DRN-5759050

The complaint

Mr B has complained about the quality of a car provided on finance by Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance ("MBFS").

What happened

Both parties are familiar with the circumstances of this complaint, so I've summarised the events here.

MBFS supplied Mr B with a new car on a hire purchase agreement in December 2022. The cash price of the car was around £41,000. The hire purchase agreement required payments of around £450 for 48 months. Mr B paid a deposit of around £11,900. There was an optional purchase payment of around £16,300 and the annual mileage cap was 18,000. Mr B said that in the first month he identified a rattle from the rear near side and contacted the selling dealer. The dealer said that a new seat clip was required but Mr B had to wait until May 2023 for the part to be available and fitted.

Mr B said that shortly after the new seat clip had been fitted the rattle was back and the dealer had the car, but he wasn't sure what was done. The car went in for a service in December 2023 and it remained with the dealer while it tried to resolve the matter.

Mr B said that this went on for some time. He went back and forth between the dealer and the manufacturer and was unhappy with the service provided.

Mr B complained to MBFS in June 2024, and although he got an acknowledgement of his complaint, he said he didn't have any meaningful contact and MBFS told him its time to consider the complaint had ended in August 2024.

Mr B referred his complaint to our service in September 2024. He said that he'd now received a late final response, and although MBFS were allowing the rejection of the car he remained unhappy because he wasn't being offered his full deposit back.

An investigator here looked at the complaint, he said that the car wasn't of satisfactory quality. He said that MBFS already had an opportunity to repair the car but hadn't done so in a reasonable amount of time and without significant inconvenience, so Mr B was entitled to reject it. He said that the offer wasn't fair, and that Mr B should be refunded his full deposit.

Mr B agreed with our investigator, but MBFS disagreed. It said that it had offered a pro-rata amount of the deposit due to fair usage. It said that Mr B was 20 months into a 48-month agreement and although he made a large deposit payment this resulted in lower monthly payments. It also said had the deposit been lower the monthly payments and/or final payment would have been higher. It said that Mr B wouldn't have been able to hire the same sort of car for the equivalent of the monthly payment and that's why it was fairer to also deduct from the deposit. MBFS referred to another method of calculating the fair usage charge from another dispute resolution service.

The complaint was passed to me to make a decision. I issued a provisional decision which said:

The agreement in this case is a regulated consumer credit agreement. As such, 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 their quality.

The Consumer Rights Act 2015 (CRA) is of particular relevance 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".

The CRA says the quality of goods are satisfactory if they 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 might include things like the age and mileage at the time of supply and the car's history.

The CRA says 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, and safety.

The car was new when supplied and the cash price was around £41,000. So, I think it's fair to say that a reasonable person would have expected the quality to be high, and that the car wouldn't have had any issues, including minor defects, for quite some time. I've also noted that MBFS have referred to the car as a luxury top of the range model.

Given the length of time the car had been in Mr B's possession before he contacted MBFS, and the description of the fault, the onus was on him to demonstrate the car wasn't of satisfactory quality. I appreciate that he'd been dealing with the dealer and the manufacturer, but the car belongs to MBFS, and it is responsible for supplying a car that is of satisfactory quality.

MBFS didn't really engage with Mr B's complaint. It didn't ask Mr B to supply any evidence about the fault with the car, and once its time to consider the complaint had passed it said it hadn't reached a conclusion and referred Mr B to our service.

Based on what I've seen, I'm satisfied that all the parties now agree that the car had a fault and it wasn't of satisfactory quality. As this is no longer in dispute, I'm not going into great detail on that here. But for the avoidance of doubt, I'll say that I agree.

Considering this was a new car and cost around £41,000, it seems unlikely that such a fault is a matter of wear and tear. So, I'm satisfied that the car was not of satisfactory quality at the point of supply because it had a defect.

The CRA sets out that (outside of the short term right to reject period) if the goods don't conform to the contract the consumer has the right to ask for a repair. And if the goods aren't brought back to conformity after the repair the consumer has the right to reject the goods. The CRA also says where the consumer requires the trader to repair or replace the goods, this must be done within a reasonable time and without significant inconvenience.

