

## **The complaint**

Mr S complains about a car that he acquired using a hire purchase agreement with Mercedes-Benz Financial Services UK Limited ("MBFS"). He says it wasn't of satisfactory quality when it was supplied to him.

## **What happened**

In March 2022, Mr S entered into a hire purchase agreement with MBFS for a new car. The cash price of the car was £50,350. Mr S traded in his existing car for £10,201.81 which was put down as a deposit on the agreement and also paid a deposit of £5,000 from his own pocket.

Mr S says the car's battery developed a fault within nine days after he acquired it. The car was inspected on several occasions with the battery being changed on more than one occasion and the car was fitted with new parts that were sourced from overseas.

However, Mr S says the car remained faulty and so he complained to MBFS about this. MBFS upheld the complaint and offered to do the following:

- Settle the hire purchase agreement with no negative impact on Mr S's credit file.
- Collect the car at no additional cost.
- Refund £6,769.60 of the £15,201.81 deposit with 8% interest.
- Pay £300 for the inconvenience Mr S had been caused.
- Pay £200 for the time they took to send Mr S their final response.

Mr S didn't agree with the terms of the offer. He said he should be refunded the full deposit and all the monthly payments he'd made under the hire purchase agreement. Mr S also said MBFS should refund him £770 for the cost of a service plan, £254 for a scratch and dent cover plan and £319 for a GAP insurance plan. And Mr S said MBFS should give him a goodwill gesture for their poor customer service.

MBFS didn't agree to this, so Mr S referred his complaint to our service. Our investigator looked into what had happened and recommended that MBFS should refund the deposit in full as well as the other things they had offered to do. He also said MBFS should refund the repayments Mr S made to the agreement during the time he couldn't use the car.

Mr S agreed with the investigator's view, but MBFS didn't. They said it wasn't reasonable to refund the full deposit as this would mean Mr S would pay relatively little overall for the use of a brand-new premium car.

Our investigator didn't change his view, and so Mr S's complaint has been passed to me for a 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.

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr S and MBFS though that I've reviewed everything on file. And if I don't comment on something, it's not that I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

MBFS supplied the car to Mr S under a regulated hire purchase agreement. Because of that, our service can consider complaints about the hire purchase agreement and the goods, in this case the car. MBFS has an obligation to ensure it was of satisfactory quality – as set out in the Consumer Rights Act 2015 ("CRA"). Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods; (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

Mr S was supplied with a brand-new car that had a cash price of over £50,000. Because of this, I think that it's reasonable for Mr S to have had high expectations around the quality of the car. However, it seems that pretty much straight away after the car was supplied to Mr S, it either had a problem with its battery or a problem which caused the battery not to charge correctly, and that this issue hasn't been fixable.

It seems that MBFS accepts the car wasn't of satisfactory quality bearing in mind the offer it made to Mr S. For the avoidance of doubt though, I find that the car wasn't of satisfactory quality when it was supplied. There seems to have been a significant fault with the car which is affecting the battery, and this was first experienced by Mr S within a couple of weeks. I wouldn't expect a 'reasonable person' to have expected this issue to have happened with a brand-new car so soon after acquisition.

As I've found that the car wasn't of satisfactory quality when it was supplied to Mr S, I will now set out what I think should be done to put things right.

## **Putting things right**

The CRA sets out a number of remedies where goods were found to not be of satisfactory quality. The supplier of the goods is typically allowed one opportunity to repair the goods, where those issues arise after 30 days of the goods being supplied. Consumers do have the right to seek rejection of the goods if the supplier has already had one opportunity to repair the goods.

I'm unsure whether Mr S sought to reject the car within the first 30 days. But, even if I'm wrong about that, I think he is now still entitled to do this bearing in mind the number of unsuccessful repairs that were attempted on the car, the remedies that are set out in the CRA and what I consider to be fair and reasonable in the circumstances of this complaint. So, MBFS should now take back the car and end the hire purchase agreement with Mr S. It would be unreasonable in my view to expect Mr S to continue with the agreement until the end of the term considering the number of problems he's experienced.

MBFS should therefore now arrange to take back the car from Mr S and end the hire

purchase agreement with nothing further owed. Mr S isn't responsible for any termination or recovery costs associated with ending the agreement or taking back the car. MBFS should ensure that when cancelling the agreement, no adverse information is recorded on Mr S's credit file.

I also think MBFS should refund the deposit Mr S made in full and don't agree with them that this should be refunded pro-rata. MBFS should by now be fully aware of our approach to refunding deposits under hire purchase agreements. The advance payment made under the agreement is a deposit, it's not the same as an advance rental made under a hire agreement – which we would usually say should be refunded pro-rata. It should also be remembered that Mr S is now going to have to start again with a new deal, and I think a full refund of his deposit broadly puts him in a fair position to do that. Interest of 8% simple each year should be added to this, from the date of payment to the date of settlement.

Mr S has said he wasn't able to use the car for around eight weeks and I've no reason to doubt that. I think it's unreasonable to expect Mr S to meet the costs of the monthly repayments under the hire purchase agreement while not having the use of the car. So, I consider it fair for MBFS to refund an equivalent of two payments to him.

I consider that being supplied with a car that wasn't of satisfactory quality has caused Mr S some distress and inconvenience. Being without the car and making arrangements with the garages to determine the issues are things that would also have been inconvenient to him. MBFS made an offer of £300 in respect of this which I find to be fair. So, MBFS needs to pay Mr S this.

I note that MBFS offered Mr S £200 for the way they handled this dispute. That also seems a fair amount and so they will need to pay him this.

Finally, if MBFS has recorded any adverse information that relates to this dispute, such as late or missed payment markers with credit reference agencies, these should be removed.

### **My final decision**

I uphold this complaint and direct Mercedes-Benz Financial Services UK Limited to do what I've set out in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 February 2025.

Daniel Picken  
**Ombudsman**