

## **The complaint**

Mr T 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.

## **What happened**

In September 2023, Mr T was supplied with a new car through a hire purchase agreement with MBFS. He paid a £10,000 deposit (which included a £1,500 dealer's contribution) and the agreement was for £65,970 over 49 months; with 48 monthly payments of £794.85 and a final optional payment of £33,500. The agreement limited the car to 6,000 miles a year.

Starting from October 2023, Mr T experienced multiple problems with the car and he complained to MBFS in April 2024. MBFS agreed that Mr T could reject the car, along with receiving a refund of the £8,500 deposit he paid, and receiving £500 compensation for the distress and inconvenience he'd been caused.

Mr T wasn't happy with this offer and, after taking legal advice, he issued a pre-action letter requesting £16,927.70 as settlement of his agreement – Mr T felt he should be refunded the full £10,000 deposit, all the payments he'd made, the cost of a tracker/immobiliser he'd had fitted to the car, and the paint protection he'd paid for. MBFS didn't accept this, but they increased their offer to include 10% of the payments Mr T had made, plus the paint protection.

Mr T still wasn't happy with MBFS's offer, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that, although MBFS had agreed Mr T could reject the car, they were also entitled to make a charge for fair usage. As Mr T had travelled over 7,500 miles before rejection was agreed, the investigator said that a refund of 10% of the payments was fair for the impaired usage Mr T had had. However, as Mr T had stopped using the car in August 2024, the investigator said that Mr T should also be refunded all the payments he'd made since that date.

The investigator also said that, for the same reasons why MBFS had agreed to refund the paint protection, they should also refund the cost of the tracker/immobiliser. Finally, the investigator said MBFS should increase the compensation to £650.

Mr T didn't agree with the investigator's recommendations. He thought MBFS should refund some payments due to the delays in them dealing with his matter. He also thought they should refund 25% of the regular payments he'd made, as 10% was too low to cover the financial loss and inconvenience he experienced. And this should also cover the period from November 2023 to April 2024, as the first problems with the car occurred in October 2023. Finally, he wanted MBFS to agree to delete certain medical documents he'd sent them from their system.

MBFS also didn't agree with the investigator's opinion. They didn't think that it was fair to ask them to refund all the payments from August 2024 onwards, as Mr T had advised them he

was intermittently using the car after this date; refund the cost of the immobiliser itself (as this is a removable item and Mr T could have this fitted to another car), although they would cover the cost of installation and removal; or increase the compensation offer by £150.

While the investigator said that MBFS should delete Mr T's personal medical information, the comments from both parties didn't alter the rest of their recommendations. MBFS continued to disagree with the increase in compensation and said that Mr T would be able to use the immobiliser on another car, so it was fair for this to be removed.

Mr T provided evidence that the current mileage on the car was 7,615 miles – 74 miles more than the 31 July 2024 mileage of 7,541 miles. He said this additional mileage was incurred by taking the car for two contractual services, and when he attempted to return it to the supplying dealership. He also thought the compensation should be increased to between £750 and £1,500.

Because neither party agreed with the investigator, this matter 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 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've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 T was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, MBFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless MBFS can show otherwise. So, if I thought the car was faulty when Mr T 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.

In this instance, it's not disputed there was a problem with the car, nor that this fault was present or developing when the car was supplied to Mr T. 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.

## Putting things right

Due to the issues with the car, which Mr T complained to MBFS about on 8 April 2024, MBFS agreed that he could reject the car. This offer was made on 1 July 2024, and I think it's fair in the circumstances. When we look at rejection, our standard approach is to only ask the financial business to refund the deposit paid directly by the customer – we don't expect that a dealer contribution, which is essentially a reduction in the sale price of the car, to be refunded. I've seen that MBFS have offered to refund the proportion of the deposit paid by Mr T, which I'm satisfied is fair. As such, I won't be asking them to refund any more than this part of the deposit.

Mr T has been able to use the car while it was in his possession. So, I think it's only fair that he pays for this usage. Mr T has explained that it was always his intention to make all the payments under the finance agreement, and then pay the optional final payment to purchase the car when the agreement ended. He's said that this is the reason why he was doing more than the 6,000 miles a year allowable under the agreement – the car had done over 7,500 miles in the less than 12-months between supply and when he stopped using the car at the start of August 2024.