Mr B had the car taken to a third-party main dealer, who in turn liaised with the manufacturer. He contacted the selling dealer, on MBFS' advice, and let them know about the issue but they declined to offer any support unless they saw the car. But MBFS didn't engage with the complaint, offer Mr B any support or ask for any evidence. Given the garage that has seen the car was manufacturer approved, and the selling dealer didn't have *capacity to look at the car initially, I don't think Mr B has intentionally prejudiced MBFS right to a repair.*

Considering the circumstances I think the chance to repair has now passed. A repair hasn't been made in a reasonable amount of time and without significant inconvenience, as required by the CRA, so Mr B should now be able to exercise his final right to reject the car. All parties seem to be in agreement with this, but the car has remained in Mr B's possession, and he's continued to pay for it and drive it, due to the dispute over the refund of the deposit. What's left for me to decide is whether MBFS offer is fair, considering it wants to make a deduction from the deposit for Mr B's use of the car.

Deduction for use

The CRA says a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. There's not an industry standard mileage figure.

I wrote to MBFS asking for more detail on how it set its monthly payments initially. It said that the final payment is the amount it is able to guarantee it can sell the car for if it is returned at that point. It also explained that the deposit amount and mileage allowance will affect the monthly payments.

MBFS have said that Mr B made a large deposit and that would have had meant that his monthly payments would be lower than without such a deposit. I accept that when the agreement was negotiated this would have been an important factor in working out what the monthly cost would be, as well as the mileage allowance. MBFS have also drawn an example that if there wasn't a deposit that would have meant the monthly payment would have been much higher. I don't completely disagree with its logic here, and I've taken all of this into account. But I also think that the final payment must also be taken into account, as it would affect the remaining balance to be paid over the agreement. All of this might be important when setting out a new agreement, but not necessarily fair when considering a deduction for use.

There are some other factors in the individual circumstances of this case that also need to be taken into account. Mr B isn't going to be making the final repayment as he's rejecting the car. This isn't a hire agreement, his payments and deposit were going towards him ultimately owning the car, which he won't be able to do here. Mr B probably didn't foresee that things would go wrong in the way they have, and a deposit is an important factor to be able to move into a new agreement once this car is rejected. He's basically going to need to start again, through no fault of his own, and might find that his buying power is reduced.

Mr B has described a timeline of events where he's been trying to sort things out with the dealer and the manufacturer. I accept that MBFS weren't on notice about the problem until June 2024 but based on what he's told us I don't think he's had trouble-free motoring in his brand-new luxury car. There have been significant periods where he's been waiting for a repair, or an inspection and he's described not wanting to use the car as it has been somewhat of an embarrassment. I think that is confirmed in part by the mileage he covered. MBFS said I can't clearly attribute the lower mileage he's completed solely to the issues he experienced with the car. There might have been an overestimation on mileage needed or changes in Mr B's personal circumstances. I accept that might be the case, but that would only be relevant if he were negotiating a new contract. The facts are that Mr B has actually driven a third less than the mileage allowance under the agreement. I think this was also because he was trying to reject the car from an early stage. So, I need to take this into account when considering what would be a fair deduction for his actual use.

I think that Mr B has endured a significant period of impaired use, and loss of enjoyment. It's hard to put a figure on that, but I noted there wasn't any allowance made for this in the redress that was originally offered. I think it would be fair to say that Mr B hasn't had the benefit of driving the brand-new luxury car as it was intended.

Mr B's use might be more comparable to someone just hiring a car, so I've made some enquiries about the average costs of hiring this type of car which I've asked MBFS to consider. When I wrote to MBFS I asked it to consider all of this further and make a revised offer.

MBFS said that the figures I've pointed to for hiring a car aren't comparable because prices might have changed since 2022 and in the examples I sent it would mean a higher amount paid overall. I accept that, but I've shared them hoping that it might have some sort of internal pricing matrix it could show me to support its calculations. MBFS responded with some further calculations based on the same example, but these also include VAT, and I've found trying to strike a comparison isn't ideal as we're not set up to make these sorts of calculations for a business.

MBFS have revised their offer, taking into account that Mr B has now driven around 28,400 miles in the car. It maintained the pro-rata refund of the deposit but has contained this to the point where it made its original offer, which was around 20 months, even though Mr B has now had a further ten months use of the car (albeit impaired). It offered to refund £ 6,942.20 of the deposit on the same pro rata basis. 8% simple annual interest would be paid on this from the date of payment of the deposit until settlement. In addition, it has offered to refund £1,350.84 for loss of enjoyment or impaired use. This is around 10% of the 30 repayments made. This means that Mr B would be paying around £570 for each month's use he's had of the car.

