

complaint

Mr N complains that a car he acquired through a hire purchase agreement financed by Mercedes-Benz Financial Services UK Limited wasn't of satisfactory quality.

background

On 18 December 2018 I issued a provisional decision on Mr N's complaint. After considering all of the evidence and arguments presented by both sides, I was minded to think there was enough information to persuade me, on balance, that the car wasn't of satisfactory quality when it was supplied to Mr N – in particular – that it wasn't reasonably durable.

I attach a copy of my provisional decision to this final decision. It forms part of this final decision and fully sets out the background to this complaint. It details in full how and why I reached this position.

I invited Mr N and Mercedes FS to let me have any further evidence or arguments they wanted me to consider before I made my final decision.

after my provisional decision

Mr N's response

Mr N broadly agreed with what I'd said in the provisional decision. He said that he'd tried to start the car because it had been sat for a while. He said that the replacement door handle had started to stick again and provided video footage to show this.

Mr N also said that the dash cam has never been hard wired into the car as it plugs into the cigarette lighter. He felt this demonstrates that the car hasn't been inspected properly as it would've been clear that there was no hard wiring. He provided video footage to show how the dash cam connects to the cigarette lighter.

Mr N provided evidence of the car insurance he's been paying monthly for the car supplied by Mercedes FS and asked if this cost could be taken into account. He added that he'd also paid to have new number plates physically made up when he had to transfer his private registration number. He explained that he was out of pocket by around £30 for that and thought it should be taken into consideration too.

Mr N stressed the impact this matter was having on him and his finances and urged for things to be concluded as quickly as possible. He suggested that the £250 award for distress and inconvenience that I was minded to make didn't go far enough to recognise all that he's been through with the car.

Mercedes FS' response

Mercedes FS disagreed with my proposed outcome. In summary, it made the following comments:

- It felt there was a lack of evidence to support Mr N's concerns with the car and said that the only fault to have been evidenced was the issue with the handbrake light. Mercedes FS said that it disputes all of the other issues Mr N has highlighted.

- Mercedes FS said the fault with the handbrake light did not present itself for over eighteen months into the agreement. It felt the car had covered a sufficient amount of miles for its age and that the fault could've happened for any number of reasons. It said that my opinion isn't that of a qualified engineer or technician so I wasn't in a position to say that the fault with the handbrake light was down to the build quality of the car.
- It pointed out that the Consumer Rights Act 2015 sets a six month rule on when the burden of proof moves from the business to evidence that a fault wasn't inherent at the point of supply to the customer proving that it was. It recognised that this wasn't a solid 'line in the sand' but felt that it was unreasonable for me to say that the burden should fall back on Mercedes FS in this particular case.
- Mercedes FS added that it wasn't reasonable for Mr N to have purchased a new car when this one remained useable. It pointed out that Mr N had driven the car for a further six months after he'd first identified concerns and that there was no change in circumstances to suggest that the vehicle became unsafe after a further six months of driving.
- It reiterated the comments it had made previously around the handbrake's operation. It said that the handbrake light doesn't reference the level of application and whether that level is suitable for the car's circumstances at that time. It explained that the light will come on when the handbrake is applied passed the first notch and that had the light not been visible at all, this would not impact the functionality of the handbrake or the car.
- It pointed out that tapping the handbrake wasn't normal practice or operation and that I shouldn't be considering this particular video footage as evidence. Mercedes FS added that any part being used against its normal operation can be damaged. Mercedes FS also wanted to review the images of the bumper being removed from the car when it was wrapped. We provided the requested images.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the individual circumstances of this complaint and I've thought very carefully about the points that have been made in response to my provisional decision. Having done so, it remains my view that it would be fair and reasonable for Mercedes FS to allow Mr N to reject the car.

It's not in dispute the car has a fault with the handbrake light. This fault was observed when the independent expert carried out an inspection and can also be seen in video footage that Mr N has provided. Both sides to the dispute do broadly agree that the handbrake light shouldn't operate in this way.

