

The complaint

Mr L complains about a car supplied under a hire purchase agreement provided by Mercedes-Benz Financial Services UK Limited ('MBFS').

What happened

In November 2021 Mr L acquired a used car to be used for his profession, funded in part with a hire purchase agreement taken with MBFS. The car was just under two years old and had covered around 14,536 miles. The cash price was £32,389 and Mr L paid a deposit of £22,265. The rest of the funds were taken under a hire purchase agreement taken over 36 months, with an annual mileage allowance of 20,000.

Shortly after getting the car, Mr L says he noticed issues with it. Some of these issues were noted slightly later, but for simplicities sake I will list these here as these were quite extensive.

It's worth noting here Mr L has provided a lot of testimony on this case about the issues on the car and what happened. I'll focus on what I think are the key facts, but I want to reassure Mr L that I've carefully considered everything he's said and reviewed all of the evidence and statements he's provided.

Mr L noted issues with:

- Tyres close to legal limit
- Juddering under braking – a warped disc was later noted
- Issues with gearbox juddering between 2nd and 3rd gear
- Cosmetic issues - a large scratch to the roof, crack in front grill, chips, discoloration of chrome trim, issues with wheel trim and general issues with paintwork – specifically around the rear of the car and rear doors
- Missing bolt from front bumper
- Rear camera loose/not functioning

Mr L says the car was returned to the dealer for repairs in February 2022 and March 2022, but some issues including the juddering under braking and gearbox issues persisted. Mr L complained to MBFS. It issued a final response around March 2022. It said, in summary, that there was no evidence the issues Mr L complained about were present at the point of supply.

In April 2022 Mr L says the car detected a collision when it was stationary.

In May 2022 Mr L made our service aware of the complaint and we began to investigate. We requested various information from MBFS, much of which wasn't supplied. Mr L provided some further information such as emails between the dealer and himself, and an email from a tyre company identifying the issues with a warped front disc, chrome trim and a bolt missing from the front bumper.

Around August 2022 Mr L said the car had detected a collision again and in another incident said the brake assist function slowed the car when there was nothing in front of it, injuring him.

Our investigator issued an opinion and explained he thought the complaint should be upheld. He explained there was a lack of evidence available, but based on what Mr L had provided and his testimony, he thought the car had faults present at the point of supply that meant it was of unsatisfactory quality. He said he thought Mr L should be able to reject the car and that MBFS should pay him £250 to reflect the distress and inconvenience caused.

MBFS didn't agree. It said some minor issues with the car had been resolved by the dealer, but others hadn't been looked at, so it hadn't had the opportunity to resolve these.

The case was then passed to me for a decision. I asked MBFS and Mr L for some further information. Mr L provided some further evidence such as job sheets and 'vehicle inspection results' from the dealer.

Mr L has also said he has incurred further costs since the investigator issued his opinion such as MOT, servicing and an extended warranty. It's also worth noting here that at the car's last MOT in November 2022 it is recorded as having covered 71,302 miles.

I sent Mr L and MBFS a provisional decision on 10 January 2023. I've summarised the key points from my findings below. I explained to MBFS and Mr L:

- *I was satisfied the agreement Mr L entered into was regulated and our service could consider it*
- *That the Sale of Goods Act 1979 ('SGA') was relevant to the complaint and meant MBFS needed to make sure the car supplied was of 'satisfactory quality'*
- *In general, there was something of a lack of evidence about the appearance of the car*
- *That the SGA explains that anything that would've been apparent on an examination of the goods before the contract was made should not be considered part of satisfactory quality*
- *In relation to the missing bolt, this had been repaired. So, I said no further action was required*
- *In relation to the chrome trim, I thought this issue had also likely been repaired. I also explained I didn't know how severe this was, but if it was severe, it should've been apparent on an inspection*
- *In relation to the scratch to the roof, if this was present when supplied I thought this should've been apparent on an inspection*
- *In relation to the cracked grill, this should've been apparent on inspection*
- *That there was a particular lack of evidence around the rear doors and paintwork, but it's likely this would've been apparent on an inspection of the car if the issues were present*
- *In relation to the tyres, I thought it was most likely these were road legal and safe*
- *In relation to the warped brake disc, this was repaired at no cost to Mr L and didn't impact him driving the car*
- *In relation to the gearbox, I thought this fault occurred. But I said due to the gear*

change being described as “slightly delayed but not harsh” by a garage, I might not consider that this meant the car was of unsatisfactory quality. Either way, I was satisfied this had been repaired and Mr L had covered around 18,000 miles without further work being needed

