

The complaint

Mr B complains Mercedes-Benz Financial Services UK Limited (MBFS) supplied him with a car that he believes wasn't of satisfactory quality. He also complains the car was misrepresented to him.

What happened

In January 2023, Mr B entered into a 48 month personal contract purchase (PCP) agreement for a used car. Its cash price was £18,500, it was first registered in May 2018 and it had travelled around 46,500 miles. Mr B paid a deposit and the rest was financed by a loan provided by MBFS. The monthly payments were £292 followed by an optional final payment of £6,075 should Mr B decide to keep the car.

Mr B says before agreeing to buy the car, he mentioned to the supplying dealership that the tyres and brakes looked worn and needed attention. According to him, the dealership said the car would undergo a thorough check. Mr B agreed to buy the car and it was delivered on 27 January 2023.

Within days of delivery, Mr B contacted the dealership to complain about the condition of the tyres, he also said the car was making an abnormal knocking noise when driving, especially when turning. The car was returned to the dealership at the start of February 2024. The dealership said the tyres' tread were above the legal limit and having carried out a road test, they couldn't hear the noise he had reported. The car was returned to Mr B.

In March 2023, Mr B reported that the start/stop function wasn't working. The car was returned to the dealership and it was believed the battery was the cause of the issue. It was replaced under warranty. At this time, the mechanic pointed out to Mr B that the tyres weren't in good condition as it was perishing and had deep cracks. Mr B later replaced the tyres at a cost of £565. Unhappy with the above issues, he complained and requested to reject the car.

MBFS said the car had passed its MOT without any advisories right before it was delivered to Mr B. They said the tyres were above the legal limit so they can't agree the car wasn't of satisfactory quality at supply. MBFS didn't agree to rejection however due to the time taken to answer the complaint, they agreed to pay £100 compensation as a gesture of goodwill.

In October 2023, Mr B arranged for an independent inspection to be carried out. It said all the tyres had been replaced but based on the pre-delivery inspection report, the tyre treads were within legal limit. He was satisfied the start/stop function had been fixed. He noted the brakes did show corrosion but were considered to be of serviceable condition at the point of supply. He identified the knocking noise but said further investigation was required as the source of it was unclear. However given nine months had passed and Mr B had covered approximately 8,000 miles, he didn't believe the issue would've been present at supply.

Mr B referred the complaint to our service. He also complained about other issues which weren't subject to the initial complaint e.g. he believed the car's manufacture and registration date had been misrepresented to him. The investigator recommended the complaint wasn't

upheld. She concluded the car was of satisfactory quality at supply and there hadn't been a misrepresentation.

Mr B strongly disagreed and maintained his stance.

In September 2024, I issued a provisional decision outlining my intentions to partially uphold the complaint. I said:

"Was the car mis-represented?"

When Mr B referred the complaint to our service, he complained the car was mis-represented as the supplying dealership didn't make him aware of the car's manufacture date (2016). He said he was led to believe it was five years old. I can't see this specific point was initially raised to MBFS when the complaint was raised. But the investigator has addressed it in her outcome to which MBFS has had the opportunity to consider and respond so I believe it's fair for me to consider it also.

To be satisfied a misrepresentation has occurred, there must be:

- 1. A false statement of fact has been made; and*
- 2. This false statement induces the consumer.*

Here, Mr B says the car was manufactured in 2016 but it wasn't registered until May 2018. He says this meant the car was older than he was led to believe meaning it would've impacted the car's value. He says this hadn't been pointed out to him by the supplying dealership and if it had, he wouldn't have bought the car. He says he only came to realise the manufacture date when MBFS issued its final response.

I haven't been provided with the car's advert so I can't say whether it provided information on the car's manufacture date nor what it said about the car's age. According to Mr B he was told it was five years old. I note his comments that he didn't specifically ask the dealership about the manufacture date and accepted the information given to him about the car's age.

At this point, I would like to stress that it's not uncommon for a car to be manufactured but registered at a later date. This could be for a number of reasons such as it was manufactured abroad, and had to be shipped and transported to the relevant destination and that may take some time (weeks or even months). In this case there is nothing to suggest the car was used prior to it being registered in the UK in 2018 so it's more likely than not it was first used after that date. So on that basis, I believe the dealership didn't do anything wrong by saying it was five years old. That was a fair description of the car's age given when it was first registered in the UK.