But Mercedes FS doesn't agree that it has supplied a car that was of unsatisfactory quality. As I explained in my provisional decision, exactly what is satisfactory quality will depend on a number of things, including the age, mileage and price paid for the car. This was a brand new car. I still think it is fair to say that a reasonable person would expect that a brand new car could be used, free from even minor defects, for a considerable period of time.

Satisfactory quality also covers durability, and with cars this means that the components within the car must be durable and last a reasonable amount of time. Exactly what a reasonable period of time for a car to last free from defects would be depends on a variety of factors. In this particular case, the car supplied to Mr N was brand new, so I think it's reasonable for him to expect to use it without any problems or faults for some time. Mercedes FS points out that the first time the fault with the handbrake light was observed was when the independent expert inspected the car, which was around eighteen months into the agreement. But Mr N first highlighted problems with the handbrake warning light on his brand new car around a year after he got it. He'd only travelled around 7,000 miles at that point.

I still consider that an issue with the handbrake light would be a significant concern to a reasonable person. I say this because I consider it to be integral to the driving experience because it goes to the safety of the car when it is in use. I have noted Mercedes FS' comments that the handbrake light doesn't impact the functionality of the handbrake and that it still securely holds the car. But a handbrake light that flickers on and off could suggest to the driver that the handbrake is engaged when it isn't. As I said in my provisional decision, the handbrake light is integral to Mr N's confidence that it correctly engages at the appropriate times when he's operating the car. I don't think a reasonable person would expect to have this issue develop on a brand new car from a relatively early stage.

I accept Mercedes FS' point that the fault with a handbrake light can happen for any number of reasons and that it may not have been present or developing at the time the car was supplied. But I've not been provided with any evidence that makes me think the issue in this particular case has been caused by normally expected wear and tear or that it's happening as a result of a maintenance issue. And I'm not persuaded that this issue has arisen because of the way Mr N has been driving the car, nor have I seen anything to show that it's as a result of his dash cam.

I recognise that Mercedes FS feels that Mr N's footage of the handbrake being tapped should be disregarded because it isn't normal practice or operation. But I consider that this footage is Mr N attempting to show that the light illuminates in situations when it shouldn't. From what I've seen, Mr N isn't applying excessive force to the handbrake unit.

Having very carefully considered the circumstances of this complaint I'm satisfied that the evidence indicates there has been an ongoing problem with the handbrake light and that it has been observed from a relatively early stage. As there have already been numerous unsuccessful attempts to diagnose and troubleshoot the fault, for the reasons I've already explained both here and in my provisional decision, I don't think it would be fair to allow any further option to investigate or repair the car.

In summary, from everything that's been said and provided, I remain persuaded, on balance, that the car wasn't of satisfactory quality when it was supplied to Mr N – in particular – that it wasn't reasonably durable.

In response to my provisional decision, Mr N highlighted additional financial losses he's incurred. He provided bank statements to show he paid £80 to transfer his private number plate to his new car, and £32.88 to have new number plates physically made up. He also provided evidence to show that he's paid £43.55 a month to keep the car supplied by Mercedes FS insured, even though he's not driven it since June 2018. I agree that Mr N has had little benefit from the car insurance that he's paid and that he's out of pocket as a result of having to change his private number plate over. These are costs that he's only incurred as a result of the breach of contract. With this in mind, I think Mercedes FS should refund these amounts to Mr N. The evidence Mr N has provided to me to support these costs will be provided to Mercedes FS.

Mr N was disappointed with the amount I was minded to award to recognise the distress and inconvenience he's been caused. I do recognise that it's been incredibly frustrating to have to return to the dealerships and to keep driving the car whilst it was presenting a problem with its handbrake light. But I recognised that situation in my provisional decision by saying that Mercedes FS should pay Mr N £250 compensation for the impact the breach of contract has had on him. I felt it was evident that Mr N had experienced problems relating directly to the supply of the car. I also felt that Mr N should be given a 10% refund of the monthly payments he made from January 2018 to May 2018 inclusive plus interest. I was minded to make that award because of the impact on Mr N of the loss of enjoyment from the car. I then recognised that Mr N hasn't driven the car or had any use of it owing to his concerns over its safety. As a result, I felt it would be fair for Mercedes FS to refund the payments Mr N has made from June 2018 onwards in full. I am still minded to think that approach is fair compensation.

my final decision

My final decision is to uphold this complaint.

