

## **The complaint**

Mr B complains about a car he acquired with finance provided by Mercedes-Benz Financial Services UK Limited ("MBFS").

## **What happened**

In April 2023, Mr B entered into a regulated hire purchase agreement with MBFS in relation to a used car. The car was three years old, its mileage was 35,585 miles, and its cash price was £33,750.

Shortly afterwards, starting in May, Mr B complained to the dealer about a number of issues. These included damage caused by water ingress, excessive noise and vibrations coming from the engine, poor brakes, unsafe seats, and noises coming from other places.

In June and July, some repairs were carried out at no cost to Mr B. Some of these were done under warranty, and some as a gesture of good will. After that, he reported further problems, but MBFS told him (on 12 September) that these were most likely due to reasonable wear and tear, for which it would not be liable. It did however offer to pay him £200 for his inconvenience. Being dissatisfied with that response, Mr B brought this complaint to our service. He asked to reject the car.

One of our investigators began to consider this complaint. Meanwhile, another repair was carried out in November, but after that Mr B said that there were still further problems, including with the gearbox. He added that the car trims had been damaged during a visit to a service centre. Later, he said that further damage, this time to the bodywork, had been caused during another repair.

Our investigator decided not to uphold this complaint, because he said there was no evidence to show that the problems in November had been present when the car was delivered to Mr B in April. MBFS is not responsible for new problems, unless they can be shown to have been already developing at the time of delivery. Consequently, Mr B was not entitled to reject the car.

Mr B did not accept that decision. He said that the price of the car had been £6,000 higher than the market value, and so he did not expect it to have so many problems. He pointed out that several components had needed to be replaced even though they would normally be expected to last much longer. (For example, the suspension should last 50,000 to 100,000 miles, or seven or eight years, but two suspension struts had been replaced in July, after only three years and 37,400 miles.) He asked for an ombudsman's decision.

Since then, Mr B has reported that he has been told by a garage that some further components need replacing, and the gearbox requires repair work. He said he has taken the car to the dealership 15 times. He added that the courtesy car which was provided to him was not of equivalent quality to the car he had hired.

I wrote a provisional decision which read as follows.

## What I've provisionally 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.

Mr B has reported the following problems with the car, or that the following parts needed to be replaced or repaired (I will explain later why some are in bold type):

- **engine mounts needed replacing**
- **brake booster**
- **unsafe seats (not secure)**
- **suspension struts and mounts**
- **rear shock absorbers**
- **sealing rails on rear doors**
- **boot lock**
- **front radar camera and sensor**
- gearbox
- trims had perished, leading to water ingress
- excessive noise and vibrations coming from the engine
- noises coming from other places
- support bushing
- LED headlamps
- SCN coding

I have seen evidence about the following visits to garages:

### 1 June 2023

There is mention in MBFS's case notes of a visit on 1 June 2023 when a door window seal was found to have deteriorated, but it was not repaired, because neither Mr B nor the dealer were willing to pay for them. MBFS says this was damage caused by cleaning chemicals.

### 27 June

I have not seen an invoice for the first repair, but there is no dispute between the parties that the car was repaired by the main dealer on 27 June 2023. Some sealing rails were replaced.

### 5 July<sup>1</sup>

An invoice from the main dealer, dated 5 July 2023, says that two suspension struts and their mounts were replaced, the headlamps were adjusted, various springs and nuts were replaced, the brake booster was replaced, and the driver's seat was repaired. The mileage was 37,400 miles.

I have also seen an email from the garage saying that the engine mounts were replaced, although that is not in the invoice.

Mr B says that the brake booster should normally last for the lifetime of the car; the suspension struts should last 50,000 to 100,000 miles, or seven or eight years; and the engine mounts should last five to seven years. He also says that the driver's seat was not actually repaired at all. He says that he later took the car to a different branch of the main

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<sup>1</sup> In its response to my provisional decision, MBFS clarified that the car was in the garage between 27 June and 5 July and that this was one and the same visit.

dealer, who told him that the seat did not appear to have had any work carried out on it; they would not repair the seat under warranty, and it would cost £2,000 to repair. There is a dispute about whether Mr B ever visited that other branch at all, which I will deal with under the next heading.

#### 22 August and a subsequent visit

MBFS's complaint handler asked the other branch to confirm whether it had told Mr B that the driver's seat had not been repaired in July. In response, that garage told MBFS that the only record it had of any booking with Mr B was on 22 August 2023, and he did not attend. MBFS relied on that information when it sent Mr B its final response to his complaint.

