

The complaint

Miss T complains about the redress settlement from Mercedes-Benz Financial Services UK Limited (MBFS) for a car she acquired that is of unsatisfactory quality.

What happened

In December 2019 Miss T entered into a Personal Contract Plan (PCP) agreement with MBFS for a new car.

The four year finance agreement was due to end in December 2023 and Miss T had intended to make the £10,900 optional purchase payment (the balloon payment) so that she would own the car. She then planned to sell the car to pay for another vehicle.

In mid 2023 Miss T noticed that some of the car's paintwork had bubbled. She contacted the dealership who said the bubbling was a known issue for the paint colour and it would arrange a respray for the car under warranty at no cost to Miss T. The respray couldn't be completed until August 2025 due to technician schedules. Miss T complained to MBFS as she wanted to sell the car before then. Due to the problem Miss T didn't pay the balloon payment.

MBFS upheld the complaint. It said the problem with the paintwork was 'considered inherent' so Miss T could reject the car. MBFS's final response letter offered to settle her complaint by her rejecting the car and it would:

- Collect the car, at no extra cost.
- End the financial agreement with no negative impact on her credit file. MBFS subsequently confirmed to Miss T that she wouldn't need to pay the outstanding amount of £11,273.23 (the balloon payment of £10,900 plus the £363.33 December 2023 monthly instalment plus the £10 transfer of ownership fee).
- Refund Miss T's deposit of £1,321 plus 8% interest.
- Pay Miss T a £350 goodwill payment.

MBFS's final response letter also said that under the terms of the finance agreement Miss T would still have to pay any excess mileage or damage which falls outside of its vehicle return standards (VRS).

Miss T complained to us. She said if she handed back the car she would be worse off as she had been paying towards the equity of the car with her monthly payments. Also, MBFS would charge her for excess mileage and the wear and tear damage on the car which wouldn't have been an issue if she'd bought the car as she'd planned.

Miss T wants MBFS to either pay her the market value of the car less the balloon payment, or, if she had to hand back the car, more compensation for her distress and inconvenience and not to be charged for excess mileage or wear and tear to the car. Miss T told us about how dealing with the situation had affected her health and that she was behind with payments for her new vehicle as she hasn't been able to sell the car.

Our Investigator said that MBFS had made a reasonable offer in relation to the car's rejection. But she didn't go on to consider the issues of the charges for the excess mileage and wear and tear to the car.

Miss T then asked if MBFS would agree to her keeping the car but having a price reduction of the final balloon payment to compensate for the fault with the car's paintwork, with the possibility of a free respray. MBFS didn't agree and said if Miss T wanted to keep the car she would need to pay the balloon payment, it would still offer the £350 goodwill payment and respray the car for no charge.

As there was no agreement about settlement Miss T wanted her complaint referred to an Ombudsman.

Before I made my provisional decision I asked Miss T to tell us the car's mileage and provide photos of the damage to the car. I detailed her response in my provisional findings below.

What I provisionally decided – and why

I made a provisional decision that I thought the fair and reasonable outcome of the complaint would be MBFS' offer that Miss T reject the car, as set out in its final response letter, and in addition that MBFS doesn't enforce the terms of the finance agreement in relation to excess mileage and damage which falls outside of the VRS. I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The parties should note that this complaint has now been set up against MBFS, which is the business name for the creditor and hirer in the PCP with Miss T, rather than the business name our Investigator referred to in her correspondence.

The agreement in this case is a regulated consumer PCP agreement so we are able to consider complaints relating to it. As MBFS is also the hirer of the goods under this type of agreement it's responsible for a complaint about their quality.

In considering what's 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 having been good industry practice at the relevant time.

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. 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 and mileage at the time of sale and the car's history.

The quality of the 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 be aspects of the quality of goods.

MBFS hasn't disputed that there's a fault with the car and appears to accept that the car isn't of satisfactory quality. For the avoidance of doubt, I think the car supplied to Miss T isn't of satisfactory quality. I'll explain why.