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

- take back ownership of the car and end the finance agreement with nothing further to pay
- collect the car at no cost to Mr N
- remove the account from Mr N's credit file

- Give Mr N a 10% refund of the monthly payments he made from January 2018 to May 2018 inclusive. Mercedes FS should add interest at 8% simple a year on the refunded amounts from the date each one was originally paid to the date of settlement
- Refund the payments Mr N has made from June 2018 onwards in full as Mr N hasn't driven the car or had any use of it owing to his concerns over its safety. Mercedes FS should add 8% simple interest a year from the date each payment was paid to the date of settlement
- Refund the £43.55 monthly payments Mr N made to insure the car supplied by Mercedes FS from June 2018 onwards. Mercedes FS should add 8% simple interest a year from the date each payment was paid to the date of settlement
- Reimburse the £80 fee Mr N paid to transfer his private number plate to his new car and the £32.88 he paid to have new number plates physically made up. Mercedes FS should add 8% simple interest a year from the date each amount was paid to the date of settlement
- Pay Mr N £250 distress and inconvenience

If Mercedes-Benz Financial Services UK Limited considers it is legally required to deduct income tax from the interest parts of my award, it must send a tax deduction certificate with the payment so that Mr N can reclaim the tax if he is able to.

Mr N should refer back to Mercedes-Benz Financial Services UK Limited if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Mercedes-Benz Financial Services UK Limited must make any outstanding payment to Mr N within 28 days of the date we tell it that Mr N accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 23 February 2019.

Claire Marsh
ombudsman

COPY OF MY PROVISIONAL DECISION

complaint

Mr N complains that a car he acquired through a hire purchase agreement financed by Mercedes-Benz Financial Services UK Limited wasn't of satisfactory quality.

background

In June 2016 Mr N entered into a hire purchase agreement for a brand new car. The cash price of the car was around £13,500 and the agreement was to run for 48 months. The agreement allowed Mr N to cover 8,000 miles a year.

Shortly after getting the car, Mr N raised concerns about whether it was the same colour and had the same features as the one he'd test driven and then went on to order. In August 2016, the supplying dealership made Mr N an offer which included having the car colour wrapped as a gesture of goodwill.

Around a year after Mr N got the car, he started to report problems. In June 2017, Mr N said that the engine bay had started to squeak and rattle and that he'd noticed high revs when the car was idling. The car was booked into the supplying dealership's garage for an inspection into the rattling noise on 21 June 2017. The car had travelled around 7,000 miles at that point.

The diagnostic was inconclusive. The garage suggested that Mr N could have some parts replaced under warranty to see if that resolved the issue. Mr N didn't keep the appointment made for 8 July 2017 because he was unhappy with the exploratory repair work the garage proposed to do. He decided instead to see how things went and if the issue would correct itself in time.

At the end of January 2018, Mr N booked the car in as it was still presenting with a rattling noise from the engine area. He also noticed the door handles were sticking and that the handbrake warning light flickered when the handbrake was on. The car had travelled around 11,350 miles when the supplying dealership's garage carried out a road test. The door handles were replaced and the handbrake was tightened up. No other issues were identified.

At the end of March 2018, Mr N took the car back to the supplying dealership's garage. It had travelled almost 12,500 miles at that point. Mr N explained the issues with the noise and the handbrake were still presenting and provided video footage of them. The garage had the car for a day and a further road test was undertaken. No faults were identified. Mr N says that the mechanic told him that his type of car wasn't really made for motorway driving and that his experience was down to the nature of the car.

Mr N then made a complaint and said that he should be allowed to reject the car because of all of the trouble he'd had. It was agreed that Mr N would return the car to the supplying dealership on 21 April 2018 for a week long road test. Mr N was provided with a courtesy car of a higher specification during this period. He collected the car on 30 April 2018. It had travelled nineteen miles in the time the garage had it. Mr N says it wasn't tested for long enough and points out that the engine rattling noise was still there. He also adds that his car was damaged whilst in the garage's care and that the garage had agreed to cover the cost of the fuel in the courtesy car he was given.