However, Mr B has provided evidence that he had a courtesy car which he returned to that same branch on 23 August. So on balance, I am satisfied that he did attend the garage on that occasion. Since the garage denies that that visit happened, I also accept that it did tell Mr B that the driver's seat had not been repaired by the original branch in July.

I have not seen evidence of what (if anything) was repaired on that visit. However, MBFS has provided an email which it sent to Mr B in response to a complaint he made on 24 August. That email says that the car was back with the original branch of the main dealer for a seat to be repaired (it does not say which one), and for the boot lock to be replaced with a new one which was on order. It's not clear whether either of these repairs were carried out.

#### 27 September

There is a reference in MBFS's case notes to another visit on 27 September to the same garage as on 5 July. It lists the repairs that were carried out on both of those visits together, which are the same items as appeared on the 5 July invoice. It is therefore not clear what other work (if any) was done in September.

#### 8 November

I have seen an invoice from a third branch of the main dealer, dated 8 November 2023. It says the boot lock was repaired; this was done to solve a noise issue. The mileage was 41,588 miles.

That is only three months after the boot lock was supposed to have been replaced in the second August visit. I don't know if this repair was necessary because the replacement in August was not carried out, or because the new lock in August had failed.

#### 12 January 2024

I have seen an invoice from an independent garage, dated 12 January 2024, which says that the front radar was recalibrated (and the mileage was 42,829 miles). However, there is no evidence about why or for how long it was in need of recalibrating.

#### 31 January

I have seen an invoice from the main dealer, dated 31 January 2024, for replacing the rear shock absorbers, which was done under warranty. (The mileage was 43,076 miles.)

That is nine occasions.<sup>2</sup> I have seen no documented evidence about any other repairs.

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<sup>2</sup> As noted in the footnote above, it's actually eight.

In the list of issues above, I have highlighted in bold type the issues which were covered by the above repairs. The rest of the list is of issues which may or may not have been dealt with, but I haven't seen evidence of that one way or the other. I have asked Mr B if he can provide evidence about the gearbox in particular, but unfortunately this has not proved to be possible.

Mr B says there were six other visits to garages. These include the gearbox being repaired in April 2023, and another visit in October when he says there were issues with water ingress, engine noise and vibration, knocking noises coming from the front of the car (and also from the rear due to the faulty boot lock), unresponsive brakes, and the driver's seat was still noisy and unsecure. He found that the trims had been damaged on the return of the car from the dealership. He also says that there continue to be issues with the gearbox.

### The law

MBFS's responsibility was to provide a car which was of satisfactory quality at the point of delivery (having regard to the car's age, mileage and price). It is not responsible for any new faults which are found later on, unless they were present or developing at the point of delivery.

Faults which are discovered within six months of delivery may be presumed to have been present at the time of delivery, unless it is proved otherwise. After that, the burden of proof switches to Mr B.

If faults were present at the point of delivery, then MBFS is entitled to one attempt at repairing the car before the right to reject the car can be exercised. My approach here is to consider the car as one item, rather than each component in the car separately. So MBFS doesn't get one chance to repair each different fault; but rather, one chance to repair the car as a whole.

### My findings

There is not enough evidence for me to determine whether the continuing issues with the gearbox are because the repair in April failed, or because of a new fault. So I make no findings about the gearbox, or about the other issues for which I have seen no evidence (*i.e.* the non-bolded items on the above list), and I do not uphold Mr B's complaint about those matters.

The remaining items are the following: the engine mounts, the brake booster, the suspension struts and mounts, the sealing rails, the front radar, the rear shock absorbers, the boot lock, and the seat or seats. As for the seats, I have only seen evidence about the driver's seat, and none identifying any other seats, so I will confine my findings about seats to the driver's seat.

I have seen evidence that all of these items have now been repaired, except for the driver's seat. But although the boot lock appears to have been fixed now, this appears to have taken two attempts.

Mr B reported a problem with the driver's seat only a couple of days after the car was delivered to him, so it's likely that this problem was present when the car was delivered to him. It was not repaired in July, when the car was taken for the seat to be repaired for the first time. So I will uphold his complaint about that. (It may have been repaired in August; although Mr B disputes that, I've seen no evidence that it was still faulty in October. I make no finding here about whether the seat is still a problem or not.)