I've thought about this revised offer carefully, and I thank MBFS for being willing to consider things further. I should also point out that the Financial Ombudsman decisions don't have precedent value as certain court judgments do. I need to consider Mr B's complaint by deciding what I think is fair and reasonable in the individual circumstances.

But I'm still not persuaded that Mr B's use of the car means that a further deduction needs to be made from the deposit. Mr B at this point has paid around £13,500 in monthly payments alone at around £450 a month. I haven't seen anything which indicates that the car will have depreciated more than that solely because of his use (and not also because of how long things have gone on since the dispute). I need to bear in mind that Mr B is in this situation which has been beyond his control and it's because he's been supplied with a car that is not of satisfactory quality, together with all the other factors I've already mentioned.

As I explained earlier, the CRA doesn't set out how to calculate a deduction for use. So, at this stage I don't think creating a formula to calculate how to make a deduction would be appropriate. But as a starting point, in the particular circumstances of this case, I think the monthly repayment towards the hire purchase agreement is a reasonable figure to use for a months' worth of use of the car. So, I think MBFS can retain the monthly payments Mr B made in recognition of the use he's had of the car up until the point it is collected.

This reflects the nature of the Financial Ombudsman Service's scheme as one which is intended to be fair, quick, and informal. I think this means Mr B will have paid a reasonable amount for his actual use of the car, taking into account all the individual circumstances, which I think is the spirit of the legislation. He'll also be able to walk away and start again without being in a worse position overall.

Finally, I've considered compensation. MBFS didn't get to grips with the complaint in the time required and had it done so I think Mr B would have supplied all the information that it needed at an earlier stage. MBFS aren't responsible for the actions or communication from the other parties such as the manufacturer.

No amount of money can change what's happened. But I think the compensation offered is in line with what's awarded where the impact of the breach of contract and MBFS handling of the complaint has caused considerable distress, upset and worry – and/or significant inconvenience that needs a lot of extra effort to sort out. So, I think £500 compensation is suitable in the circumstances because it's had that sort of impact on Mr B.

Considering all the circumstances, and the other refunds set out, plus out of pocket interest, I think the steps I've set out below are a fair and reasonable way to resolve the complaint.

Mr B agreed with the provisional decision. MBFS disagreed and in summary it said:

- Mr B may have intended to purchase the car, but there was no concrete evidence to support this
- Mr B had the option to return the car at the end with no further financial obligation beyond excess mileage or damage charges. Purchase was not a condition.
- Customers commonly returned cars at the end of PCP agreements. Assuming an intention to purchase is not a reasonable basis for the provisional decision.
- Mr B could have opted for a hire purchase agreement if his clear intention was to own the car at the end of the term.
- The agreement was structured using a standard calculation which is widely used in the automotive finance industry
- The specific figures within the calculation, Guaranteed Future Value and interest rate are tailored to the car, agreement terms and individual customer circumstances.
- In the same agreement without the deposit the payments would have been around £700. But the large deposit reduced the monthly payments to £450. So, Mr B had paid around £9,500 less due to the deposit.
- If a customer took out this same agreement without a deposit they would have paid substantially higher monthly instalments. Redress for loss of enjoyment was unlikely to be as much as 40%.
- While it acknowledged that the car was not of satisfactory quality, Mr B was still able to use it for a significant period. The car remained driveable, and repairs were minor adjustments.
- Mr B had continued to use the car since the final response and covered around 9,900 miles which demonstrates continued utility and benefit, despite the issues.
- A full refund of the deposit does not fairly reflect Mr B's use of the car and the benefit he derived from reduced monthly payments over 32 months.
- The proposed deduction was £4,958.80 but it proposed a final offer to refund 50% of this figure. It reminded that this was still pro rata on 20 months not the full 32 months that Mr B had the car.
- This would allow a deduction for use but still give Mr B funds towards a new car which would be more equitable and fairer for both parties
- It proposed a second counter offer. It said under the CRA the customer has the alternative right to a price reduction. It said that if Mr B wanted to keep the car it would give a 10% price reduction on the full cash price in light of the issues and customer experience. It proposed a one-off payment of £4,099.70 if Mr B would agree to keep the car and negate his right to reject it.