Mercedes FS issued its final response. It said none of the issues reported could be replicated during an independent inspection or a week long road test. As a result, it said it was unable to accept Mr N's request to reject the car. It added that if any faults had been found, it would've taken the opportunity to fix them first before looking at accepting a rejection. It went on to explain the options open to Mr N if he wanted to end the agreement early. It explained the outstanding finance balance that Mr N would need to pay if he wanted to sell the car to a third party as well as outlining voluntary termination and handback options.

On 1 May 2018 Mr N used the car to drive to work. He recorded footage of the engine rattling and of the handbrake light on the dashboard flickering. The footage was sent to Mercedes FS and it arranged an independent inspection of the car. This happened on 4 May 2018. Mr N was present during this inspection and he says that the handbrake light did flicker and that the noise was heard.

The independent inspection report says that the car was driven on various road surfaces including the motorway. The engineer concluded there was no unusual noise when the engine was idle, nor when the car was driven. He said there was no grating noise from the brakes and that they operate without fault. The engineer noted that the handbrake warning light flickered once when the car was waiting at a set of traffic lights. It said the handbrake warning light is very intermittent. The report made no comment on whether the engineer considered the car to be of satisfactory quality when it was supplied to Mr N.

Mr N said the report proved the existence of one of the faults on his car and that Mercedes FS should either allow him to reject the car and refund the payments he'd made towards it or that it should fix the car and offer him a discount on his monthly payments.

Mr N then contacted Citizens Advice. He explained that he'd given the main dealer garages numerous occasions to rectify the problems and that he should be allowed to reject the car without giving them any further opportunities to try and find then fix the faults. When Mercedes FS didn't agree, Mr N contacted us.

On 11 May 2018, our investigator spoke to Mr N on the phone. Mr N agreed that he would allow a different garage to undertake further investigation and booked it in for early June 2018. Mr N was optimistic that he would be able to work with the finance company to sort things out.

On 15 May 2018, Mr N needed to call roadside assistance out to the car. It had travelled just over 13,000 miles at that point. The roadside assistance company identified an engine overboost fault code. It suggested taking the car to a main manufacturer dealership for further investigation.

Mr N was frustrated with the entire situation. He said he was disappointed with the quality of the repairs to the damage caused when the supplying garage had the car. He said that further damage was caused whilst these repairs were being undertaken and that the exhaust's heat shield was now loose.

The garage told him the repair to the heat shield wouldn't be covered under warranty because of the presence of a third party part. Mr N said the only opportunity for other parts to have been used on the car would've been when the colour wrap was applied. Mr N was concerned that the wrap work may have caused the problems he was experiencing with the car.

Mr N said the car started to smell like burning when he was driving it on 25 May 2018. He explains that he had no other option but to buy another car because this one is clearly faulty. He's provided paperwork to show that he ordered a new car on 29 May 2018. Mr N explained that things are tight financially for him now as a result of having to pay for two cars and two insurance premiums. He said that he wanted to be able to reject the car supplied by Mercedes FS and receive a refund of all the payments he'd made towards it. He also wanted compensation for having to order a new car, along with a written apology from each of the different people he's had to deal with. He pointed out that he shouldn't be having so many problems with a car that was brand new when he got it and that the customer service he's received has been awful.

Mr N took the car to the garage in early June as arranged. This was a main dealer's garage, but not the same one that originally supplied the car. This garage wasn't able to find any electrical faults either but said there was a "slight lip" on the front brake disk. Mr N was surprised that this hadn't been picked up in any previous inspection.

Mr N explained that he now wanted either to reject the car or that the car should be discounted by 50% and repaired to the standard it should be. He pointed out that the second main manufacturer's garage had also damaged the colour wrap on the door and provided a photograph to show this. The garage agreed to repair that problem.

Mr N felt like he'd been through enough. He said he'd been back and forth to the garages at least seventeen times and that the car had been damaged by both dealerships. He was very upset to have to keep paying for a car with faults and damage. Mr N provided evidence from his insurer to support his position that the car had never been involved in a rear end collision. He pointed out that the only time the rear bumper could have been removed for any third party part to be added was when the colour wrap took place. Mr N said this meant that the heat shield has been loose and that he hadn't had original manufacturer's parts on the car since 2016.

