

## **The complaint**

Mr A complains about a car Mercedes-Benz Financial Services UK Limited (“MBFS”) supplied to him under a hire purchase agreement (“HPA”) wasn’t of satisfactory quality.

## **What happened**

In July 2022 MBFS supplied a car to Mr A under an HPA, it was about two years old and had done around 21,000 miles at the point of supply.

A few days after Mr A collected the car, he said he noticed a juddering to the steering when braking. In August 2022 he informed the supplying dealership and in October 2022 the car underwent repairs. The brake discs and pads were replaced as well as the hub caps, all repairs were covered under warranty, but the problem remained.

In November 2022 Mr A says the car was test driven and he was informed that further repairs needed to be undertaken. In March 2023 a garage instructed by MBFS investigated the issue and informed Mr A the problem was with the wheels, which needed replacing due to the wheel bolts being over tightened. The wheel hubs were replaced again in May 2023, but the problem persisted. In July 2023, the car was booked in for repair and, in August 2023, Mr A was advised that the alloy wheels needed replacing.

In December 2023, the fault reoccurred, and in February 2024, the car was booked in for further investigation. Mr A was once again informed the hub caps and brakes needed replacing due to the wheels being over-tightened. According to the mechanic, this over-tightening likely occurred when Mr A had a puncture repaired at a third-party garage. As a result, the brakes, discs, and hubs had become warped, causing the brake judder. Mr A was told he’d be responsible for the repair costs.

Mr A complained to MBFS in February 2024. It looked into things but didn’t uphold the complaint. In short it said it was reasonable to expect wear and tear to occur. It said amongst other things, brakes and discs are consumables and dependent on driving style and so are not covered under warranty but in this case the dealership covered the costs as a gesture of goodwill. It went on to say, based on the repair history it was unable to accept rejection of the vehicle because the fault occurred more than six months after the start of the agreement.

Mr A remained unhappy and so referred his complaint to this Service. Our Investigator looked into things and said she didn’t think the car was of satisfactory quality. She said repairs had been carried out on several occasions, but the faults remained so suggested MBFS allow rejection of the vehicle. MBFS didn’t agree, it maintained that the issues occurred due to wear and tear, notably it pointed out that Mr A had done in excess the mileage allowance allowed under the agreement.

As an agreement couldn’t be reached 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.

Having done so, I've reached the same overall conclusions as our Investigator and for broadly the same reasons, I will explain my reasons below.

I'd like to point out that I won't be commenting on all the evidence submitted by the parties – only what I consider to be central. It's clear Mr A has strong feelings about this complaint. He has provided detailed submissions in support of his view which I can confirm I've read and considered.

However, I trust that both parties will not take the fact that my findings focus on what I consider to be the central issue as a discourtesy. The purpose of my decision isn't to address every point raised but to set out my conclusions and reasons for reaching them.

The HPA entered by Mr A is a regulated consumer credit agreement and this Service is able to consider complaints relating to it. MBFS is also the supplier of the goods under this type of agreement and responsible for a complaint about its quality.

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr A entered. Because MBFS supplied the car under a HPA, there's an implied term that it is of satisfactory quality at the point of supply. Cars are of satisfactory quality if they are of a standard that a reasonable person would find acceptable, taking into account factors such as the age and mileage of the car and the price paid.

The CRA also says that the quality of goods includes the general state and condition, and other things such as its fitness for purpose, appearance and finish, freedom from minor defects and safety can be aspects of the quality of the goods. Satisfactory quality also covers durability.

Having considered what the CRA sets out about durability, the expectation here is that goods will last for a reasonable amount of time. Mr M acquired a used car, it was about two years old and had travelled around 21,000 miles. The price of the car was not insignificant and was about £31,500. I accept that it is reasonable for a used car of this age and mileage to show signs of wear and tear and this will be reflected in the price of a used car, when compared to how much it would have cost new. But just because the car was used with some mileage, doesn't mean MBFS has no requirements in relation to satisfactory quality.

Based on the information I have I don't think there's a dispute about there being a fault with the car. I say this because I have both Mr A's detailed testimony along with communications between the parties involved and job sheets on file. MBFS has provided invoices and job sheets which confirm the brake judder was present in March 2023, July 2023 and February 2024.

The invoice from March 2023 states: *"wheel judder through steering wheels from 40 MPH upwards"*

I also have a road test report from February 2024 which states: *'we last worked on this car for this concern 17/08/2023... carried out road test and confirmed brake judder could be felt through steering wheel and seat, the judder could be felt at most speeds from 25mph upward'*.

Mr A has also provided video evidence which confirms the steering wheel judders and so it follows I am satisfied there is a fault with the car which is still present.

It's normal to expect some wear and tear, particularly in a second-hand car and I accept that

tyres, brake pads and discs are likely to be considered usual wear and tear.

But I have considered what Mr A has said, the main issue Mr A complains about appears to be an ongoing judder when braking, he has indicated this has made the car uncomfortable to drive and meant he has not felt safe using it. So, this is the issue I have focused on.

