

The complaint

Mr G and Miss G are unhappy that a car supplied to them under a hire purchase agreement with Mercedes-Benz Financial Services UK Limited (MBFS) was of an unsatisfactory quality.

What happened

In August 2021, Mr G and Miss G were supplied with a used car through a hire purchase agreement with MBFS. They paid a deposit of £5,000 and the agreement was for £20,799 with 36 monthly repayments of £337.52 and a final optional payment of £13,625. At the time the car was just over one year old and had done 8,706 miles.

Mr G and Miss G complained to MBFS that they needed to keep visiting the supplying dealership – three times in the first ten months – to have the oil topped up. And they didn't think this was normal.

MBFS didn't uphold the complaint, as they said the dealership hadn't been able to find any fault with the car. Mr G and Miss G weren't happy with this response, and they brought their complaint to the Financial Ombudsman Service for investigation.

Our investigator said he thought the level of oil consumption was higher than would reasonably be expected. And, even though MBFS were unable to find a fault with the car, he thought the excessive oil consumption with a car of this age and mileage meant that a fault was likely to be present.

What's more, because Mr G and Miss G had been suffering from the excessive oil consumption since they took possession of the car, the investigator thought that the car wasn't of a satisfactory quality when it was supplied. And, because MBFS had been given the opportunity to fix the car, and hadn't been able to do so, he said that Mr G and Miss G should now be able to reject the car.

The investigator said that, because Mr G and Miss G had had use of the car, they should pay for this usage. So, he thought MBFS should be able to keep the payments they'd made. But he said that MBFS should refund the deposit plus statutory interest; and pay Mr G and Miss G an additional £150 for the ongoing inconvenience of them having to regularly top up the oil on the car.

Mr G and Miss G accepted the investigator's recommendations and commented that they'd had to take the car back to the dealership for an oil top-up on three more occasions while the complaint had been ongoing. However, MBFS said they would like an ombudsman to make a final decision. As such, this matter has been passed to me to decide.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr G and Miss G were supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, MBFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless MBFS can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr G and Miss G to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr G and Miss G took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask MBFS to put this right.

Having reviewed all the evidence, I can see it's not disputed that the car was returned to the dealership on multiple occasions because it was (and still is) using an excessive amount of oil. But the dealership couldn't find any fault. Nor have they or MBFS been able to provide any explanation for the excessive oil consumption.

When Mr G and Miss G took possession of the car, it was just over a year old and had done 8,706 miles. As this was a used car, I wouldn't expect the same quality as in a brand-new car. And, I'd expect some wear and tear to be present. But I think any reasonable person would expect the car to be free from any significant undisclosed mechanical issues. And I must also consider the price Mr G and Miss G paid for the car - almost £26,000. The more expensive the car, the fewer minor issues I'd expect to be present.

I think that the car using an excessive amount of oil, to the point where it needs to be significantly topped up every few months, is a significant mechanical issue, and one which any reasonable person wouldn't expect to be present in a car with such a low age and mileage. As such, I'm satisfied there's a fault with the car. And, given when Mr G and Miss G first started needing to top-up the oil, I'm also satisfied that this fault was likely present when the car was supplied to Mr G and Miss G. Which makes the car of an unsatisfactory quality when supplied.

Where there's a fault that makes the car of an unsatisfactory quality, the CRA allows for one chance of repair. As the car has been returned to the dealership on multiple occasions, and they've been unable to identify why the car is using so much oil, I'm satisfied that this one chance at repair has taken place. And the fault with the car remains. As such, I'm satisfied that in these circumstances Mr G and Miss G should be allowed to reject the car.

Putting things right

Although the car has been using excessive oil, Mr G and Miss G have been able to continue to use it. As such, I think it's reasonable that they pay for this usage. And I won't be asking MBFS to refund any of the payments they've made. However, this doesn't mean that Mr G and Miss G haven't been inconvenienced by what's happened.

Mr G and Miss G have had to make multiple journeys back to the dealership, for the oil to be topped up and the car to be investigated for the reason for this. And they've explained how frustrating this has been. The investigator has recommended a payment of £150 to recognise this. Which I think is fair, and in line with what I would direct in similar circumstances. So, in the absence of any additional evidence, I intend to adopt this as part of my decision.

So, MBFS should:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr G and Miss G;
- refund the £5,000 deposit Mr G and Miss G paid;
- apply 8% simple yearly interest on the refund, calculated from the date Mr G and Miss G made the payment to the date of the refund [†];
- remove any adverse information relating to this agreement from Mr G and Miss G's credit files; and
- pay Mr G and Miss G an additional £150 for the distress and inconvenience they've suffered as a result of being supplied a car that wasn't of a satisfactory quality.

[†]HM Revenue & Customs requires MBFS to take off tax from this interest. MBFS must give Mr G and Miss G a certificate showing how much tax they've taken off if they ask for one.

My final decision

For the reasons explained, I uphold Mr G and Miss G's complaint and Mercedes-Benz Financial Services UK Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Miss G to accept or reject my decision before 4 April 2023.

Andrew Burford
Ombudsman