On 8 June 2018, the dealership tried to return the car to Mr N following the repairs to the damage caused by the dealership. Mr N refused to accept the car back. He pointed out that the repair to the wing mirror wasn't right and that there was a further scratch on the paintwork. The dealership refused to take the car back. The relationship between Mr N, the retail dealerships and Mercedes FS reached stalemate. Mr N says the car has remained on his driveway ever since. The car's mileage now is just short of 13,500 miles.

On 4 July 2018, Mr N declared the car as being off the road and removed his personal number plate from it.

Our investigator looked into things and gave his view. He didn't think the car supplied to Mr N was of satisfactory quality, specifically because he wasn't persuaded that it was reasonably durable. He pointed out that it wasn't in dispute that there was an electrical fault with the handbrake and that he wouldn't expect a brand new car to be experiencing this sort of problem. He didn't think there was anything to suggest the issue was down to wear and tear or Mr N's driving style.

He also thought that Mercedes FS had had enough opportunities to try and replicate and fix the fault. To put things right, the investigator said that Mercedes FS should collect the car and cancel the finance agreement with nothing further to pay. He added that Mercedes FS should refund the initial deposit Mr N paid along with the payments he made towards the finance agreement in June and July 2018. He also thought that Mercedes FS should pay Mr N £250 compensation to acknowledge the trouble and upset this experience has caused.

Mr N was happy with the proposed outcome. But Mercedes FS didn't agree and asked for an ombudsman to consider the matter. It pointed out that the first instance of the problem was nineteen months into the agreement so it didn't agree that the fault was inherent when the car was supplied. It said that the handbrake was functioning as it should be and was holding the vehicle when applied. It didn't think the light flickering had any impact on the handbrake's operation. It added that it's not been possible to specifically identify or fix the issue as the car's diagnostic logs keep coming back clear. It also felt that Mr N had decided to buy another car knowing the likely impact paying for two cars would have on his finances.

Mr N added additional points to the complaint before it was passed to me. He said that he wanted to claim back the payments he'd made towards the car's three year service plan because the car had two services and neither of them identified any issues. He pointed out that Mercedes FS's response to the investigator's opinion was incorrect. He provided photographs to show that the car's bumper was removed when the colour wrap was applied.

Mercedes FS also added additional points. It said that under the relevant law, a fault needed to appear within the first six months to establish that it was present at the time of delivery but the problem with the handbrake wasn't seen until Mr N was nineteen months into the agreement. It confirmed that it had reviewed all of the video evidence Mr N had provided.

But it didn't think the video footage, despite the quantity of it, was conclusive. It also felt it was impossible to provide a fix to a fault that cannot be found or diagnosed, even with extensive diagnostics and checks.

Mercedes FS suggested that the car was useable and it was Mr N's decision to buy a new car. It said it was possible that Mr N's hardwired dash cam could be causing the intermittent fault with the handbrake light. It concluded by saying that Mr N had completed a large proportion of his mileage allowance and that it didn't consider there to be any evidence to suggest the car was subject to an inherent fault or unfit for purpose.

Whilst I have been reviewing the complaint, Mr N reiterated his position. He explained that he didn't have any choice but to buy another car on finance, so all of the payments that he's made should be refunded to take into account the strain of the cost of paying for the new car along with his household bills. He also pointed out that this matter was causing him considerable anxiety and that the £250 compensation the investigator had recommended wasn't anywhere near enough.

After I reviewed everything both sides had said and provided, I broadly agreed with the conclusions our investigator reached but thought the position with the deposit Mr N paid was actually different to what the investigator said. I also thought it would be fair to recognise the impaired use Mr N had of the car. In addition, I noted that Mr N had incurred costs transferring his private number plate to another car. I informally let both sides know of my observations around the proposed redress.

Mr N didn't entirely agree with the points I'd raised around his impaired use of the car and thought it would be fairer to recommend a full refund of the payments he'd made from January 2018 onwards. Having said that, he explained that he was anxious to bring things to a close and asked me to issue a final decision urgently.