Mr B has pointed out that shock absorbers should last 50,000 miles, but they failed after only 43,000 miles. This may indicate that they were not durable, which would mean that they were not of satisfactory quality at the point of delivery. It is of course possible that shock absorbers can fail earlier than 50,000 miles due to factors such as the manner of driving, load, road conditions, and so on. But I have seen no evidence to make me think that Mr B has been using the car in such a way as to diminish the usual lifespan of the shock absorbers in this way. So on the balance of probabilities, I am presently minded to uphold his complaint about those.

The sealing rails, the suspension struts and mounts, the engine mounts, the brake booster, and the boot lock all required repairing or replacing within six months of when the car was delivered to Mr B (in June, July and August). Therefore in the absence of evidence that these faults were not present in April 2023, I will presume that they were, having regard to section 19(14) of the Consumer Rights Act 2015. I will therefore uphold his complaint about those items. The front radar failed later, and as there is no evidence about why, I will not find MBFS liable for that.

For the reasons I have set out above, I am minded to find that the car was not of satisfactory quality when it was delivered to Mr B.

Finally, MBFS was not obliged to provide a courtesy car of equivalent quality to Mr B's car, so I am unable to uphold his complaint about that.

### Redress

As I've said, I have seen evidence of five garage visits at which the relevant parts were repaired or replaced: on 27 June, 5 July, the second visit in August, 8 November 2023, and 31 January 2024.

As there was more than one relevant attempt to repair the car, I think that Mr B did have the right to reject the car. I think it would have been disproportionate to exercise that right in July just because the sealing rails had been replaced in June. But after the 5 July visit failed to resolve the issue with the driver's seat, I think that he was then entitled to reject the car.

I therefore propose to require MBFS to put things right in the following manner:

- Arrange for the car to be collected at no cost to Mr B;
- End Mr B's hire purchase agreement with nothing further to pay;
- Remove any adverse data about the agreement from Mr B's credit file;
- Refund Mr B's deposit of £24,519.91, with interest at the rate of 8% a year from 27 April 2023 to the date of settlement;
- Pay him £500 for his inconvenience.

### **Responses to my provisional decision**

MBFS maintained that its final response to Mr B in September 2023 had been fair at the time, but it agreed that the events since then might have led it to uphold his complaint if it had known about them – but it had not heard anything from him since September. It had therefore not had a chance to comment about the new issues that had arisen. So MBFS asked that I confine my decision to the information that had been available to it in September 2023, and refer the new issues to it as a separate complaint.

MBFS also provided evidence from the dealer (a memo about a claim dated 7 July 2023) about the repairs which were carried out between 27 June and 5 July, which mentioned that the driver's seat had been repaired.

Mr B said that in addition to the deposit, he had also paid another sum of £7,000 in October 2023, in order to reduce his monthly payments from £210.58 to £43.66. He asked for this to be refunded as well. He also asked for his monthly payments to be refunded.

### **My findings**

Even if I agree with MBFS that I should confine my decision to the matters it knew about on 12 September, that will not affect the outcome of this case. That is because, as I said in my provisional decision, I think that Mr B was entitled to reject the car in August. I remain of the view that the driver's seat was not repaired (either properly or at all) in August, for the same reasons that I gave in my provisional decision (see page 3).

I will therefore uphold this complaint, for the reasons given above.

I will not give Mr B his monthly payments back, because he had the use of the car during those months, so it is only fair that he should pay for them. But I think it is fair that he should get back his deposit, and also the £7,000 over-payment he made on 18 October 2023, less the difference between his old and new monthly payments. That difference is £166.92, which over six months is £1,001.52, so I will require that of the overpayment, £5,998.48 is refunded. (I won't award interest on that amount, because Mr B has had the benefit of paying reduced monthly payments since October.)

### **My final decision**

My decision is that I uphold this complaint. I order Mercedes-Benz Financial Services UK Limited to:

- Arrange for the car to be collected at no cost to Mr B;
- End Mr B's hire purchase agreement with nothing further to pay;
- Remove any adverse data about the agreement from Mr B's credit file;
- Refund Mr B's deposit of £24,519.91, with simple interest at the rate of 8% a year from 27 April 2023 to the date of settlement;
- Refund £5,998.48 from Mr B's overpayment; and
- Pay Mr B £500 for his inconvenience.

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

(Mr B should refer back to MBFS if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 April 2024.

Richard Wood  
**Ombudsman**