

The complaint

Miss M complains about the quality of a car she has been financing through an agreement with Mercedes-Benz Financial Services UK Limited (who I'll call "MBFS").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint MBFS, but I think they need to take action here.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Miss M acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then MBFS, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Miss M. The car here was about four years old and had already completed about 26,200 miles. So, I think it's fair to say that a reasonable person would expect that parts of the car might have already suffered wear and tear. And there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn when it was supplied.

The relevant legislation explains that when we consider whether a car has been of satisfactory quality we should consider whether it has been durable. I don't think the car supplied to Miss M has been durable.

I say that because I don't think a reasonable person would expect to replace the front brake pads and discs four times over the course of a little over 10,000 miles of driving. Nor do I think a reasonable person would expect to replace the wheel bearings on three occasions in that period.

MBFS have explained that when Miss M took the car to the garage in December 2022 the dealership noted the tyres were mixed and the wheels had been over torqued. But that post dated the issues I've referred to above, and the garage identified that in May 2022 the tyres were correct. So I don't think the mixed tyres could realistically be considered to have contributed to the problems Miss M had been having, and as the tyres had clearly been replaced, and the wheel would have been removed after the May 2022 visit, it wouldn't be reasonable to suggest there was evidence the wheels were over torqued in May 2022 or before that, when the problems Miss M is complaining about were occurring.

Putting things right

As the business have tried, and failed to repair the issues with the car, I think they should now allow Miss M to reject it and to end her finance agreement. They'll need to take the car back at no cost to Miss M.

They'll also need to refund any deposit Miss M has paid and, as she's been deprived of that money, they will need to add interest to that refund.

Miss M has been inconvenienced by these issues. She's had to take the car back to the dealership on many occasions and in the meantime she's had to put up with the car juddering. MBFS offered her £250 to compensate her for the distress, inconvenience, and loss of enjoyment she'd experienced, but I don't think that was sufficient in the circumstances and I would agree with the investigator's suggestion that £400 better reflects the issues Miss M has had.

MBFS will need to refund the instalments Miss M paid towards her agreement with them, but the relevant legislation allows them to retain some of those instalments in respect of the use Miss M has had from the car. It's clear Miss M has been able to drive the car and that she's been kept mobile with a courtesy vehicle when the car has been in the garage. But her use of the car will have been impaired by the juddering she experienced. In all the circumstances I think MBFS should be allowed to retain 80% of the finance instalments Miss M has paid but they will need to refund the rest and will need to add interest to the refund.

My final decision

For the reasons I've given above I uphold this complaint and tell Mercedes-Benz Financial Services UK Limited to:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no further cost to Miss M.
- Refund Miss M's deposit/part exchange contribution of £3,000 and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund 20% of rentals in respect of loss of use and add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Miss M £400 to compensate her for the distress, inconvenience, and loss of enjoyment she'd experienced (MBFS may deduct £250 if they've already paid that).

- Remove any adverse information they may have reported to Miss M's credit file as a result of this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 30 March 2023.

Phillip McMahon
Ombudsman