

The complaint

Mr M is unhappy that a car supplied to him under a hire purchase agreement with Mercedes-Benz Financial Services UK Limited (MBFS) was of an unsatisfactory quality.

When I refer to what Mr M has said and what MBFS have said, it should also be taken to include things said on their behalf.

What happened

In October 2023, Mr M was supplied with a used car through a hire purchase agreement with MBFS. The cash price was £12,480 and the hire purchase agreement was for £279 a month over 59 months; with a final payment of £279 plus a £10 Option to Purchase fee. At the time of supply, the car was around seven and a half years old and had done 77,517 miles.

Just over five weeks after he was supplied with the car Mr M returned it to the dealership as he had noticed an engine management light coming on. Although he didn't leave the car with the dealership on that occasion, he returned the car to the dealership just over a week later and left it for investigation. The dealership found the fault to be diesel particulate filter (DPF) efficiency with a blocked pipe to the exhaust back pressure sensor, which they repaired. The car was ready to collect after five days.

Mr M decided he did not want the car back after the repair and complained to MBFS about the fault saying he wished to reject the car. He also cancelled the direct debit monthly payment for the hire purchase agreement.

MBFS partially upheld Mr M's complaint, acknowledging the inconvenience of experiencing a fault so early in the contract for which they paid Mr M £150, but they did not accept the rejection of the car.

Mr M was unhappy with this response, so he referred his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that as MBFS had repaired the car, and there was no evidence that was unsuccessful, Mr M did not have the right to reject the car under the CRA. He thought MBFS offer to pay Mr M £150 for distress and inconvenience was a fair resolution and so did not uphold Mr M's complaint.

Mr M didn't agree with the investigator. Mr M repeated his wish and intention to reject the car and felt the £150 payment for inconvenience was insufficient.

Because Mr M didn't agree, this matter has been passed to me to make a final decision.

It is my understanding that Mr M did not collect the car and the agreement has since been terminated.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I have reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances. I have focused my decision on the quality of the car on supply and Mr M's wish to reject the car and not the termination of the agreement as this did not form part of Mr M's complaint.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we can investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr M entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances.

I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask MBFS to put this right.

At the time it was supplied the car was over seven years old and had completed 77,517 miles. The cash price was £12,480 so less than the price of the car when new and I think a reasonable person would expect a car of this age and mileage to require more and earlier maintenance than a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors.

First, I considered if there was a fault with the car. I've considered evidence provided by both sides and it is not disputed there was a problem with the car, nor that this fault was present when the car was supplied to Mr M. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think MBFS should do to put things right.

The CRA says a consumer has 30 days to reject faulty goods. After this period the finance provider has a single chance of repair where goods do not conform to contract. As the car was returned to the dealership outside of the 30 days since it was supplied to Mr M, he did not have the right to reject the car and MBFS were reasonable to insist on a repair first, which they completed with the car being ready after five days. If after completing that repair the car still did not conform to contract Mr M would likely have had a stronger case for rejection. However, I have not seen any evidence that this repair was unsuccessful and so I am satisfied MBFS acted fairly and promptly in investigating the fault and repairing the car.

and have no reason to think it was not of a satisfactory standard once the repair was completed.

MBFS also paid Mr M £150 for inconvenience. Whilst I note Mr M has disagreed that this figure was fair given the cost of taxis, and stress and frustration he felt, I have not seen any evidence of costs he incurred during the five days the car was being repaired and so given the information provided I feel this was a fair payment.

Mr M has also suggested that he ought to have been allowed to replace the car. Section 23 of the CRA sets out that where repair or replacement are disproportionate compared to the other, the consumer cannot require that. So here, replacement is arguably disproportionate to repair given the relatively minor work that was required against the relatively major task of sourcing a car of the same make, specification, age, mileage and so on.

I appreciate Mr M will be disappointed with my decision but for the reasons stated I think MBFS have acted fairly, and I don't think it would be right to ask MBFS to do anything further in respect of Mr M's complaint.

My final decision

For the reasons explained, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 November 2024.

Jo McHenry
Ombudsman