I've thought about Mr B's comments that had he known the car was manufactured in 2016 he wouldn't have bought it. However I'm not convinced by this. I say this because there's insufficient evidence it was a key aspect of his decision making and more importantly this wasn't a brand new car. If this was a key aspect for Mr B, I believe it would've been reasonable for him to have asked the dealership before he bought it. I note he didn't realise the manufacture date until MBFS' final response letter. Additionally, there is insufficient evidence this impacted the car's value as he's alleged.

In light of the above, I can't reasonably say there was a false statement of fact and it induced Mr B to buy the car. Therefore I don't find there was a misrepresentation.

Was the car of satisfactory quality at supply?

Mr B acquired a car under a regulated credit agreement. MBFS was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) 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 that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

In this case, Mr B acquired a car that was five years old and had travelled around 46,500 miles. As this was a used car with significant mileage and age, it's reasonable to expect parts may already have suffered substantial wear and tear when compared to a new car or one that is less travelled. Meaning there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn.

The tyres and brakes

Mr B complains the car was provided to him with tyres in a damaged and dangerous state. I've carefully considered the MOT test (pre-supply), the pre-delivery report, the job cards of February & April 2023 and the inspection report. I've also taken into account the age and mileage of the car when Mr B bought it. Having done so, I don't find the condition of the tyres meant the car wasn't of satisfactory quality at supply. I say this because the pre-delivery report shows the tyres were inspected and considered to be satisfactory. It passed its MOT without any advisories meaning the tyres' tread and overall condition met the legal requirements meaning it was road-worthy. Neither the MOT or pre-delivery report mention the presence of deep cracks at the time the tyres were looked at.

I note by the time the engineer said in April 2023 that the tyre's treads ranged from 2.6 to 3.6mm and there were deep cracks, the car's mileage was 48,581. Meaning Mr B had covered around 2,000 miles since purchase. Based on this report, the tyres' tread had reduced since the pre-delivery inspection and the presence of cracks was now apparent. I don't find this is unexpected given the age and mileage of the car at supply and Mr B's use of it thereafter. Tyres are subject to wear and tear as they are serviceable parts of the car. I appreciate Mr B's unhappiness about having to replace the tyres so soon after he bought it but this was a used car that had significant wear and tear meaning repair and replacement of parts such as tyres may be needed sooner than a new or more worn car.

Based on the above, I don't agree the car was supplied with tyres that were in an unsatisfactory condition.

For similar reasons, I don't find the condition of the brakes meant the car wasn't of satisfactory quality at supply. I'm aware the car failed it's MOT in January 2024 due to one of the brakes being less than 1.5mm thick. However by this point, the car had been in Mr B's possession for 12 months and he had covered 11,000 miles so it's to be expected the

brakes would've become worn and needed replacing due to wear and tear as a result of Mr B's use of the car. This is supported by the findings of the inspection report.

Stop/start function

In March 2023, Mr B complained about the stop/start function not working. Based on job cards and the fact a repair was carried out to fix it, I find there was a fault. However just because something has gone wrong it doesn't necessarily mean the car wasn't of satisfactory quality. Given the age and mileage of the car when supplied, I find it's more likely than not the fault was due to reasonable wear and tear.

I'm aware Mr B has told our service that in recent times there is still an issue with it. I'm sorry to hear this. But having determined it wasn't a fault that meant that the car was unsatisfactory quality, I can't reasonably say MBFS needs to take any action to remedy this.

Abnormal knocking noise

I can see within days of purchase, Mr B reported abnormal knocking noises when driving specifically when turning. He believed this was related to the suspension.

Although it was returned to the dealership for inspection, they said they couldn't hear the noise. This may suggest it was an intermittent issue. However based on the inspection report, the engineer did manage to hear it stating it was coming from the offside front suspension. However he said further investigation would be required to identify the source. It went on to say given the age and mileage covered since supply, the most probable cause would be wear and deterioration in one or more components. However there is no indication the mechanic was made aware that Mr B had initially reported this issue almost immediately after supply.

A service report in February 2024 identified "Suspension noise, requires NSF spring arm to rectify". I believe it's more likely than not this was the cause of the knocking sound Mr B had been reporting from the outset and the inspector had identified. So I'm persuaded this fault was present and developing at supply.

