

## **The complaint**

Mrs K complains that the car she acquired financed through a hire purchase agreement with Mercedes-Benz Financial Services UK Ltd (MBFS) wasn't of satisfactory quality.

## **What happened**

The details of this complaint are well known to both parties and have been set out by the investigator, so I won't repeat them again here. Instead I'll focus on giving the 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.

Having done so I agree with the conclusions reached by the investigator for these reasons:

- A new car was supplied to Mrs K under a hire purchase agreement with MBFS that she signed in November 2021;
- MBFS as the supplier of the car was responsible for ensuring that it was of satisfactory quality at that time – whether it was of satisfactory quality will depend on several factors, including the age and mileage of the car and the price that was paid for it;
- The car that was supplied to Mrs K was new, therefore I would reasonably expect it to be free of defects for a considerable period;
- Mrs K reported that in July 2022 a warning light came on the dashboard to say the anti-theft alarm was malfunctioning. She took it to the dealership which applied a software update. In October 2022 the same anti-theft alarm fault appeared, and Mrs K returned to the dealership. She was told a new control panel unit was required and the repair went ahead. I've seen copies of invoices confirming works were completed. I'm satisfied that this fault would have rendered the car of unsatisfactory quality and that the business had the opportunity to repair;
- Mrs K experienced a further issue in December when the alarm went off while she was in the car. The engineer reported that Mrs K may have accidentally locked the vehicle when getting in and the motion sensor had detected movement;
- MBFS said
  - *“an engine management light can illuminate at any time for a variety of reasons, one of which could be a result of outdated software. Therefore, in the first instance, the Retailer may look at whether there is outstanding software updates that could be causing the issue. A software update was available during this visit and the Retailer completed this, which seemed to*

*remedy the issue at the time. Furthermore I am in agreement that modern vehicles will require regular scheduled or unscheduled software updates either to improve the overall mechanical quality or for everyday improved performance. To clarify MBFS do not consider this as an opportunity of repair as the Retailer did not replace any components during this visit."*

- While I agree that modern cars can require software updates periodically, in this instance the new car had a fault that needed investigating within months of Mrs K acquiring it. And she presented the car to the dealership in July for repair. The Consumer Credit Act (CCA) doesn't stipulate that the repair should involve replacement of components. So I'm satisfied that in this circumstance this was the business's opportunity for repair with respect to the CCA;
- After the complaint came to this service Mrs K reported a further failure with the vehicle - the boot lid kept opening once Mrs K has closed it. I've seen a copy of the job sheet which confirmed a problem with the tailgate control unit. It's not clear to me whether this tailgate issue is connected to the previous control panel issue. But it does appear there is or was another fault with the vehicle;
- I asked MBFS for some additional information:
  - whether there was a connection with the overhead control panel fault and the boot not staying closed fault - was this a different control panel?
  - would MBFS be willing to commission an independent report to identify if there is an underlying electrical issue or whether the issues were separate?

While I did receive a response from MBFS no new information was provided concerning any of the faults and it didn't respond to my request for an independent inspection of the vehicle;

- Mrs K had also complained that she didn't feel safe driving the car specifically in relation to the brakes. I haven't seen any evidence that there is a problem with the brakes but I asked Mrs K if she had any further information about this or any information about whether the electrical faults were related. Mrs K said she felt the car was unreliable. She said to this day she has issues with the car braking automatically when she is either driving forward or in reverse especially when the car detects another vehicle moving. She said the dealership tested the brakes and found no fault but it's something that happens intermittently. She provided copies of videos from the mechanics concerning the initial faults but couldn't provide any additional information about them;
- I also asked Mrs K if she would be willing to arrange an independent inspection of the car. She felt that due to the car being under warranty she shouldn't need to spend money on an independent inspection;
- With neither party agreeing to an independent inspection it's left for me to decide based on the information that's available;
- I'm persuaded that the boot lid opening when it shouldn't is a fault that would render the car not of satisfactory quality. It does appear from the job sheets and invoices provided by Mrs K that there are, or have been, faults concerning the car's computer/electrical panels. These faults may or may not be related but I'm satisfied MBFS has had one opportunity to repair the vehicle and Mrs K continues to experience faults. So I'm persuaded in the circumstances the car isn't of satisfactory

quality and Mrs K should be allowed to reject it.

### **Putting things right**

To put things right MBFS must:

- End the agreement and collect the car – both at no cost to Mrs K;
- Refund Mrs K's deposit of £8,600;
- Mrs K responded to our investigator's view to confirm she wasn't provided with a courtesy car between 3 October 2022 and 1 December. She said she was only provided with a courtesy car for the day of the repair. So MBFS should refund two monthly payments to reflect the impaired use she's had of the car;
- Pay 8% simple yearly interest on all refunded amounts above from the date of payment until the date of settlement;
- Mrs K has been caused distress and inconvenience with the situation and I consider it fair and reasonable for MBFS to pay her £200 compensation;
- Remove any adverse information from Mrs K's credit file in relation to the agreement.

### **My final decision**

My final decision is that I uphold this complaint and Mercedes-Benz Financial Services UK Ltd must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 22 September 2023.

Maxine Sutton  
**Ombudsman**