

The complaint

Miss K is unhappy with a car supplied under a hire purchase agreement provided by Mercedes-Benz Financial Services UK Limited ("MBFS").

What happened

Miss K acquired a new car in June 2021 using a hire purchase agreement from MBFS to finance part of the cost. The agreement was for 48 months and Miss K paid a deposit of £1,800, to be followed by monthly payments of £300.91. At the end of the agreement, Miss K could have chosen to keep the car and make a final balloon payment, or she could have chosen to return the car.

Miss K said there was a fault with the instrument panel in the car where it would go blank. She provided a brief timeline of the issue. The first occurrence of the fault she said happened in October 2021 and MBFS supported her in resolving the issue. Miss K said she experienced faults with the same instrument panel on two more occasions, in February and May 2022, before the panel was replaced. Between August 2022 and January 2023, Miss K said she experienced the same fault with the replacement instrument panel on several occasions.

The fault with the instrument panel was intermittent but meant that Miss K couldn't view any information that would normally appear on the panel during driving, such as her speedometer and various other important information.

Miss K requested to reject the car and for her finance agreement to be settled. She also referred her complaint to our service.

MBFS responded to Miss K and upheld her complaint. In November 2022 they offered to:

- settle Miss K's finance agreement,
- collect the car at no additional cost,
- refund Miss K's deposit of £1,800, and
- pay £250 for any inconvenience caused.

Miss K didn't feel the resolution was fair because she'd not been able to use the car due to the problems with the instrument panel throughout the duration of the agreement.

While the complaint was with our service, Miss K provided a screenshot of an app which linked to her car. The screenshot showed the car had been driven for around 13,700 miles.

Our investigator upheld Miss K's complaint and thought that MBFS needed to do more in addition to the offer they had made. She explained that Miss K was able to use the car since acquiring it but the instrument panel wasn't working properly since October 2021. So, considering the impact of the issue on Miss K, she thought a 10% refund of the payments made since October 2021 reflects the impaired use caused by the car not being of satisfactory quality.

MBFS responded and said they agreed with the investigator's view. They calculated the costs above to total £2,768.55 and confirmed they had now terminated Miss K's agreement at no further cost before receiving confirmation of whether Miss K accepted the investigator's findings.

Miss K disagreed with our investigator's view. She said, among other things, that the 10% refund of payments would not cover the months she had impaired use of the car. She also said the emotional distress experienced from the issue with MBFS wasn't included in the investigator's findings. Miss K suggested an alternative settlement which involved:

- An exchange of the car to a different class vehicle which is not older than the one she acquired on the same repayments.
- A 15% refund of all payments made since October 2021.
- A refund of a recent service that she paid for.
- Recompense for the emotional distress, anxiety and inconvenience caused while having the vehicle, in addition to the £250 offered.
- A refund of the deposit paid.

Our investigator responded and explained that she thought the £250 compensation MBFS offered for the inconvenience caused was fair and reasonable. And she reiterated that she thought a 10% refund of payments made since October 2021 was a fair way to resolve things. She also explained that it is Miss K's responsibility to maintain the car after acquiring it and didn't think it would be fair to ask MBFS to refund this service payment as she had use of the car.

MBFS has also told our service that in February 2023 Miss K told them she now wished to keep the car and no longer pursue a rejection. MBFS also told our service that following terminating Miss K's agreement, they had paid her £2,768.55 in February 2023. But as she now wishes to no longer pursue a rejection of the car, they have reinstated her agreement and may need to recall the funds paid to her.

The complaint was passed to me to decide.

I issued a provisional decision on 2 June 2023 where I explained why I intended to uphold Miss K's complaint. In that decision I said:

"Miss K complains about a car, and the subsequent offer made in relation to it, supplied to her under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Miss K's complaint about MBFS.

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – MBFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note here that the car Miss K acquired was brand new. So, I think a reasonable person would expect it to be in excellent condition, with no faults or issues. And I think they would expect trouble free motoring for a significant period.

It doesn't seem to be in dispute here that the car wasn't of satisfactory quality when it was supplied. I say this as MBFS upheld Miss K's complaint and agreed to take the car back. But, for completeness, I think it's worth me very briefly commenting on this.

I don't think a reasonable person would've expected the issues Miss K's car had, in particular the instrument cluster not working intermittently since October 2021. So, I'm satisfied the car wasn't of satisfactory quality when it was supplied.

So, what I need to consider here is whether the offer MBFS made to Miss K was fair and reasonable to put things right, or if it needs to do anything further. There are various parts to this, and Miss K has set out what she thinks MBFS should do. So, I'll comment on these in turn.

Rejection of the car

MBFS has already agreed to Miss K rejecting the car, but my understanding is that Miss K would now prefer to keep it.

There are three remedies available to Miss K if a car is found to be of unsatisfactory quality under the CRA.

One of her options would be a repair. But given MBFS has already attempted to repair the car and it hasn't solved the issue, I'm not confident a further repair would also repair it. So I don't think this remedy would be appropriate in this instance.

Another option for Miss K would be a replacement of the car. However, in this instance, I don't think this remedy would be fair to MBFS. The car is now around two years old and is used. I don't think it would be reasonable and practical for MBFS to be able to source a like for like replacement.