This fault was initially raised within seven days of delivery and after Mr B had only travelled around 200 miles. I don't believe a reasonable person would expect to experience such an issue so soon and having covered such minimal mileage (even for a car of that age and mileage). I would still expect the car to be reasonably durable and in this case I don't believe it was. On this basis, due to the fault with the suspension's spring arm, I don't find the car was of satisfactory quality at supply meaning there was a breach of contract.

Where this happens and it's outside of the short time to reject the car (30 days), the CRA says there should be an opportunity of repair which is what I think should happen here to resolve the complaint. MBFS should either arrange or cover the cost for this repair to be carried out (that is, the replacement of the suspension's spring arm). Although I can see Mr B did ask to reject the car, it was outside of the 30 day time period so I won't be recommending rejection.

Upon proof of payment, Mr B should be refunded the cost of the inspection report he arranged (subject to proof of payment). This is because this is a cost he's incurred as a result of being supplied with a faulty car.

I've thought about the likely impact of this situation on Mr B including multiple trips to garages, the arrangement of the inspection report and the worry as to whether the car would perform as expected. For this, I believe MBFS should pay an additional £150 compensation for the trouble and upset caused. This is in addition to the £100 compensation already paid for the time taken to investigate the complaint. Thus a total of £250 compensation.

Other

While this case has been at our service, Mr B has raised a number of other issues he is unhappy about such as the sale of the car and the dealership's conduct, the affordability of the agreement, suitability of the car and the sale of the car's warranty. However having reviewed his complaint submission to MBFS, I can't see these specific points were raised to them nor was it addressed in the final response so I can't say MBFS has had the opportunity to investigate his concerns. If Mr B wants these issues looked into further, he must raise them as a new and separate complaint. I won't be considering them in this decision.

Conclusion

Taking everything into account, based on the fault of the suspension's spring arm, I don't find the car was of satisfactory quality at supply and MBFS needs to put things right as outlined. However I don't find the car's age was mis-represented to Mr B.

Lastly I'm very sorry to hear about Mr B's recent health issues, I wish him a speedy and continued recovery. If this is impacting his ability to pay for the car, I encourage him to speak to MBFS directly. I would like to remind MBFS of their obligations under CONC where consumers are experiencing financial hardship".

Responses to the provisional decision

Both parties were invited to respond to the provisional decision.

In summary, Mr B said:

- He disagrees with the findings regarding the severity of the mis-description, he says there's been a failure to distinguish between wear and tear and the tyre's structural failure;
- He's too unwell to pursue this matter further;
- Due to his recent health, he may not be able to drive again and he's unlikely to get further employment to cover the monthly payments;
- He wants MBFS to collect the car and cancel the agreement. He believes he's less than five months away from the point where he can end the agreement;
- The compensation due and the cost of the repairs is likely to be more than five monthly payments.

Mr B's response was put to MBFS for their consideration. MBFS said they accepted the provisional findings and what was needed to put things right. They asked how Mr B would like to proceed with the repairs.

They also said they were sorry to hear about his ongoing health and they would pass this information to their specialist team who deals with vulnerable consumers and they would be in contact with him in due course to discuss matters further and determine how best to support him.

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 thank both parties for their responses which I've carefully considered. I recognise Mr B's strength of feeling about this matter but my opinion remains unchanged.

I'm very sorry to hear about the ongoing impact of Mr B health and I wish him a speedy recovery. Given the circumstances and the important focus of his health, I can understand why he simply wants this situation dealt with and the agreement to end. I find MBFS' above proposed course of action is fair in the circumstances because the specialist team will provide the relevant support and discuss options with him. I encourage MBFS to liaise directly with Mr B as a matter of priority to resolve matters in the interest of both parties.

On the basis I haven't been provided with any further information to change my decision I still consider my provisional findings to be fair and reasonable in the circumstances.

My final decision

For the reasons set out above, I intend to partially uphold Mr B' s complaint.

To put things right, Mercedes-Benz Financial Services UK Limited must:

- Either arrange or cover the cost of the repair as outlined above;
- Reimburse Mr B for the cost of the independent inspection report (subject to proof of payment) plus pay 8% simple interest per annum from the date of payment up to the date of settlement*;
- Pay an additional £150 compensation to Mr B for the trouble and upset
- Refer this account to the specialist team and provide the relevant support to Mr B in light of his ongoing medical situation.

*If Mercedes-Benz Financial Service considers tax should be deducted from the interest part of my award it should provide Mr B with a certificate showing how much it has taken off, so Mr B can reclaim that amount if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 October 2024.

Simona Reese
Ombudsman