

The complaint

Mr D has complained that he is unhappy with the quality of a car he acquired in October 2021, using a hire purchase agreement with MI Vehicle Finance Limited ("MIVF").

What happened

Mr D acquired a used Mercedes in October 2021, using a hire-purchase agreement with MIVF. The cost of the car was £109,000, of which Mr D borrowed £84,662.45 over a term of 60 months, with a monthly repayment of £1,626.78. The car was about nine months old and the mileage at the point of supply was 6,163.

Mr D complained to MIVF in February 2022, raising a number of issues as follows:

- He said he believed the car had previously been in an accident, having been told this by one of the dealerships he had taken the car to.
- There was a noise from the air vents in the central console.
- There was wind noise from the rear passenger window.
- The chrome on the driver door and frame wasn't aligned.
- The driver side of the car needed realignment.
- The rear left hand side bumper was sticking out slightly.
- Windscreen wipers were faulty at the point of supply.
- Two parts of the car were removed during a service at Mercedes in Turkey.
- The front side carpet behind the front wheels came off when travelling at high speed.
- There was a stone chip in the windscreen.
- Brake discs and pads required replacement.
- Rear tyres required replacement.

MIVF responded to the complaint to say that, after discussion with the supplying dealership, it was partly upholding the complaint, in that some of the items were being repaired or replaced. These were the air conditioning (said to be the cause of the noise from the air vents) the passenger window, the chrome on the driver door and frame and the windscreen wipers. However, it said other listed issues were due to wear and tear. In addition, Mercedes had conducted a paint test and confirmed that on all the metal panels, the paint is original, so there were no signs that this vehicle was in an accident before the point of supply.

Mr D then contacted MIVF in May 2022, to say he was unhappy that the previous repairs to the vehicle hadn't been completed correctly, in that the noise coming from the centre console, and the passenger window draught, were still present and the windscreen wipers were still making a noise despite them being replaced. Mr D also said that he had paid for the rear bumper to be aligned and clipped back in, which hadn't been completed.

MIVF said in response that it had been in contact with the supplying dealership, which arranged for the vehicle to be returned to Mercedes where the original repairs were completed. Further repairs were done, but Mr D stated that there was still a noise coming from the centre console. MIVF said that Mercedes had confirmed that it had been unable to identify a fault and unable to replicate the noise coming from the centre console despite

numerous test drives. However, If Mr D could supply further evidence of the problem, MIVF said it would look at this again, MIVF also said it would pay Mr D £100 in recognition of the inconvenience caused, and I understand this payment has been made.

Mr D was unhappy with all this, and brought his complaint to this service. Mr D told us that the noise from the central console was worse and was now coming from the side vents as well as the centre, and he sent in a video to demonstrate this noise. He has also said that the sunroof is cracked, and the rear panel behind it misaligned, this having happened during the course of repairs in June 2022. He wants MIVF to fix the problems with the vehicle which he initially highlighted and to replace the sunroof as it cannot be repaired.

Our investigator looked into the complaint, and concluded that it should be upheld in part. MIVF did not agree, and asked that the complaint be reviewed by an ombudsman

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've decided to uphold Mr D's complaint in part. I'll explain why.

Because MIVF supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was about nine months old, so would have incurred some wear and tear before it was supplied to Mr D.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

Mr D has had repairs done at more than one Mercedes dealership. He sent in details of the sequence of events, together with copies of several email exchanges with the dealerships involved, and with MIVF. He also sent in videos to support his comments about the noise, and photographs of the sunroof. MIVF sent in copies of its records of Mr D's complaint, along with the hire purchase agreement and copies of its own email exchanges with the dealerships.

MIVF sent in an e-mail, dated April 2022, from the dealership that carried out the inspection and servicing of the car just before the point of supply in October 2021. It said that the only fault found at that point was a loose small trim on the leading edge of the offside front wheel arch. (The visual inspection report also provided by MIVF states "offside front splash guard damaged").