MBFS supplied Miss T with a brand new car. So, I think it's fair to say that a reasonable person would expect the car could be used free from defects for a considerable period of

time. MBFS has confirmed that the problem with the paint bubbling is a known issue for the colour of paint for the car and 'considered inherent'. So I think the car wasn't of a satisfactory quality when it was supplied to Miss T.

I've considered what remedies there are in the CRA and what would be fair and reasonable in the particular circumstances of Miss T's complaint.

MBFS offered to repair the fault with a respray of the car. It's told us why the respray can't happen before August 2025, which I think is a reasonable explanation for the delay. Understandably Miss T didn't want to wait that long for the respray so MBFS offered rejection of the car. Its offer that I set out above in relation to Miss T rejecting the car is in line with the remedies under the CRA.

Under the PCP the annual permitted mileage is 10,000 and under the terms of the finance agreement Miss T will be liable for any excess mileage or damage which falls outside of the Vehicle Return Standards (VRS). Miss T has access to information about the VRS. She's concerned that if she returns the car MBFS will charge her for the excess mileage she's done and wear and tear to the car. MBFS' final response letter says if she rejects the car then under the terms of the finance agreement Miss T will still be liable for those issues.

I hadn't seen any information about the amount of excess mileage on the car or details about the wear and tear on the car so I asked Miss T to provide that information. She's sent us a photo of the car's mileage at 61,759 (as at end of October 2024) and photos of what she refers to as 'minor wear and tear'. I've arranged for these photos to be sent to MBFS with this provisional decision.

From information in these photos it may well be that the wear and tear isn't outside the VRS. As to mileage, Miss T has done approximately 12,400 miles a year (61,000 miles over 59 months). That's over the annual permitted mileage of 10,000 under the terms of the finance agreement but I don't think excessively so.

In these particular circumstances I don't think it's fair for MBFS to hold Miss T liable for those matters if she rejects the car. That's because I accept that before Miss T saw the bubbling on the car's paintwork she intended to make the balloon payment to own the car, to then resell, in which case she would have had no liability to MBFS for the excess mileage and wear and tear outside the VRS. As that had been Miss T's plan she had no reason to limit her mileage and she would likely either have paid for the wear and tear to be repaired before selling the car or if not priced the car for sale accordingly. The only reason Miss T didn't go ahead with her plan to purchase the car was because of the approximately 20 months wait to get the car resprayed. While MBFS has given a reasonable explanation for the delay to the respray it was an unreasonable time for Miss T to have to wait for a car of unsatisfactory quality to be repaired and not what Miss T had planned around.

MBFS has offered rejection of the car. I think the fair outcome of the complaint would include MBFS not enforcing the terms of the finance agreement in relation to excess mileage or damage which falls outside of the VRS (if any).

I've considered whether MBFS should pay more compensation to Miss T for her distress and inconvenience this situation has caused her but I think MBFS' £350 offer was a fair amount. I wouldn't expect its offer to reflect any equity in the car that Miss T believes she will lose by returning the car. She's been making payments to use the car and the car doesn't belong to her until she makes the balloon payment so at present she has no equity in the car.

Miss T says she would like the option of keeping the car with a price reduction by not paying the balloon payment (£10,900), and possibly having the car resprayed for free. I can't fairly

say that's a reasonable outcome to her complaint. Under the finance agreement Miss T would have to pay about £30,000 in total for the car so her proposal would mean she would get a third of the price discounted and have the car repaired for free. Even without the free repair I don't think I can reasonably say that her keeping the car and not paying the balloon payment is a fair price reduction.

In all the circumstances I think the fair and reasonable outcome of the complaint is MBFS' offer that Miss T reject the car, as set out in its final response letter, and in addition that MBFS doesn't enforce the terms of the finance agreement in relation to excess mileage and damage which falls outside of the VRS'.