Mercedes FS didn't agree that it needed to do anything at all as it still didn't agree there were any faults inherent at the point of sale. It provided further commentary from the independent engineer that had inspected the car. It also suggested that the fitting of Mr N's dash cam could be causing the fault. Mercedes FS indicated that it had further points that it wished to make directly in relation to the facts of this case but it needed more time to do so.

As it wasn't going to be possible to informally resolve the matter, I have moved to a provisional decision in order to set out my position to both sides at the same time.

my provisional findings

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

Mr N has said he wants us to look at his whole customer service experience with the brand of car (including all the interactions with the dealership and manufacturer). Just to make it clear I am only able to consider complaints relating to a regulated consumer credit agreement. The hire purchase agreement that Mr N entered into is a regulated consumer credit agreement. Mercedes FS is the supplier of the goods under this agreement, and as such, is responsible if the car supplied wasn't of satisfactory quality.

So I can look at the obligations of Mercedes FS as the supplier of the goods. And if it hasn't supplied goods of satisfactory quality I can look at how this has impacted Mr N, and what it should do to put things right. This doesn't necessarily mean I will say Mercedes FS is responsible for all his interactions with the wider brand – but I want to reassure Mr N that I will be considering the things he has said about the problems with the car and how these have impacted him when deciding what Mercedes FS needs to do next.

did Mercedes FS supply a car of satisfactory quality?

My role is to decide whether the car was of satisfactory quality at the time it was supplied to Mr N. Relevant legislation says goods should meet the standard that a reasonable person would consider satisfactory (taking account of their description, price, and other relevant considerations). Aspects of the quality of goods can include their durability. If goods are not of satisfactory quality, then the finance provider can be liable as this is a breach of contract.

Mercedes FS supplied Mr N with a brand new car with a purchase price of around £13,500. With this in mind I think it is fair to say that a reasonable person would expect that it could be used, free from defects, for a reasonable period of time.

In this case, the parties fundamentally disagree about the problems with the car. From Mr N's perspective, he's had a lot of trouble with it. He's gone to significant lengths to provide video evidence to try and demonstrate the issues he's experiencing as well as going back and forth to the dealerships. But Mercedes FS disagree. It says the car is fit for purpose and useable as intended. It feels the only fault which has shown itself after nineteen months is a handbrake light which very intermittently flickers. It says the light has no impact on the usage of the car and isn't significant.

But I don't think Mr N would've gone to the trouble he has to record footage and take the car to dealerships for inspections and road tests if he was driving the car without any problems. He'd had the car for around a year and was able to do approximately 7,000 miles in it before he had concerns about a rattling noise. This suggests to me that there was a perceptible change in his driving experience and I've not seen anything that makes me think that came about as a result of his driving style, a lack of servicing or because the car had been involved in an accident.

Mercedes FS' position centres on the handbrake light flickering on the dash. I can appreciate that this is the only concern that Mr N has highlighted that has actually presented itself, albeit it fleetingly, whilst the car has been subject to a garage inspection.

But that doesn't mean that Mr N's other concerns with the car are unjustified. He has consistently said the car has a rattling noise when accelerating and that the brakes make a grating noise. The difficulty is that the problems Mr N has reported do seem to be intermittent. He has been able to film some of the issues but the garage hasn't been able to reproduce the problems when it has carried out diagnostics or had the car for road tests.

I accept Mercedes FS' points that some of the video footage Mr N has provided isn't persuasive enough to conclusively demonstrate the cause of the problems he's experiencing. I've listened carefully to the recordings of the engine noise Mr N has provided and the audio is unclear as to specifically what operation he's highlighting as being abnormal. The snippets don't make it clear what normal operation sounds like and it is difficult to hear specifically what Mr N is concerned about due to the general background noise in the recording from the other traffic on the road.

But Mr N has provided evidence from a roadside assistance company that attended the car in May 2018 and reported an engine overboost fault code. Although the car has been seen since then, it appears that the underlying cause of the engine overboost fault doesn't appear to have been fully explored. Mr N has also highlighted issues with the eco stop start light not coming on and a burning smell.

