

The complaint

Mr W complains Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance (MBFS) supplied a car under a hire purchase agreement which was of unsatisfactory quality.

What happened

Mr W took out a regulated hire purchase agreement (also described as an agility personal contract plan agreement) with MBFS on 9 November 2023. Mr W collected the vehicle on 10 November 2023. Whilst driving home, he said he noticed a loud, strange clunking noise originating from the back of the car. He thought the noise was coming from something in the boot, but he discovered it was the rear reversing camera opening and closing.

Mr W has provided a detailed timeline of what has happened with the vehicle since he collected it. I won't repeat everything which has happened here in detail. In summary, Mr W reported the issue to the dealership and the car was taken in for a diagnostic check in November 2023. Mr W said the advisor stated that the rear-view camera was trying to calibrate, and he was told the noise should settle. Mr W said they removed the cover around the number plate at the time. He said the noise was no better on the return journey.

Mr W took the car back to the dealership on two further occasions in December 2023 and then again in January 2024 as he felt the issue had not been resolved. He received correspondence from the dealership which said the noise related to the calibration of the rear-view camera and was a characteristic of the car.

Mr W complained to MBFS about the quality of the car being unsatisfactory. MBFS responded to the complaint on 6 February 2024. It said it had reached out to the agents/authorised repairers at the dealership to discuss the issue and they had raised it as a technical case with the manufacturer. It was subsequently advised that the noise was part of the camera's normal operation which opens and closes to recalibrate on every ignition cycle. Overall, it concluded the noise was not a fault, but a characteristic of the car and Mr W was not eligible for rejection of the vehicle.

Mr W remained unhappy and asked our service to investigate. Our Investigator reviewed the case and felt there wasn't sufficient evidence of a fault. However, Mr W didn't agree. He provided comments and further evidence to demonstrate the presence of a fault and the severity of it. In summary he said:

- When he purchased a brand-new car, he expected it to be without faults. However, there was a noise present which forced him to stop and check there were no loose items in the boot. He expected the journey to be without noise.
- He notified the dealer who made the first attempt to repair the issue by removing the housing around the license plate.
- The issue remained and a second repair was attempted. He said he was informed by the dealership that several dealers were reporting the issue regarding the noise. He

was told there was no resolution but the technical team at the manufacturer would provide a solution (such as a software update).

- Mr W had no assurances of timescales for resolution and complained which led to the car being taken into the garage for a third time for a repair attempt. At this time, Mr W said noise dampening was added but this did not help.
- The dealership informed him the manufacturer recommended driving the car at 30km/h and to keep the steering angle at <10 degrees to allow the car to calibrate and if he turned off the ignition the process would repeat. However, he said this was not described in the operating manual and were not issues present on his previous (almost identical) cars. He said the precision required means these conditions are impossible to achieve in the routine daily use of the car which is generally to take his children to and from school. He feels the car is not fit for purpose.
- He made several attempts to contact the manufacturer directly but did not receive a response. Therefore, the car was taken in by the dealership for a fourth attempt at repair.
- He feels the provision of the courtesy car was a stalling technique to reduce his protection in terms of his consumer rights. He said he understands that for the first six months the onus is on the supplier of the goods to prove the car is fault free at the time of delivery. But, after six months, the onus is on him.
- He did not know he would need to pay for an independent inspection to enact his consumer rights. He was not told to do this and he was also told the time taken to review the case would not impact his consumer rights because he had stated he wanted to reject the vehicle in January 2024.
- He was concerned our service didn't conduct a thorough investigation because job sheets and other information was not obtained. He also provided a report from a mechanic and recordings which show the frequency and noise of the camera opening. Additionally, he has provided several emails to confirm what he had been told while trying to get the car repaired. He has provided a copy of the job sheets from MBFS which detail the first three times the car was at the dealership. He was not provided with a copy of the job sheet for the fourth time (January to March 2024).
- He has also explained there was a previous decision by our service regarding a noise issue which stated that a noise should not be accepted as a "characteristic" and that this was grounds for rejection.

As Mr W didn't agree, the complaint has been passed to me to decide.

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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. And MBFS as the supplier of the goods under this type of agreement is responsible for a complaint about the quality of those goods.

The Consumer Rights Act 2015 is relevant to this complaint. It says that under a contract to supply goods, there is an implied term that “the quality of the goods is satisfactory”. To be considered “satisfactory”, the goods would need to meet the standard a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. So, it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age, mileage and the car’s history at the time of sale.

The quality of goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Here the car was acquired new with a cash price of £34,230. So, I think it’s fair to say that a reasonable person would expect the level of quality to be higher than a cheaper model or a second-hand, more road-worn car and that it could be used – free from defects – for a considerable period of time.

Mr W has provided evidence to show the car was not performing as he expected. He said he first noticed the noise coming from the rear of the vehicle when he was driving the car home from the dealership. He has provided audio recordings which he has explained is the sound of the rear-view camera opening and closing as he is driving. He has also provided a report from a mechanic. The mechanic explained during a test drive of ten minutes the camera was opened and closed 12 times. It also went on to explain the operation of the camera was not smooth and there was a loud clunking. The noise was described as “*extremely distracting*” by the mechanic. This supports what Mr W has said about the operation of the rear-view camera whilst driving.

Moreover, I have seen an email from the dealership which confirms it was a known issue affecting some vehicles. MBFS have described the issue as a characteristic of the car in its final response. I understand the opening and closing of the rear-view camera is related to the camera’s attempt at calibration.

Mr W has provided correspondence he received from the manufacturer which explained the flap on the reversing camera opens and closes by itself during forward travel, this is a result of the online calibration. Once calibration is completed, the camera flap stays closed for the rest of the ignition cycle. The manufacturer has explained this calibration is based on the assumption the camera position may have changed through door or trunk lid opening and closing. And calibration can be performed as long as the vehicle speed is 30km/h and the steering wheel is <10 degrees. As soon as the ignition is re-cycled the process starts again.

Having considered everything, I accept there does seem to be an issue with the camera calibration which seems to have been present at the point the car was sold. However, this isn’t sufficient to say the complaint should be upheld. I also need to consider whether this made the car of unsatisfactory quality.

I acknowledge the comments made by Mr W about the level of the noise and the frequency of the camera calibration. I’ve also considered the mechanic’s report and the audio recordings. On the other hand, I note the comments from the manufacturer’s technical team about how to achieve calibration. Also, the manufacturer’s manual does explain that the reversing camera might extend and retract automatically for calibration without displaying an image. Overall, I’m not persuaded from the evidence I have seen this issue is such that it meant the car was of unsatisfactory quality.

I recognise Mr W has provided a copy of another decision which was issued by our service and which talks about a squeaking noise. I must base my decision on the facts of this case and the individual circumstances which have been presented to me. I also recognise Mr W has raised concerns about MBFS stalling on the repairs. However, from the evidence I've seen I can see the car was taken into be repaired when Mr W initially raised concerns and continued to raise concerns. Ultimately, Mr W remained unhappy with the car and the matter was not resolved, but I don't think MBFS acted unfairly here or caused unnecessary delay.

Overall, it seems the rear-view camera tries to calibrate more frequently and noisily than Mr W expected. However, I'm not satisfied this meant the car was of unsatisfactory quality at the point of sale and so I won't be asking MBFS to do anything further here.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 December 2024.

Laura Dean
Ombudsman