The email went on to say that in the dealership's inspection in April 2022, there was a great deal of damage to the vehicle, which required removal of both front and rear bumpers to rectify, a new undertray, wheel arch liners, and two ducts under the vehicle. The air-conditioning was also inoperative and required further investigation, and there was potential

damage to the condenser. The dealership said the damage wasn't present at the point of supply, and noted that the car had travelled over 15,000 miles in the intervening seven months. The dealership further said that it was going to carry out adjustments to the rear passenger side window glass under warranty.

I can also see from an email from MIVF to Mr D in April 2022 that, as part of a list of issues and repairs, it was noted that the windscreen wipers were faulty at the time they were provided, and that the dealership would be covering the cost of replacing them as they were mentioned in a report at the time of the sale.

It is not in dispute that most of the items Mr D complained about to MIVF have been rectified, either under warranty, or at Mr D's expense where the issues were due to wear and tear occurring whilst he had the car.

The items repaired or replaced under warranty were the air conditioning (said to be the cause of the noise from the air vents) the passenger window, the chrome on the driver door and frame and the windscreen wipers.

Looking at the other items that Mr D raised with MIVF:

- There's no evidence that the car had previously been in an accident, and the paint test I mentioned above supports that view.
- With regard to the driver side of the car needing realignment, and the rear left-hand side bumper sticking out slightly, the inspection carried out by Mercedes in April 2022 suggests the front bumper had scuff marks, indicating some impact to the front bumper as the cause of both issues. There's nothing in the information from the point of supply to suggest these issues were present then.
- With regard to the two parts of the car removed during a service at Mercedes in Turkey – clearly this happened after the point of supply, and the inspection by Mercedes suggested these items were snapped off rather than removed
- Mr D said the front side carpet behind the front wheels came off when travelling at high speed. I noted above that Mercedes identified considerable damage to the underside of the car - since the point of supply – which is the likely cause.
- The final three items – the stone chip in the windscreen, and the brake discs and pads and rear tyres requiring replacement, were noted in MIVF's response to Mr D's complaint as being due to wear and tear. Given that the car had travelled over 15,000 miles in some seven months, and I understand had been driven across Europe, I think this is reasonable.

I've seen nothing to suggest that the repairs to the passenger window, the windscreen wipers and the alignment of the chrome on the driver door and frame weren't successful. So the items that remain are the noise from the centre console and the damage to the sunroof.

With regard to the sunroof, it is not in dispute that the damage to this was not present at the point of sale. Therefore I can't fairly hold MIVF responsible for rectifying this. Mr D said this occurred during the course of other repairs, and our investigator said in his view that Mr D should take this up with the relevant dealership, and if unable to resolve it, should refer it to the Motor Ombudsman (or seek independent legal advice) as a complaint of this nature is outside the scope of this service. This is correct and therefore I don't uphold this element of Mr D's complaint.

With regard to the noise from the centre console, MIVF originally said that the vehicle required an air conditioning re-gas, as this was thought to be the cause of the noise. This was completed by Mercedes. However, it did not rectify the problem.

In January 2023 Mr D told us that a Mercedes dealership in London had identified that the centre console noise was coming from the multifunction camera, and he was waiting for the relevant part to be delivered and installed to see if that dealt with the noise. A few weeks later Mr D confirmed that this had not solved the problem. He said the noise was still present, and repeated every 20 - 40 seconds, so that he had to turn on music to cover it. He sent in a copy of his email to the dealership, including video evidence of the problem.

In April 2023 Mr D told us that the Mercedes dealership in London had raised a technical ticket with Mercedes head office in Germany. It had requested that the electrical wiring in the area be tested, which had been completed and sent to Mercedes head office. Further instructions were awaited from the head office on how to resolve the issue.

Mr D sent in a further video in May 2023, (which had been copied to MIVF) in which the noise is evident, and it is clear the vehicle was not travelling at a particularly high speed.

In July 2023, Mr D said he had received an update from the Mercedes dealership in London saying that Mercedes head office were sending a special tool which is designed to suppress interference, and which can be attached to the power and ground line for the camera; this should hopefully suppress the sound to the point it cannot be heard. I don't have confirmation that this has been completed.