When the car was seen in June 2018, the garage only suggested there was a slight lip on the front brake disk. It wasn't suggested that this lip caused any major problem to the operation of the brakes, but I'm mindful of the fact that Mr N has consistently maintained that he's heard a grating noise from the brakes.

The main focus of the complaint has been whether there's a fault with the handbrake because the dashboard light has flickered intermittently when the handbrake is on and engaged. When Mr N first reported these concerns in June 2017, exploratory repairs were proposed to try and troubleshoot the cause of the issue. I can understand why Mr N wasn't happy with that approach. It wasn't guaranteed to even identify the cause of the issues, let alone resolve them.

Bearing in mind this was a brand new car, a reasonable person would expect problem free motoring for much more than a year. I don't think a reasonable person would expect a brand new car to need exploratory repairs.

The videos Mr N has provided of the handbrake light flickering do show there's a possibility of an electrical fault, perhaps a wiring or connection issue. The expert report also identified the presence of the flickering too. I've looked carefully at the video footage Mr N has provided and I think it shows that the connection appears to be unstable. When he taps the handbrake, it shouldn't flicker in this way. I believe Mr N has provided this footage to show the connection appears to be unstable. And I don't agree with Mercedes FS that a flickering handbrake light isn't significant. The bar for what would be considered satisfactory quality is higher with a brand new car.

Whilst the garage has said that the warning light doesn't impact on the operation of the handbrake, I can understand why Mr N would be concerned about it. The operation of the handbrake (and the driver's confidence that it is or isn't engaged) is integral to the safety of the car. I don't think a reasonable person would be happy to accept an intermittent issue like this one so soon after getting a brand new car. There's nothing to suggest that this issue is presenting as a result of a lack of maintenance or general wear and tear.

the additional clarification from the independent engineer

I've looked carefully at the further clarification Mercedes FS obtained from the independent engineer that inspected the car. But to my mind, the engineer's response is inconclusive- he didn't think it was possible to say whether the fault was at the point of sale or developing since. So the weight I can place on this extra clarification is neutral as it can be interpreted to support both positions equally.

the timing of the dash cam installation

Whilst the retailer has said in its opinion the dash cam fitment could've caused the issue with the car, there isn't sufficient evidence to support that this is most likely the cause for the problems that Mr N experienced with the handbrake. It also doesn't speak to the problems he's highlighted with the engine overboost and the burning smell. I accept that it may well be possible for third party installations to cause a problem, but it doesn't seem to have been fully explored in the occasions that the retailer has had the car.

Given the amount of times the car has been inspected by two separate retail garages, I'd have expected the installation of the dash cam to have been investigated as a potential source of the trouble Mr N has experienced with the handbrake long before now. I also agree with Mr N that the nineteen miles the car travelled during its week long road test wasn't enough to fairly replicate his usual driving experience.

And I'm currently not minded don't think it would be fair for either the retailer or Mercedes FS to look to investigate the car further now. Too much time has elapsed.

I do accept that Mr N had the car for around a year before reporting any concerns with its performance, but I'm also mindful of the fact that he'd only travelled around 7,000 miles in the car at that point. And Mr N has been consistent with the problems that he's been reporting. He'd travelled just under 13,500 miles before he felt he had no option but to stop using it because he was concerned it was unsafe. I have placed weight on the fact that this was a brand new car and that Mr N has had more problems with it than are fair. Whilst it would be unrealistic to expect a car to be fault free forever, it's clear that this brand new car hasn't performed as it should've done. I feel the handbrake light is a very significant problem and is integral to Mr N's confidence that it is correctly engaged at the appropriate time when he's operating the car. And I'm not persuaded that in supplying a car of that quality Mercedes FS acted fairly and reasonably.

I've thought about what Mercedes FS has said about how long Mr N had the car before the issue with the handbrake light was shown. But for the reasons I've explained, I am currently minded to think there's enough information to persuade me, on balance, that the car wasn't of satisfactory quality when it was supplied to Mr N – in particular – that it wasn't reasonably durable.