Miss K feels she should also receive an exchange to a different class car which is not older than the one she acquired. It's unclear what is meant by a different class vehicle, but I presume it is to a larger or more expensive model of car. In any event, our service's role is to direct a business to try and put the consumer back into the position they would have been in, had the mistake not occurred, if one did occur. In this instance, I can't see that exchanging a car to a different class car would be fair on both parties concerned. So, I don't think it is fair to ask MBFS to do this.

This means the available option for Miss K in this instance is rejection. I'm satisfied Miss K has the right to reject the car, given the car was of unsatisfactory quality. And I think this is fair because MBFS has already had the chance to repair the car and I don't think it is practical for MBFS to find a replacement.

I can also see that MBFS had offered to refund the deposit paid. Considering this deposit was paid in part towards the cost of the car, I think this is fair and reasonable.

Impaired usage

Following our investigator's view, MBFS has offered to reimburse Miss K 10% of the repayments she made towards the agreement. Miss K believes 15% should be repaid.

I've carefully thought about this. I agree Miss K suffered from impaired usage of the car, as at times it was not performing as it should, particularly considering it was brand new.

But, I need to consider the specific circumstances here. Miss K covered around 13,700 miles in the car up until around January 2023. And she has likely covered more miles in the car since. So she had reasonable use of it. And, as the issue was intermittent, it does appear that for times during the agreement it was performing as it should.

I asked our investigator to request from MBFS the job sheets from the repairs to understand how often Miss K was without a car and to understand whether she was given a courtesy car to be kept mobile. However, MBFS hasn't been forthcoming in providing this information before the deadline set. So, in the interests of resolving this complaint within a timely manner, I've relied on the information in front of me.

I accept that Miss K has said she was nervous driving the car in case the issue reoccurred. Thinking about this, rather than awarding a higher amount for the specific periods the car wasn't performing, I think pragmatically, a 10% refund on payments across the entire period the car wasn't working as it should is reasonable.

Distress and inconvenience

I think it must have been frustrating for Miss K to have to deal with the issues the car had. The fault with the instrument panel meant that at times Miss K couldn't view any information that would normally appear on the panel during driving, such as her speedometer and various other important information. I can see how this might have been distressing and worrying for Miss K.

Thinking about all of this, I agree with MBFS here that £250 is fair to reflect what happened.

Service schedule and fuel costs

Miss K believes she should be refunded the cost of servicing the car and also fuel costs.

Giving Miss K a refund on the service and fuel costs would put her in a better position than she would've been had nothing gone wrong – as she was always going to pay out for these expenses. Miss K has had benefit from the fuel, and she would've had to cover the cost of the service if the car had been of satisfactory quality.

So, I don't think it's reasonable she gets these costs back.

Miss K has said she doesn't want to reject the car. MBFS has also said that they had terminated the agreement when our investigator issued her view but has since reinstated it. I'm unsure why MBFS initially terminated the agreement as Miss K hadn't responded to the investigator. I think this is likely a clerical error. But it is worth highlighting that, should Miss K choose to keep the car, it is likely MBFS would seek to claim any arrears or funds already paid to her while she has had use of it."

I set out that I intended to uphold this complaint. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses to the provisional decision

Miss K responded and requested an extension to the deadline I set, which was agreed.

Miss K then responded and said, among other things that she didn't agree with my provisional decision as it did not benefit her in any way and was unhappy some elements of my intended instruction to MBFS might be subject to a tax deduction.

Miss K also said there was not any consideration of the fact that she was unable to drive the car at times and that our service didn't take every aspect into consideration.

MBFS didn't respond before the deadline I set or before the extension to the deadline I gave.

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.

If there's something I haven't mentioned, I haven't ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Miss K believes my provisional decision didn't benefit her in any way. My role is to reach an outcome which is fair and reasonable to both parties. Our service isn't a consumer champion. So, although I've noted Miss K's comments, we are impartial and do not take the side of either party to a complaint.

Tax legislation requires a business to deduct tax from certain aspects of an award made. Ultimately, this is a matter for MBFS to work out and I suggest Miss K contacts HMRC if she remains unhappy.

Miss K believes I did not consider that she was unable to drive the car at times. I'm satisfied I addressed this aspect of Miss K's complaint in my provisional decision. And I'm not persuaded to change my decision by any further comments made in relation to this.

Miss K has requested documentation from MBFS regarding the defects of her car and the work that has been completed on the car. I suggest she contacts MBFS directly to request these.

In summary, I think MBFS needs to do more in this instance to put things right. I'm satisfied the outcome reached is fair and reasonable given the circumstances.

My final decision

For the reasons I've explained, I uphold this complaint and instruct Mercedes-Benz Financial Services UK Limited to put things right by doing the following:

- End the agreement with nothing further to pay.
- Collect the car at no cost to Miss K at a time and date suitable for her.
- Reimburse Miss K the deposit paid of £1,800. *
- Reimburse Miss K 10% of repayments made towards the agreement from October 2021 up until when the car is collected. *
- Pay Miss K £250 to reflect the distress and inconvenience caused.
- Remove any negative information about this agreement from Miss K's credit file in relation to this complaint, if any.

* 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 Miss K how much it's taken off. It should also give Miss K a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue and Customs if appropriate.

If MBFS has already given compensation in relation to this complaint, the final amount should be less the amount already given.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 17 August 2023.

Ronesh Amin
Ombudsman