Mr A has provided credible testimony to explain that the vibration and juddering was evident only a few days after collecting the car. Very soon after this he reported the issue to the dealership and repairs were undertaken in October 2022. This suggests to me that the fault was present when the car was supplied and that the repairs carried out in October 2022 didn't correct the problem. Mr A's credible testimony is backed up by health check reports, invoices and job sheets detailing repairs carried out. I also have an extensive number of emails about the issues and repairs being booked in. For example, I have email correspondence about the issues and to support this I also have evidence to show appointments were booked in as early as October 2022 and November 2022. This suggests the problems occurred very soon after the point of sale.

I have considered the amount of repair attempts that have been carried out for the juddering issues when braking, and from the invoices, job sheets and correspondence I am satisfied the same issues were repaired and remained. MBFS has said because the issues occurred more than six months after Mr A acquired the car it doesn't support rejection, but I disagree. I note that MBFS refers to wear and tear and I accept that issues with an older, higher mileage car can be put down to reasonable wear and tear. But at the point of acquiring the vehicle it had only done 21,000 miles which is minimal given the average lifespan of a car.

However, I have turned my mind to whether in the particular circumstances here a reasonable person would consider the goods to be of satisfactory quality. I've had regard to the age and mileage, as well as the events outlined above. I have also had regard to how soon Mr A reported the problem with the car which was discovered within days of Mr A using it. This shows it was likely present when he acquired the car rather than something which developed later. It seems that the age and mileage notwithstanding that a reasonable person would not expect to be sold this car for a cash price of £31,500 with what appears to be an existing and significant juddering issue that required immediate attention with repairs being carried out soon after.

For completeness, I understand MBFS has said Mr A has used the car excessively, given the number of miles he's done since acquiring the car, but being able to drive a car for long distances does not in itself make it of satisfactory quality. It has also said the issues stemmed from Mr A using a third party not adhering to manufacturers tolerances when re-fitting a wheel replacement. I accept there is evidence to support this but for reasons I've explained above, the issues that remain with the vehicle were first brought to light soon after the point of sale and I'm not persuaded this complaint has stemmed from a repair carried out much later.

On the face of it the evidence persuasively points to the original issue with the juddering when braking has not been remedied effectively. I appreciate there will be an element of uncertainty in cases like these – however, I need to decide what is most likely to be the case. And the evidence here points to the original issues which were present within days of taking the car (and causing the car to fall below the standard a reasonable person would consider satisfactory) being ongoing. Therefore, I have considered what remedy would be a fair one to put things right. I note that the CRA allows a supplier to make one attempt at repair before the consumer can claim other remedies. Here it appears there have been multiple attempts to remedy the juddering, so I have considered other remedies including the final right to reject.

In summary I think there is compelling evidence to show the car was of unsatisfactory quality when supplied to Mr A, so I think rejection is a fair remedy here. MBFS should therefore take back the car at no further cost or inconvenience to Mr A, end the finance agreement and refund him the value of any deposit and part exchange contribution.

I note there were several times Mr A didn't have use of his car, but I've also considered that he was supplied with a courtesy car during this time at no extra cost, so I won't be recommending he receives a refund for loss of use. But I've also thought about what Mr A has said about the courtesy car and I'm minded to agree with our Investigator here. Mr A has said the courtesy car supplied was significantly smaller than his vehicle and more importantly did not permit pets which prevented Mr A using the vehicle with his dog. For this I think it's fair Mr A receives a 10% refund for the times he was supplied with a courtesy car for impaired use.

Mr A will not get a full refund of his payments because he has had notable use of the car. So, I need to fairly reflect that. But I also need to think about any money he is fairly due back (or arrears that should be written off) in the particular circumstances here.

Mr A has incurred other costs, in April 2024 Mr A paid a 50% contribution to repairs which has been evidenced by an invoice, but I'm not persuaded the repairs fixed the fault. The expense occurred because Mr A was supplied with a car which was of unsatisfactory quality and so a refund of these costs is fair and reasonable.

I think Mr A was no doubt caused some overall inconvenience as a result of being supplied a car that wasn't of satisfactory quality. I say this because he would've had to take the car in for multiple repairs and there was a lot of back and forth with all parties involved, this would've caused further inconvenience. I think it's fair and reasonable in this case to say Mr A has suffered distress and inconvenience in spending time and effort and some cost in attempting to get the car repaired on multiple occasions and in bringing his complaint.

Over the course of two years, he's been engaged in discussion with MBFS, facilitated multiple appointments, has waited for repairs, and been involved with the complaints process heavily. Because of this I will be recommending MBFS pay Mr A £300 for the distress and inconvenience caused.

### **Putting things right**

MBFS need to put things right here by:

- Taking back the car and cancelling the hire purchase agreement with nothing further owed.
- Remove any adverse information from Mr A's credit file (if applicable).
- Refund the customers deposit and part exchange contribution.
- Pay a refund of rentals at 10% as directed in my findings above to cover any impaired use.
- Refund the cost of repairs paid by Mr A in April 2024 (if applicable).
- Pay 8% simple yearly on all refunded amounts from the date of payments made to the date of settlement.
- Pay £300 for any distress and inconvenience caused.

**My final decision**

My final decision is I uphold this complaint and direct Mercedes-Benz Financial Services UK Limited to put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 April 2025.

Rajvinder Phaiser  
**Ombudsman**