- Again, there was a particular lack of evidence in relation to the collision detection and automatic braking. But I hadn’t seen enough to make me think any issue was present or developing at the point of supply*
- In relation to the rear camera, an inspection of the car from June 2022 said this was working, so I didn’t think it was likely there was a fault here*
- In relation to other minor issues, I thought these were either repaired or not present or developing at the point of supply*
- As a general observation, Mr L had covered a lot of miles in the car – around 57,000 as of November 2022*
- I didn’t think MBFS were responsible for costs Mr L had raised such as MOT tests, servicing or a warranty*

I gave both parties four weeks to come back with any further information. MBFS didn’t respond.

Mr L came back and made various points. In summary, he said I’d got various dates and events wrong. He said he thought the car had been in an accident and repaired. He said the car had steering vibration. He said the rear camera was loose. He said the car’s ABS came on for no reason. And he said he was going to get a report carried out on the car.

Mr L then sent an independent report in relation to the car. I’ll comment on this further below, but in summary, this explained it thought the paintwork finish of the car was poor in parts and there was evidence of prior repairs to the car, including the use of filler. The report concluded it would take extensive work to return the car to an acceptable standard.

I got in touch with MBFS and Mr L and explained the report had changed my opinion on the complaint because of its contents and conclusions. Together with what Mr L had consistently said about the car, I explained I thought the complaint should now be upheld.

I sent a copy of the report to MBFS and explained to it, and Mr L, that I thought it would be fair to allow Mr L to reject the car. I thought he should be reimbursed his deposit, reimbursed 10% of all repayments made to the agreement, paid £200 to reflect the distress and inconvenience caused and for any adverse information to be removed from Mr L’s credit file.

Mr L also provided a receipt for the cost of the independent inspection, which I also thought should be reimbursed.

Mr L said he was relieved the complaint was being upheld, but was unhappy this wasn’t the case before the independent report was provided. He reiterated some of his original points and said the car still had ongoing issues, such as automatically braking unnecessarily. I gave MBFS a deadline of 22 February 2023 to respond. It then explained it didn’t receive the report, so this was sent again and a deadline of 7 March 2023 given to provide any comments.

MBFS initially agreed that following on from the report the car wasn’t of satisfactory quality.

But, it then got in touch after the 7 March deadline and said it thought the car may have been in a collision during the term of the agreement. And it said Mr L should’ve noticed the poor paintwork before the contract was entered into. MBFS asked for some time to make final

comments. A final deadline of 16 March 2023 was given to MBFS and it was explained I would issue a final decision if no further comments were provided by this date. MBFS didn't send any further information.

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 think this complaint should be upheld.

Looking at the independent report Mr L sent in, I'm satisfied this makes it clear the car had previously been involved in an accident and poorly repaired. I've included some of the findings from this report below:

"The bonnet did appear to be out of alignment with uneven gapping"

"The nearside rear wing displayed minor scratches and there was a slight uneven texture. There were sanding marks along the arch by the nearside rear door"

"The rear bumper displayed minor scratches and imperfections to the paint. There was also a slight colour difference; the nearside rear appeared to be grey and the offside rear appeared to be black"

"In our opinion based on the visible evidence, we were able to identify several cosmetic defects with the vehicle at the time of our inspection, however, it does appear that some repairs have been conducted especially to the nearside rear area of the vehicle as the nearside rear wing (paint) did measure at 1,232 microns, whereas the remaining measurements were somewhat consistent"

"We would have to conclude generally the paintwork finish was not considered to be to a commercially acceptable standard and/or of satisfactory quality. The repair method also will be considered to be less than satisfactory to the rear wing substrates equated to 1'232 microns. Original paint depth will be somewhere between 90 microns and hundred and 150 microns prior to any remedial action."

"We would conclude that we were able to identify defects with the paint finish at the time of our inspection and usages of filler material appears to of been applied based on the paint readings to the nearside rear wing."

"The areas which have been subject to repair are not considered to be of a satisfactory quality"

"It would also appear on both the nearside rear door and offside rear door apertures that there was uneven texture of paint where we consider that this part of the vehicle has been painted and taped up. However, where the rough paint is located this has not been taped up correctly and been exposed during the process."

