

The complaint

Mr T complains that a car acquired with finance from Mercedes Benz Financial Services UK Limited wasn't of satisfactory quality.

What happened

In June 2022 Mr T was supplied with a car and entered into a hire purchase agreement with MBFS. At the point of supply the car was around 3 years old and had covered mileage of around 8,700.

Before collecting the car from the dealership, Mr T was asked to sign a document stating that the car had been checked. Mr T asked the dealership if the car was in good condition and free from damage, and was advised that it was, so he signed the document.

On collecting the car, Mr T discovered that the alloy wheels had scratches and dents. The paintwork had scratches and there was a dent in the back of the drivers seat. Mr T raised these issues with the dealership, who said he could book the car in for the damage to be rectified.

Mr T chased the dealership over the course of around a week and asked when he could bring the car in. He didn't receive a response, so he drove to the dealership and asked to reject the car. The dealership refused to accept a rejection and said it would call Mr T later, but this didn't happen.

Mr T complained to MBFS. In response, MBFS said there were no grounds for rejection because the dealership was entitled to an opportunity to repair the car.

Mr T disputed this and said the dealership had already had several opportunities to repair the issues and had failed to do so.

Mr T exchanged several emails with the dealership regarding the issues with the car and trying to arrange a suitable date for repairs to take place. The car was eventually booked in for repair, but when it was returned to Mr T most of the damage was still present. The dent in the drivers seat hadn't been repaired and the alloy wheels were still damaged.

Mr T brought his complaint to this service. He wants to reject the car.

Our investigator upheld the complaint. He said that based on the emails between Mr T and the dealership, he was satisfied that there were faults with the car. The investigator said that Mr T had provided the dealership with ample opportunities to repair the car and that with no attempt at repair having been made within the first 30 days, had asked to reject the car within this time. The investigator said that MBFS should've accepted rejection. He also said that (outside of the first 30 days) the dealership had attempted repairs, but these hadn't been successful at rectifying all the issues. The investigator concluded that the car wasn't of satisfactory quality and that Mr T should be allowed to reject the car.

Mr T contacted the investigator to explain that he had now sold the car and settled the

finance agreement. He said he'd suffered a loss of around £10,600.

Our investigator said that MBFS should refund the deposit, minus any net proceeds of sale, and calculated this figure at £9,088.72.

Mr T agreed with the investigators view. But MBFS didn't agree. It said that Mr T had accepted the car with cosmetic issues and that there was no evidence to suggest that there were any manufacturing faults. MBFS said that cosmetic issues were a wear and tear item and that it was reasonable to expect wear and tear on a second hand car.

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.

The Consumer Rights Act 2015 is relevant to this complaint. This says that goods must be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account things such as the age and mileage of the car and the price paid. The legislation says that the quality of goods includes their general state and condition, and other things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr T was around 3 years old and had travelled 8,700 miles at the point of supply. Because this is a second hand car, I'd expect a degree of wear and tear. However, given the very low mileage, I wouldn't expect the wear and tear to be more than minimal.

I've considered all of the available information and I've thought about whether there was a fault with the car which made it of unsatisfactory quality at the point of supply. Mr T has provided evidence in the form of emails between him and the dealer which show that there were issues with the speaker, the window and the sat nav. The emails also show that the dealer accepted that there were issues which needed to be rectified, specifically there is an email in which the dealer states that it will fix the back of the seat, get the alloys done and sort out all the surface scratches.

Based on the evidence I've seen, I'm satisfied that there were faults with the car.

I've gone on to consider whether the faults made the car of unsatisfactory quality. The relevant legislation includes appearance and finish as an aspect of satisfactory quality.

I've taken account of what MBFS has said about the issues being cosmetic in nature, and that its reasonable to expect some cosmetic damage due to wear and tear.

In this case, I think the issues are more than cosmetic, and go beyond wear and tear. If the issues with the wheels and bodywork and drivers seat weren't significant, I don't think the dealership would've agreed to repair them. The fact that the dealer agreed to carry our repairs suggests to me that the issues were more than cosmetic and went beyond what would be considered reasonable wear and tear for a car of this age and mileage.

MBFS has said that there's no evidence of a manufacturing fault and that it isn't responsible. I don't agree. The Consumer Rights Act 2015 specifically mentions general state and condition and appearance as factors to consider when deciding whether a car is of satisfactory quality. The legislation doesn't just refer to mechanical and/or manufacturing faults.

Taking everything into account, I'm satisfied that the condition and appearance of the car fell below the standard that a reasonable person would expect from a car of this age and mileage. The faults go beyond wear and tear. For this reason, I don't think the car was of satisfactory quality at the point of supply. MBFS must take steps to put things right.

Putting things right

Under the relevant legislation, the business is allowed one opportunity to repair the fault. In this case, I'm satisfied that Mr T gave the dealership reasonable opportunity to carry out repairs within the first 30 days before he asked to reject it. The dealership failed to carry out the repairs during this time so I think the request to reject should've been allowed.

Even if the short term right to reject doesn't apply, I'm persuaded that Mr T has the right to reject the car now. This is because the dealership attempt at repair in September 2022 wasn't successful because not all of the faults were rectified.

Mr T has told this service that he's now sold the car and settled the finance agreement. Having settled the agreement, Mr T received net proceeds of £614.28.

To resolve the complaint, MBFS should refund Mr T's deposit minus the profit he made on the sale.

Therefore, MBFS should refund the sum of £9,088.72 together with 8% simple interest per annum from the date of payment to the date of settlement.

MBFS should also pay compensation of £200 to Mr T for the distress and inconvenience caused to him as a result of supplying a car which wasn't of satisfactory quality.

My final decision

My final decision is that I uphold the complaint. Mercedes Benz Financial Services UK Limited must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 April 2023.

Emma Davy
Ombudsman