Having carefully considered all of the evidence, it's clear that, given the high usage of the car, some of the issues Mr D originally raised were due to wear and tear after he acquired the car, and indeed Mr D has covered the cost of those. However, the evidence suggests that some faults were present at the point of supply. I say this because, in an email from the dealership to Mr D, it's noted that Mr D complained about a wind noise/whistle and an alignment issue with the door a few days after taking delivery of the car. MIVF mentioned the windscreen wipers and alignment of the chrome on the driver door and frame as noted above. And Mr D and MIVF sent in copies of various email exchanges regarding the noise from the central console. This was a high-end car that was only around nine months old, and taking all this into account, I'm not persuaded that the car was of satisfactory quality at the point of supply given these faults.

Our investigator issued his view in March 2023. He said that he thought the complaint should be upheld in part in that, although the repairs were complete or due to be completed, he thought Mr D should be compensated for the impaired use of the car - because of the reoccurring noise from the centre console - by a refund of a proportion of Mr D's monthly payments, together with a further payment of £500 in recognition of the inconvenience caused (although MIVF has already paid £100 to Mr D in this respect).

MIVF disagreed with our investigator's conclusions, saying that it didn't understand how Mr D had had impaired use because of a noise coming from the centre console when he had covered more mileage than an average user would. MIVF also said that the vehicle had been into multiple Mercedes garages which had been unable to replicate the noise or find a cause. The only evidence was in the form of videos, but it was not clear what speed Mr D was travelling at in the videos, and MIVF wondered whether the noise only appeared when travelling at high speed and this is why it could not be replicated on test drives. MIVF was not satisfied that the noise had been diagnosed as a fault. MIVF also said it felt the payment for distress and inconvenience was high.

Mr D, on the other hand, thought that the compensation suggested by our investigator was inadequate as it failed to account for the loss of enjoyment he had experienced while driving the vehicle with the constant and loud ticking noise emanating from the electrical unit. Furthermore, he said, it didn't adequately address the inconvenience caused by having to make repeated visits to Mercedes dealerships to try and resolve the issue.

I've thought about both parties' responses, and I'm conscious that there have been further developments in terms of the referral to Mercedes head office for technical advice and the recent email from the dealership about the provision of the specialist tool for the camera.

I'm satisfied from the evidence that it's more likely than not that there's a fault that is causing the noise from the central console, and the most recent information is that the issue lies with the multifunctional camera. The Mercedes dealerships have accepted that there is an issue and have sought to rectify it. The various videos support Mr D's testimony that it is constant, and the most recent video answers MIVF's query about speed, as it is clear that Mr D was not travelling at high speed when that was filmed. And as I noted above, Mr D first raised a concern about the noise within a few days of taking delivery of the car. So overall I've no reason to change my conclusion that the car was not of satisfactory quality at the point of supply. So I have decided to uphold Mr D's complaint in part – that is, that he should be compensated for the impaired use of the car. For the avoidance of doubt, I do not uphold the element of Mr D's complaint that relates to the sunroof, as the damage was caused after the point of supply and I cannot hold MIVF responsible for rectifying it.

In terms of impaired use, I accept that Mr D has been able to drive the car normally and indeed has driven long distances. However, I don't think it reasonable that Mr D should have had to put up with a constant noise that required him to play music to disguise it – especially in a car of such a high specification (and high cost). Our investigator thought that a refund of 5% of the monthly payments was appropriate, and I see no reason to disagree.

Our investigator also thought a further payment of £500 should be paid in recognition of the inconvenience caused to Mr D (although MIVF has already paid £100). Given that the problem has been present for nearly two years and has required numerous visits to Mercedes dealerships without resolution, I consider this has caused a significant amount of distress and inconvenience and therefore I agree that MIVF should pay Mr D £500 in this respect. I note Mr D's comments, but I don't consider a higher amount appropriate.

Putting things right

MIVF should:

- refund to Mr D 5% of each monthly payment made since the start of the agreement to date;
- pay 8% simple yearly interest* on all refunded amounts from the date of payment to the date of settlement;
- pay a further amount of £400 in addition to the payment of £100 already made in recognition of the distress or inconvenience caused by the ongoing fault.

*if MIVF considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I have decided to uphold Mr D's complaint in part. MI Vehicle Finance Limited should pay Mr D the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 September 2023.

Jan Ferrari
Ombudsman