

The complaint

Mr Y complains about the quality of a car he acquired through a hire purchase agreement financed by Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance (MBFS).

What happened

In September 2019 Mr Y acquired a new car through a hire purchase agreement.

In November 2019 Mr Y reported a rattling noise in the vehicle, and repairs were undertaken to adjust the air vent.

In January 2021 Mr Y reported problems with his parking sensors, and these were replaced. The sensors hadn't been appropriately fixed by a third-party insurance company.

In February 2021 Mr Y reported problems with his brakes, and the car was booked into the dealership for April 2021.

In March 2021 Mr Y contacted the dealership to say the brakes had failed completely, and the car was booked in on 30 March 2021. The dealership found oil in the pipes and said the oil pump needed to be replaced. The parts needed for the repair weren't readily available, and they said it could be October or December before the repair was completed.

The dealership provided Mr Y with a courtesy car whilst he was unable to drive his, but Mr Y was unhappy with this, because it wasn't of comparable comfort to the car he'd hired.

Unhappy with the length of time for the repairs to be completed, Mr Y complained to MBFS and asked to reject the vehicle. He also asked for his monthly payments to be returned whilst he was unable to use the vehicle, along with a refund for the other costs he was incurring for the service plan, and to tax and insure the car.

MBFS sent Mr Y their final response to his complaint in April 2021. They said they had an opportunity to repair the vehicle, and as an update on the parts was due shortly, they wouldn't consider Mr Y's request to reject the vehicle at that time. They said they thought three months would be a reasonable period of time to complete the repair, and if the parts hadn't arrived by the end of June 2021, they'd reconsider Mr Y's case. They offered Mr Y £150 compensation to reflect the distress and inconvenience he'd experienced.

Unhappy with this, Mr Y brought his complaint to this service.

The parts were received earlier than expected, and Mr Y's car was repaired and returned to him at the end of May 2021. Mr Y reported a problem with the windscreen wipers shortly after the car was returned to him, and these were replaced by the dealership.

Our investigator looked into things for Mr Y. She thought the vehicle wasn't of satisfactory quality at the time it was supplied to Mr Y. But as the faults had been repaired Mr Y couldn't now reject the vehicle. She thought that although the courtesy car provided by MBFS was different to the one acquired under the agreement, it broadly met Mr Y's needs. So, as he'd

been kept mobile, she didn't think MBFS needed to refund any of Mr Y's monthly payments. She recommended that MBFS pay Mr Y an additional £100 compensation, so £250 in total, to reflect the distress and inconvenience the situation had caused him since their final response, and that they refund the £27.50 Mr Y paid to declare his vehicle off road, plus 8% interest.

Mr Y didn't agree. He said if he'd hired a car like the courtesy car he'd been supplied with, he would've paid much smaller monthly payments for it, so he should get some of his monthly payments back. He also didn't think the compensation amount fairly reflected the time and effort he'd put into resolving the situation.

As an agreement can't be reached, the case has been passed to me for a decision.

What I've decided – and why

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

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. MBFS as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that the "quality of the goods is satisfactory"

To be considered "satisfactory" the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired new with a cash price of around £41,000. With this in mind, I think a reasonable person would expect to be able to use the car, free from even minor defects, for a considerable period of time.

When Mr Y experienced a failure of his brakes, he'd driven around 9,000 miles in the vehicle. Whilst the cause of the fault hasn't been detailed, there was found to be oil in the pipes, and a new oil pump was required to rectify the fault.

I haven't seen any evidence that the fault was due to driving style or third-party damage, nor does it appear to be as a result of normal wear and tear. I don't think a reasonable person would expect such a serious fault to occur on a vehicle that was around 18 months old and had covered less than 10,000 miles.

On the balance of probabilities, I'm persuaded that the car was not reasonably durable, and therefore was not of satisfactory quality at the time of supply.

Having made that finding, I need to decide what, if anything, MBFS should do to put things right.

The CRA sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. That repair should be done in a reasonable time, and without significant inconvenience to the consumer.

When Mr Y first took his vehicle to the dealership with the problem with the brakes, they didn't know when the part would be available. Mr Y asked to reject the vehicle at that time. MBFS said they wanted to wait and see if the car could be repaired. I think it was fair for MBFS to want to see if the repair could be done in a reasonable timeframe. And, ultimately, that's what happened. Mr Y's vehicle was repaired and returned to a satisfactory condition in around two months. So, I think that Mr Y received an appropriate remedy under the CRA and so he can't now reject the vehicle as well.

MBFS provided Mr Y with a courtesy car whilst the repairs took place. Mr Y was unhappy with the courtesy car, as it wasn't comparable to the vehicle he'd acquired under the agreement. Whilst I appreciate this, Mr Y was kept mobile. He was able to use the courtesy car for his usual activities, and it broadly met his needs. So, I don't think it would be fair to ask MBFS to return any of his monthly repayments made under the agreement.

I appreciate that Mr Y suffered some inconvenience from having to use a courtesy car. This only happened because his original car which MBFS had supplied wasn't of satisfactory quality and needed repairing.

MBFS offered Mr Y £150 compensation to reflect the distress and inconvenience caused at the time they sent their final response in April 2021. Our investigator recommended an additional £100 compensation to reflect the distress and inconvenience caused after this date.

Mr Y has been put to distress and inconvenience in having to take his vehicle to be repaired on different occasions, in thinking that it might take many months for the repair on his vehicle to take place, and in the poor communication between MBFS and Mr Y when arranging to return the repaired vehicle to him.

Overall, I'm satisfied that a total of £250 compensation reflects the distress and inconvenience experienced by Mr Y.

I've seen evidence that Mr Y paid £27.50 to declare his vehicle as SORN, and he did this because he thought it would be eight months before it was repaired, and he then wouldn't need to pay to tax the vehicle for this time. I don't think it was unreasonable for Mr Y to do this based on the information he had at the time. So, MBFS should refund Mr Y for this cost, plus 8% simple yearly interest.

Mr Y said he's faced other costs for the car, like insurance and the service plan whilst he was unable to drive it. Mr Y would've need to pay these costs even if the car wasn't faulty, and he hasn't paid any additional costs for the courtesy car, so I don't think MBFS are responsible for the insurance and service plan costs.

Mr Y said he's paid about £430 in taxi and bus fares whilst he's been without his vehicle. I haven't seen any evidence of these costs or when they were incurred. As MBFS supplied Mr Y with a courtesy car, I don't think they're responsible for these costs.

My final decision

My final decision is that I uphold this complaint and Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance must:

- Pay Mr Y a total of £250 compensation to reflect the distress and inconvenience caused. This includes the £150 they've already offered.
- Refund Mr Y £27.50 for additional expenses to SORN the vehicle, plus 8% simple yearly interest.

If MBFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr Y how much it's taken off. It should also give Mr Y a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 13 April 2022.

Zoe Merriman
Ombudsman