So next I have to consider what a fair way to put things right would be.

putting things right

Our investigator said that Mercedes FS has had ample opportunity to investigate, replicate and fix the concerns Mr N had highlighted so he didn't think it would be fair to allow any further option to repair the car. I agree with our investigator on this point. Mr N has highlighted that he's been back to the garage in excess of seventeen times. So I think that a repair is unfeasible and potentially unfair to everyone involved in this matter now, not least because the working relationship between the parties has broken down to such a degree as to render it untenable.

I am minded to agree that Mercedes FS should take back ownership of the car and end the finance agreement with nothing further to pay. Mercedes FS should also collect the car at no cost to Mr N and remove the account from his credit file.

Mr N has said that he should get a full refund of all of the payments that he's made, especially because he felt he had no choice but to acquire another car on finance. But I don't agree that this would be fair. Mr N used the car for around a year before issues presented. Then he drove the car for a further six months to see whether the issues corrected themselves in time. So whilst there were issues in the first eighteen months of the agreement, they were intermittent. He'd done around 11,350 miles in the car when it was seen in January 2018. And he's travelled around 13,500 miles in the car overall.

So I think that Mercedes FS can keep the payments made from the agreement's inception up to and including the monthly payment for December 2017 to pay for the use Mr N had.

But I do think that Mercedes FS should give Mr N a 10% refund of the monthly payments he made from January 2018 to May 2018 inclusive. This is to recognise the impaired use Mr N had of the car during this time. I recognise that steps were taken to assist Mr N and that he did have use of a courtesy car whilst further investigation into the issues took place.

But the video footage and email correspondence Mr N has provided shows that the issues were presenting with more regularity during the time he wasn't using a courtesy car. So I don't think it would be fair for him to pay the full monthly repayments during this period as the car wasn't performing as it should've. Mercedes FS should add interest at 8% simple a year on the refunded amounts from the date each one was originally paid to the date of settlement.

Mercedes FS should refund the payments Mr N has made from June 2018 onwards in full as Mr N hasn't driven the car or had any use of it owing to concerns over its safety. Mercedes FS should add 8% simple interest a year from the date each payment was paid to the date of settlement.

Our investigator said that Mercedes FS should refund the initial deposit that Mr N paid. But I don't agree that would be fair here. I've looked carefully at the agreement Mr N entered into when he acquired this car. He already had finance on his previous car. To settle that agreement, he needed to pay £9,280.79. The part exchange value he was given for his old car was £8,280.79. This means that the £1,000 payment Mr N made was to pay off the remaining amount outstanding of his previous finance agreement. The purchase price of this new car was £13,532.62. The finance agreement shows that Mr N was given credit of £13,532.62. So I'm satisfied that Mr N didn't pay any deposit that went towards this car.

Mercedes FS should also cover the cost Mr N paid to transfer his private number plate to his new car as he has only incurred this expense at this time because of the breach of contract.

I agree with our investigator's recommendation that Mercedes FS should pay Mr N £250 to recognise the distress and inconvenience he's been caused. He made extensive visits to the dealership to try and resolve the issue so it's clear that the breach of contract has had an impact on him. It's evident that Mr N has experienced problems directly relating to the supply of the car. I think Mercedes FS should have accepted the car back sooner.

my provisional decision

Subject to any further evidence or representations I receive from either party, I am currently minded to uphold this complaint and say that Mercedes-Benz Financial Services UK Limited must:

- take back ownership of the car and end the finance agreement with nothing further to pay.
- collect the car at no cost to Mr N.
- remove the account from Mr N's credit file.
- Give Mr N a 10% refund of the monthly payments he made from January 2018 to May 2018 inclusive. Mercedes FS should add interest at 8% simple a year on the refunded amounts from the date each one was originally paid to the date of settlement.
- Refund the payments Mr N has made from June 2018 onwards in full as Mr N hasn't driven the car or had any use of it owing to concerns over its safety. Mercedes FS should add 8% simple interest a year from the date each payment was paid to the date of settlement.
- Cover the cost Mr N paid to transfer his private number plate to his new car
- Pay Mr N £250 distress and inconvenience

Claire Marsh
ombudsman