I've very carefully considered if this damage and the subsequent repairs happened during the time Mr L had the car. I accept this could be possible, as Mr L has covered a high mileage in the car and the report was made some time after he acquired it. But, having considered everything, I'm satisfied on balance that the damage most likely occurred before Mr L got the car.

I say this as Mr L noted cosmetic issues not long after getting the car. He's been consistent with his testimony here. I've also considered the email from the tyre company that describes the issue with a missing bolt from the front of the car. It would appear this could be as a result of previous damage. I accept this email doesn't give a date of when it saw the car, but Mr L says this was soon after he got it. Some of the issues it describes such as the warped disc were repaired less than three months after Mr L got the car, which backs up this testimony.

I've also carefully considered whether this damage would've been apparent on an initial inspection. As I explained in my provisional decision, this would mean it couldn't be considered part of satisfactory quality. I still think for some of the cosmetic issues, this may have been the case. But, thinking about the whole picture here and the overall appearance of the car, given the independent report based some of its conclusions on paint depth, I'm satisfied at least some of the damage needed a more in depth look at to become apparent. So, it follows I'm satisfied this can be considered part of whether the car is of satisfactory quality.

It follows all of this that I don't think the car was of satisfactory quality when supplied.

I've thought about whether it would be fair to allow MBFS to repair the car. But I think it has had an opportunity to do this - I think at least some repairs have been previously attempted to the cosmetic issues the car has since Mr L got it. But, even if this wasn't the case, the report concludes the car would:

"require extensive work to be completed to return the vehicle to a commercially acceptable standard"

Given this, I think a repair would likely not now be economically viable for the car given its age and mileage. Nor am I confident it could return the car to the finish it should've had when Mr L entered into the agreement, given the report details rough paint, filler and mismatched paint colours.

It follows all of this that I'm satisfied Mr L should now be allowed to reject the car.

I have reconsidered the other areas Mr L has complained about. And, I've thought about the information he provided in relation to the dates he says some of these issues occurred. But I still think, apart from the cosmetic issues detailed in the report, that these don't mean the car was of unsatisfactory quality when supplied or were repaired. This is for the same reasons I set out in my provisional decision and summarised above.

I've thought about what else would be fair and reasonable to put things right for Mr L. He's had to pay out for an independent report, so I think he should be reimbursed for this.

I have considered the impact of this situation on Mr L and his use of the car. I think it's fair to say he's been able to use it despite the cosmetic issues, given the mileage he's covered. But, he has been consistent in his testimony that the car doesn't look as it should – which is backed up by the report.

Considering Mr L's employment, I think the appearance of the car would've had an impact on him. I'm satisfied in this case that Mr L has effectively had impaired usage of it. So, I think he should be reimbursed 10% of all the repayments made towards the agreement.

I also think that discovering the issues with the car must have been stressful for Mr L. So, I think MBFS should pay him £200 to reflect this.

I've also reconsidered Mr L's request for other costs to be reimbursed to him such as the warranty, MOT test etc. But, I'm satisfied Mr L would've incurred these costs whether the car was of satisfactory quality or not. So, in this particular case, I still don't think MBFS are responsible for this.

In general, considering the use of the car Mr L has had, I don't think it would be reasonable to reimburse any further costs.

I've carefully considered what MBFS said in response to being sent the report. But, as I've explained above, I'm satisfied the damage most likely occurred before Mr L got the car. And I'm satisfied at least some of the damage wouldn't have been apparent on an inspection. So, this doesn't change my opinion.

My final decision

My final decision is that I uphold this complaint. I instruct Mercedes-Benz Financial Services UK Limited to put things right by doing the following:

- Collect the car at no cost to Mr L at a time and date suitable for him
- End the agreement with nothing further to pay
- Reimburse Mr L the cost of the independent report - £264 – from 13 January 2023*
- Reimburse Mr L 10% of all repayments made towards the agreement*
- Reimburse Mr L's deposit of £22,265 from 22 November 2021*
- Pay Mr L £200 to reflect the distress and inconvenience caused
- Remove any adverse information from Mr L's credit file about this agreement

*These amounts should have 8% simple yearly interest added from the time of payment to the time of reimbursement. If MBFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 April 2023.

John Bower
Ombudsman