Given the issues with the car, I'm satisfied that Mr T's usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that MBFS refund some of the payments Mr T made. However, I think that 10% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality. I say this because, regardless of Mr T's intentions, by signing the agreement he agreed to 6,000 miles a year. As such, his usage of the car was substantially more than agreed – had the impairment of the usage been at the level that Mr T has argued, I don't think it would be reasonable for him to have exceeded the permitted mileage as much as he did.

Mr T has also provided evidence to show that the car has essentially not been used since August 2024. As such, MBFS should refund the full payments Mr T has made from August 2024 onwards, as he was paying for a car he wasn't able to use, due to it being of an unsatisfactory quality.

Mr T also feels he should be refunded the cost of insuring the car. However, I don't agree these costs should be refunded, and I'll explain why.

While the car has been in Mr T's possession, it has been driven on the road during this time. It's a legal requirement that a motor vehicle is insured. This is needed whether the vehicle is being driven or not. The insurance covers the vehicle for risks not associated with being driven, i.e., fire, theft, and third-party damage, so Mr T was still benefitting from the insurance payments, whether he was driving the car or not.

When taking possession of the car, Mr T paid extra for paint protection, and he had a tracker/immobiliser fitted (which he's said was a requirement of insuring the car). It's not disputed that MBFS will refund the cost of the paint protection, but MBFS don't think it's reasonable for them to refund the cost of the immobiliser itself, only the fitting and removal costs. They say this because Mr T would still be able to use the immobiliser on another car once it's been removed i.e., he can still benefit from this.

While I appreciate MBFS's position on this, I don't agree this is a fair outcome. While Mr T could use the immobiliser, he's explained that this is no longer needed i.e., it's not his intention to replace the car with one that has a similar insurance requirement. However, when the car is returned to MBFS, it will benefit from having the immobiliser fitted, and this will be factored into the sale price once they dispose of the car. As such, I think it's reasonable that MBFS refund these costs.

Finally, I think Mr T should be compensated for the distress and inconvenience he was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended MBFS pay Mr T a total of £650, to recognise the distress and inconvenience he's been caused. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mr T would've felt by being provided with a car that wasn't of a satisfactory quality. But I think it also fairly reflects the fact that Mr T was able to return the car to MBFS in July 2024 and continue to dispute the compensation and refunds they were offering, but he chose not to do this. This choice added to the situation that Mr T was experiencing at the time – a medical condition had resulted in him not working, and this had limited his income and caused additional personal issues. And, while I appreciate how this would've affected Mr T, I can and have only considered the direct impact of MBFS's actions.

Therefore, MBFS should:

- end the agreement with no further monthly payments to make;
- collect the car at no collection cost to Mr T (Mr T is expected to co-operate with MBFS to facilitate this collection);
- remove any adverse entries relating to this agreement from Mr T's credit file;
- remove any medical information they hold about Mr T from their file, as he no longer wishes them to retain this;
- refund the deposit Mr T paid (if any part of this deposit is made up of funds paid through a dealer contribution, MBFS is entitled to retain that proportion of the deposit);
- refund 10% of the payments Mr T has made from the start of the agreement to the 31 July 2024, to reflect the impaired usage he's had of the car;
- refund 100% of the payments Mr T has made from 1 August 2024 to when the agreement ends;
- upon receipt of proof of payment, reimburse Mr T for the costs of the paint protection and the supply and installation of the tracker/immobiliser;
- apply 8% simple yearly interest on the refunds/reimbursements, calculated from the date Mr T made the payments to the date of the refund<sup>†</sup>; and
- pay Mr T an additional £650 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (MBFS must pay this compensation within 28 days of the date on which we tell them Mr T accepts my final decision. If they pay later than this date, MBFS must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment<sup>†</sup>).

<sup>†</sup>If HM Revenue & Customs requires MBFS to take off tax from this interest, MBFS must give Mr T a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr T's complaint about Mercedes-Benz Financial Services UK Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 2 January 2025.

Andrew Burford  
**Ombudsman**