As MBFS had provided materially new information in the form of its counter offers, I wrote to Mr B setting out what MBFS had said. Mr B rejected both new offers and in summary he said:

- At no stage had he had any enjoyment of the car
- MBFS had dragged out the process through no fault of his own
- It could have been settled over a year ago which would have been cheaper for MBFS
- The dealership and manufacturer had also fought against him
- His payments covered any wear and tear and depreciation
- He'd never mentioned to MBFS whether he intended to keep the car at the end of the contract. Obviously with the problems endured there was no chance. But he'd kept his previous car with another lender and settled the balloon payment. So had hoped to do that with this car if he'd been happy with it.
- He was not aware that he could have rejected the car earlier. But looking back there had been a fault identified with the seat clips which took over 11 weeks to be fitted, so he might have had the right to reject the car earlier.

As both parties have responded I'll now go on to make my final decision.

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 attempted to summarise above the submissions I've received from both parties as I want them to know that I've carefully considered all the points they made and the evidence they provided. However, they've repeated and reiterated a number of points that they made previously, which I addressed in my provisional decision. So, I don't intend to address the same points again. Instead, I've tried to concisely explain why the additional comments and evidence I've received since I issued my provisional decision haven't changed my mind. This reflects our remit as an informal alternative to the court.

MBFS has pointed out that there is no concrete evidence to support that Mr B would have made the final repayment to own the car. Mr B had indicated in his submissions that he might have carried on to do that, and he's now confirmed that by explaining his previous history in acquiring a car on finance where he'd paid the "balloon" payment. MBFS are right to point out that we'll never actually know what would have happened. But I still need to make a decision even if the matters aren't clear cut, and I've no reason to doubt what Mr B has already told me.

In making my provisional decision I had already had regard for alternatives such as a price reduction. However, I didn't find any merit in suggesting this earlier, mainly because it was clear that Mr B did not have any desire to retain the car, especially as the fault remains and nobody seems to have found a way to make it conform to the contract.

Given the fault was reported in the early stages of the agreement, it seems there were earlier opportunities for Mr B to be able to reject the car. There was a fault diagnosed with the seat clips, and although a repair was agreed this took a significant amount of time to be completed. Ultimately this turned out not to be the fault that was causing the noise which has remained undetermined. Arguably Mr B might have had the right to reject the car earlier. I accept he wasn't dealing with MBFS at that point, but I think this demonstrates that Mr B has been the unwilling victim of the circumstances here. I don't think he's carried on driving the car regardless and received a substantial benefit from it. He's effectively been tied to an agreement that he wanted to leave, through no fault of his own. But I'm also minded that if he'd have been able to reject the car earlier then he would, no doubt, have had to pay a something to keep himself mobile.

MBFS said the specific figures within the calculation, Guaranteed Future Value and interest rate are tailored to the car, agreement terms and individual customer circumstances. I am aware that the calculations to reach these payments is based on some sort of algorithm which hasn't been shared with me. And I've carefully considered everything that MBFS said. But ultimately, I'm still not persuaded that Mr B needs to pay more for his use than I already set out. I'm aware that he paid a large deposit and has been able to get average use from the car, but he's also paid interest to MBFS and I'm not proposing a further refund of his payments for impaired use/loss of enjoyment.

With regards to the deposit, I agree there might be cases where it should be reduced accordingly. But given things went wrong with the car near enough straight away, and Mr B has been clear that he wanted to hand back the car, I've found he should also be refunded his deposit. He's now going to have to start again with a new deal, and I think a full refund of his deposit broadly puts him in a fair position to do that.

I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons set out in my provisional decision, and above.

My final decision

My final decision is that I uphold the complaint and direct Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance to:

- end the finance agreement ensuring Mr B is not liable for monthly rentals after the point of collection (it should refund any overpayment for these if applicable)
- take the car back (if that has not been done already) without charging for collection
- Refund the deposit contribution of £11,901
- Pay 8% simple annual interest on any payments and refunds above from the date of payment to the date of settlement*
- Pay £500 compensation for the inconvenience caused to the extent that it hasn't done so already
- Remove any adverse information reported to the credit reference agencies

* If Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 September 2025.

Caroline Kirby
Ombudsman