Responses to my provisional decision

Miss T agreed with my provisional decision. MBFS didn't agree. In summary it said:

- Miss T had already confirmed to it that she'd gone over the mileage and the car had suffered some damage while in her possession, which it hadn't had an opportunity to review as the car hadn't been returned.
- Regardless of whether Miss T was planning to return or sell the car the PCP agreement clearly sets out that charges may be payable for excess mileage if the car is returned *'for any reason'*. The agreement also sets out the consequences if Miss T fails to return the car in line with the VRS.
- Additional mileage may have resulted in damage to the car beyond the reasonable wear and tear expected. It's fair and reasonable for the potential additional damage to the car from the excess mileage to be paid for by Miss T.
- The credit issued and monthly payments were calculated based on the annual mileage Miss T agreed to as it allowed MBFS to calculate a reasonable resale value if the car was returned. If Miss T had told it she wanted to do more miles the payments would have been increased because the car resale value would be lower.
- Given the circumstances of this matter it would be open to discuss reducing the current excess mileage charge of 8p plus VAT per mile.

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've carefully considered MBFS' response to my provisional decision and reconsidered all the evidence.

The PCP sets out that *'If the vehicle is returned to us for any reason, an excess mileage charge may be payable'*. The PCP also sets out that if the car is returned with damage outside the VRS Miss T would have to pay MBFS' costs either of repairing and/or refurbishing the car, or the cost of the reduction in the sale value of the car *'as compensation'*. But even if I thought those terms were clear, I still have to decide what's a fair and reasonable outcome in these particular circumstances which isn't necessarily what's set out in the PCP terms.

I understand that the credit issued and monthly payments were calculated based on the annual mileage Miss T agreed to within the PCP and I acknowledge MBFS's offer to reduce the unit cost in calculating the excess mileage costs given the circumstances.

I accept that MBFS hasn't seen the damage to the car. But we sent it photos of the damage which Miss T provided and it hasn't made any comment on that evidence nor asked for the opportunity to inspect the car for damage in its response to my provisional decision.

MBFS says the additional mileage 'may' have resulted in damage to the car beyond the reasonable wear and tear expected. But it hasn't provided any evidence to support that the additional mileage has resulted in such damage and, as I've said, MBFS hasn't asked to inspect the car in response to my provisional decision.

MBFS hasn't provided any evidence that the damage to the car is of such an extent that it's fair even in these circumstances for Miss T to be responsible for the damage. I'm not persuaded by MBFS' comments to change my mind about what I think is a fair and reasonable outcome to this complaint. Miss T is returning the car as its inherent fault meant the car wasn't of a satisfactory quality when it was supplied to her.

Importantly, I accept that before Miss T saw the fault, the bubbling on the car's paintwork, she intended to make the balloon payment to own the car, to then resell, in which case she would have had no liability to MBFS for the excess mileage and wear and tear outside the VRS. As that had been Miss T's plan she had no reason to limit her mileage and she would likely either have paid for the wear and tear to be repaired before selling the car or if not priced the car for sale accordingly.

The only reason Miss T didn't go ahead with her plan to purchase the car was because of the unreasonable time she would have to wait for the fault with the car to be repaired. Understandably Miss T hadn't planned her use of the car around it being of unsatisfactory quality with a fault that couldn't be repaired in a reasonable timescale. Overall it's not fair for her to have to pay the excess mileage charge or for damage (if any) which falls outside of the VRS.

In these particular circumstances I'm satisfied that the fair and reasonable outcome of this complaint is MBFS' offer that Miss T reject the car with the outcomes as set out in its final response letter, and in addition that MBFS doesn't enforce the terms of the finance agreement in relation to excess mileage and damage which falls outside of the VRS.

My final decision

I uphold this complaint in part and require Mercedes-Benz Financial Services UK Limited to:

- End the finance agreement with nothing further for Miss T to pay;
- Collect the car at no further cost to Miss T;
- Refund to Miss T the deposit of £1,321 plus 8% simple yearly interest* on that amount from the date of Miss T's payment until the date of settlement;
- Pay Miss T £350 compensation for the inconvenience and distress this situation has caused her;
- Remove any adverse information from Miss T's credit file in relation to the finance agreement;

- Not enforce the terms of the finance agreement in relation to any excess mileage or damage which falls outside of the Vehicle Return Standards.

*If Mercedes-Benz Financial Services UK Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Miss T how much it's taken off. It should also give Miss T a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 23 December 2024.

Nicola Sisk
Ombudsman