

complaint

Mr B complains about the annual mileage and guaranteed future value under his hire purchase agreement with Mercedes-Benz Financial Services UK Limited. He's being helped with his complaint by his partner.

background

A new car was supplied to Mr B under a hire purchase agreement with Mercedes-Benz Financial Services that he signed in October 2014. He complained to Mercedes-Benz Financial Services in May this year that the annual mileage limit should've been 15,000 miles and that the guaranteed future value was unrealistic. It didn't uphold his complaint about the annual mileage and future value but it accepted that it didn't respond to Mr B's initial letter and that there was a delay in his complaint being set up. It apologised for that and offered £100 to Mr B as a goodwill gesture. He didn't accept its offer and complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He said that the credit agreement states the annual mileage as 12,000 (rather than 15,000) and that it was Mercedes-Benz Financial Services' legitimate commercial decision to decide how it calculated the guaranteed value of the car. So he didn't think that the agreement was misrepresented to Mr B and he said that the £100 paid to him was fair for the poor customer service that he received.

Mr B has asked for his complaint to be considered by an ombudsman. He has responded in detail and says, in summary, that:

- Mercedes-Benz Financial Services hasn't acted in his best interests in relation to the guaranteed future value and hasn't treated him fairly;
- the pre-contract explanation and finance agreement don't clearly display what the maximum annual mileage per annum (or in total) is and there's been no explanation as to why the mileage was set at 12,000 (instead of 15,000) per annum;
- the information hasn't been presented in a way that is likely to be understood by "*the average member of the group to which it is directed*";
- key information being missed off the pre-contract explanation and finance agreement has led to misunderstanding and misrepresentation; and
- he rejected Mercedes-Benz Financial Services' offer of £100 compensation but due to the additional time that he's spent on this he should be entitled to more compensation for his distress and inconvenience.

my findings

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

Mr B signed the hire purchase agreement in October 2014. Immediately above his signature it says:

"This is a Hire purchase Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by it terms".

Mr B agreed to make 36 monthly payments of £510 and the agreement said:

“In addition, if you wish to purchase the vehicle at the end of the period of hire, an Optional Purchase Payment of £19,350.00 will be due 35 months after the first payment.”

So at the end of the agreement Mr B had the option of keeping the car and paying £19,350 (plus a fee) or returning the car and making no further payments. The optional purchase payment (or guaranteed future value) was a figure calculated by Mercedes-Benz Financial Services. If that value was higher than Mr B considered the car to be worth he was under no obligation to pay that amount. It was a commercial decision for Mercedes-Benz Financial Services to set the guaranteed future value. This service wouldn't normally interfere with a business' legitimate commercial decisions – and I see no reason to interfere with Mercedes-Benz Financial Services' guaranteed future value for the car that was supplied to Mr B. Mr B also signed an “Adequate Explanation” document and a document which described how the personal contract plan works. I consider that the information contained in those documents was accurate and consistent with the terms of the hire purchase agreement.

The hire purchase agreement also said that:

“If you do not exercise your right to purchase the vehicle, an excess distance charge will be payable at the rate of 10.00 pence (plus VAT) for each Mile, by which the total distance travelled by the vehicle at the end of the period of hire exceeds the allowed distance, calculated at the rate of 12,000 Miles per year”.

So I consider that it was clear from the agreement that the annual mileage allowance was 12,000 miles – and by signing the agreement Mr B accepted that mileage. There is no reference in any of the documents that Mr B signed to the annual mileage allowance being 15,000 miles. And I'm not persuaded that there was any requirement for the mileage allowance to be specified in any of the other documents that were provided to Mr B.

For these reasons, I'm not persuaded that Mercedes-Benz Financial Services has acted incorrectly in connection with the car's guaranteed future value and annual mileage allowance. But Mercedes-Benz Financial Services accepts that it didn't respond to Mr B's initial letter and that there was a delay in his complaint being set up. It's apologised for that and offered him £100 compensation. Mr B didn't accept its offer but I consider £100 to be fair and reasonable compensation for the distress and inconvenience that he was caused by its failings. So I find that it would be fair and reasonable for Mercedes-Benz Financial Services to pay £100 compensation to Mr B. But I'm not persuaded that it would be fair or reasonable for me to require it to pay any other money to Mr B – or to take any other action in response to his complaint.

my final decision

For these reasons, my decision is that, in full and final settlement of Mr B's complaint, Mercedes-Benz Financial Services UK Limited should pay £100 compensation to Mr B for its failings in responding to and setting up his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 December 2017.

Jarrold Hastings
ombudsman