Miss H and Miss M say that the car had some damage when it was delivered, which they repaired. Some other issues arose with the car later, requiring more repairs. The second key was never delivered. They say these are breaches of contract.

They also complain about a misrepresentation. They say that Mercedes-Benz told them that the car had two previous owners. But the registration certificate shows that there have been four previous registered keepers. They say they would not have bought the car if they had known that. They also complain that Mercedes-Benz never told them that the car had previously been involved in an accident. So they want to return the car and get their money back.

Our adjudicator did not uphold this complaint. She thought that the number of previous owners didn't matter as much as the car's age, mileage, and general condition. (She also thought that one of the previous owners was the garage, so the car had only been owned by three previous individuals, not four.) She also thought that if Miss H had really cared about the number of previous owners, she would have looked at the registration certificate to check what she had been told – but she hadn't until 9 months later.

The adjudicator accepted that the car had needed some repairs. But that didn't mean that the car had to be returned. Mercedes-Benz had been entitled to inspect the car and try to fix it itself at its own expense first. Instead, Miss H had taken the car to a family friend's garage, which was a breach of the terms and conditions of the hire purchase agreement. She had not provided an invoice, so the adjudicator could not fairly decide how much compensation Mercedes-Benz should pay her.

Miss H did not accept that assessment, and asked for an ombudsman's decision. So I have considered this complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Our jurisdiction over Mercedes-Benz arises under the hire purchase agreement. Miss H didn't sign it, so she's not an eligible complainant under our rules. So I will treat this as Miss M's complaint. However this doesn't stop me from considering what Miss H has told us and the evidence she has sent us, and so I have still taken these into account.

On 22 April 2015, just a few days after the car was delivered, Mercedes-Benz emailed Miss H to tell her that it had received an estimate from a third party garage to make some repairs to the car. The estimate was for £3,000, which Mercedes-Benz described as "crazy." It offered to do the repairs at its own garage and at its own cost, which it estimated would not

be more than £250. Alternatively it offered to buy the car back. Miss H chose to have the car repaired, which was done.

I think this clearly illustrates the reason why the terms and conditions say that any repairs must be done at a Mercedes-Benz garage. So I agree with the adjudicator that it would not be fair to order Mercedes-Benz to pay compensation for the later repairs. Those repairs may well have been cheaper if they had been done by Mercedes-Benz, instead of by a third party. And without an invoice I don't know how much the repairs cost anyway. (Even after the adjudicator told Miss H why the lack of an invoice mattered, an invoice still hasn't been provided.)

Since Miss H was offered the chance to return the car in April 2015 and chose not to, I think the original damage is not a reason to return it now.

The email I have referred to describes the damage which was present at the time of delivery. I think the damage described was minor. I have also seen a damage report by Mercedes-Benz, dated 4 March 2015 (before it was hired to Miss M). It mentions some damage to the offside wing of the car, near the bumper. It's not clear whether that's the same damage as was referred to in the email, but as Mercedes-Benz was aware of it, I think it's likely that it either repaired it before the car was delivered in April, or it was repaired along with everything else shortly after delivery. Whichever is the case, Miss H and Miss M rely on this report as evidence that the car had previously been involved in an accident which Mercedes-Benz failed to disclose to them. Mercedes-Benz denies that this is the case. There's no evidence about how that damage occurred, or how extensive it was, or that Mercedes-Benz knew that it had been caused in an accident. So I won't infer that it was the result of an accident, or that Mercedes-Benz wrongly withheld information it was bound to disclose.

Whatever went wrong with the car after it was repaired in or around April, Mercedes-Benz is only liable for faults which existed at the time the car was delivered. But the faults may well have developed afterwards. There's no evidence to suggest that the new faults had been present all along. So I don't uphold that part of this complaint.

The fact that the car had four previous registered keepers does not mean that it was previously owned by four private individuals who were driving it around. It is consistent with the car having been hired to two previous individuals. Each time the garage gets the car back, it registers itself as the keeper until it hires it out again. There is no evidence to the contrary, and I think that this is the most likely explanation. There was therefore no misrepresentation.

I accept that failing to provide a second car key is poor service. But Mercedes-Benz offered to supply another key, at its own cost. Miss H did not respond, perhaps because by then she had already decided she wanted to return the car. So I won't award compensation for that. If she changes her mind and wants another key after all, she can ask for one again.

my final decision

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Miss M to accept or reject my decision before 21 October 2016.

Richard Wood
ombudsman