

## The complaint

Mr E is unhappy with the resolution offered to him by Mercedes-Benz Financial Services UK Limited (MBFS), after they allowed him to reject a car supplied to him under a hire purchase agreement because it was of an unsatisfactory quality.

## What happened

In September 2023, Mr E was supplied with a new electric car through a hire purchase agreement with MBFS. He paid a £28,721.28 deposit and the agreement was for £82,888.72 over 48 months; with 48 monthly payments of £740.39 and an optional final payment of £47,350 if Mr E wanted to keep the car.

Mr E wasn't satisfied with the quality of the car due to an issue with the tyres needing replacing on a regular basis. So, he complained to MBFS.

Attempts to repair the car were made, during which Mr E was provided with a non-electric courtesy car, but these were unsuccessful. Given this, in July 2024, MBFS allowed Mr E to reject the car. They also said they would refund the deposit Mr E paid, as well as 20% of the payments he'd made to reflect the impaired usage he's had of the car, and pay him an additional £750 for the distress and inconvenience he'd been caused.

Mr E wasn't happy with the resolution offered by MBFS. He didn't think the costs relating to having to install a home charger had been taken into consideration, nor had the additional costs relating to being provided with a non-electric courtesy car. He was also unhappy that the full payments he paid to MBFS weren't being refunded, and the cost of the replacement tyres, as well as the additional insurances he'd taken out, also hadn't been considered. So, he brought his complaint to the Financial Ombudsman Service for investigation.

When he brought the complaint to us, Mr E also said that MBFS were now reporting arrears on his credit file, even though he'd already returned the car, and that this has had an impact on him being able to get further credit.

Our investigator didn't think MBFS's offer was fair and reasonable in the circumstances. The investigator said that Mr E had already received a refund for the paint protection, as well as a pro-rata refund on the GAP insurance, so these didn't need to be considered further. The investigator also didn't think that Mr E should be refunded for the home charger he'd had installed, as this could be used for other electric vehicles.

The investigator thought that the 20% payment refund offered by MBFS was reasonable for the impaired usage Mr E had suffered, and this also covered the additional fuel costs he incurred while he was in possession of a non-electric courtesy car. However, the investigator thought that MBFS should reimburse Mr E for the cost of the four replacement tyres he'd had to buy, as they had been replaced within a few months of the car being returned to MBFS, so Mr E hadn't received any benefit from these tyres.

Finally the investigator said that MBFS should amend Mr E's credit file to reflect that the finance should've been settled when the car was rejected; and that they should pay him an

additional £250 (on top of the £750 already offered) to reflect the considerable impact their reporting up to three months arrears had had on Mr E's ability to gain new finance.

While Mr E accepted the investigator's opinion, MBFS asked for more time to consider this. Despite this additional time being provided, MBFS didn't confirm whether they accepted or rejected the investigator's opinion. As such, under our rules, this matter has been passed to an ombudsman 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 E 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 E 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 supplied to Mr E, nor that this fault made the car of an unsatisfactory quality. As such, the car has already been rejected. Because of this 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**

Mr E has been able to use the car while it was in his possession. And, while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage.

However, given the issues with the car, I'm also satisfied that Mr E'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 E made. And I think 20% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality. I'm also satisfied that this refund

accounts for any additional fuel charges Mr E may have incurred while he was in possession of a non-electric courtesy car.

Due to the ongoing issues with the car, Mr E has had to replace four tyres when the car was of an age and mileage that no reasonable person would expect to have to replace the tyres. What's more, the car was returned to MBFS with these replacement tyres, meaning that not only did Mr E not fully benefit from these tyres, but that MBFS would've benefitted when selling the car, as the tyres were newer. As such, I think it's only fair that MBFS reimburse these costs.

Finally, I think Mr E 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 E a total of £1,000, to recognise the distress and inconvenience he was caused by the complaint. 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 E would've felt by being supplied with a car that wasn't of a satisfactory quality, and by the attempted repairs to the car being unsuccessful. And I think it also fairly reflects the fact that Mr E was further inconvenienced by MBFS reporting up to three months arrears on his credit file after the car had been rejected and the finance agreement ended, which severely impacted his ability to refinance his mortgage. So, this is a payment I'm directing MBFS to make

Therefore, if they haven't already, MBFS should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr E;
- remove any adverse entries relating to this agreement from Mr E's credit file, and amend the reporting to show the agreement ended on the date the car was collected;
- refund the deposit Mr E 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 20% of the payments Mr E paid towards the agreement;
- upon receipt of proof of payment, reimburse Mr E for the cost of four new tyres;
- apply 8% simple yearly interest on the refunds / reimbursements, calculated from the date Mr E made the payments to the date of the refund<sup>†</sup>; and
- pay Mr E a total of £1,000 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality, and by the incorrect reporting to his credit file (MBFS must pay this compensation within 28 days of the date on which we tell them Mr E 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 E 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 E'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 E to accept or reject my decision before 10 February 2025.

Andrew Burford  
**Ombudsman**