

complaint

Mr B has complained Mercedes-Benz Financial Services UK Limited didn't sort out the problem he had with his car.

background

Mr B bought a car in July 2013 and got a TV tuner fitted which cost him an additional £855. He took out a hire purchase agreement with Mercedes-Benz and paid a deposit of more than £23,000. He started having problems with the media system on the car and tried to get it sorted out at various local dealers. This was important to him as he has four children and wanted to use the system on long journeys to entertain them. The car was in and out of the dealers but couldn't be sorted.

Mercedes-Benz offered him half of the costs of the TV tuner, topped up to £500. Mr B didn't think this was fair. He and his family had been inconvenienced by not having the car when the problems were trying to be sorted out; any courtesy car offered wasn't suitable for the whole family and he wasn't sure what to do as his three year agreement was coming to an end. He had to pay a large balloon payment and wasn't sure this was going to be worth it. He brought his complaint to the ombudsman service.

Our adjudicator felt being able to use the media system was one of the reasons Mr B got this car. And because there was a "*known limitation*" to this system, Mr B hadn't got what he'd have expected. By this time Mr B had opted not to pay anything further for the car. So our adjudicator felt a fair resolution was for Mercedes-Benz to write off termination charges and give Mr B back his deposit. Mercedes-Benz didn't believe this was fair. Mr B had paid a large deposit – by trading in another car – so this amount was disproportionate. They were willing to refund the costs of the TV tuner along with the costs charged for extra days' hire.

Our adjudicator reconsidered this aspect. He felt an alternative resolution was fair. He asked Mercedes-Benz to:

- Refund the costs of the TV tuner;
- Remove the extra days' rental charge;
- Refund 10% of Mr B's monthly payments to reflect his lack of ability to use the TV tuner;
- Add 8% simple interest to those payments;
- Reduce the charge for a replacement registration document to £25 (from £250); and
- Pay him £200 for the inconvenience.

Neither Mr B nor Mercedes-Benz felt this was fair. This complaint was handed to an ombudsman to make a decision.

I completed a provisional decision on this case on 2 December. I felt there was enough evidence to show Mr B's car had a problem. I felt the fair resolution was for Mercedes-Benz to do the following:

- Refund £855 charged for the TV tuner along with 8% simple interest a year;
- Refund 10% of Mr B's monthly payments to reflect his lack of enjoyment;
- Add 8% simple interest a year to those payments;
- Remove the extra days' rental charge;

- Waive the charges for £1,273.13 and excess mileage; and
- Pay him £500 for the inconvenience.

They agreed with this resolution but Mr B never responded. I therefore need to complete a final decision.

my findings

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

I considered the main aspects of Mr B's complaint. This includes whether the TV tuner was faulty. And if I decided it was, what a fair resolution would be.

was the TV tuner faulty?

I can see from evidence Mr B sent us that one of his local dealers tried to sort out this problem in November 2014. Mr B assured me he and his wife made numerous phone calls before that time. He thinks his first contact was about six months after they got the car.

So firstly I think this was an issue that was causing Mr B concern. And I can see why. He'd specifically added this feature to the car so his family could enjoy it on long trips. There were further documented visits to the dealer throughout 2015.

I can also see Mercedes-Benz recognise this is a "*known limitation*". There is no fix to this problem but they regard this as "*normal performance*". I'm not convinced this is fair. Mr B paid an extra amount for a facility he'd not been told would never work as he'd have expected. I don't think there's any dispute that's the case. I know Mercedes-Benz are keen to say this feature wasn't faulty. But I don't – having reviewed the evidence – think this is the issue. Was it working as Mr B would have expected? No I don't think it was.

did this cause Mr B and his family problems?

In three years Mr B drove more than 57,000 miles in his car. This is above average mileage. So I don't immediately think the problems stopped Mr B getting use out of his car. But I can see there were occasions he didn't have the car when this problem was trying to be resolved. A year ago this was agreed to have caused about 30 hours' workshop time. And I believe it was a two-hour round trip for Mr B to get the car to the dealer.

That said in a three-year period I'd expect Mr B to take the car to be regularly serviced.

I know Mr B has been annoyed by never getting a courtesy car big enough for his family. But I don't think it's reasonable to expect every dealer to have a seven-seater on standby for use.

The main reason, though, for getting this feature was to make sure he made journeys as comfortable as possible for his children. Travelling on long journeys with even one child can be testing so I suspect Mr B was hoping for long stretches of peace and quiet. If things had to be interrupted regularly to reset the system, I don't think that's what he'd be getting.

what's a fair resolution?

As I don't believe Mr B was getting to enjoy the car the way he'd have expected, I need to decide what would put that right. Mr B no longer has the car as he decided not to pay the £20,325 purchase price when the three-year agreement came to the end. I think it's fair to conclude the TV tuner was proving to be such an issue, Mr B decided not to take that step. However that leaves him without a main car and also without capital he can use to trade in for another car.

I'm sympathetic to Mercedes-Benz's view that refunding the full deposit would have been disproportionate. But I also considered the decision Mr B made to give up the car. He ended up paying more than £34,500 over three years and now has nothing to show for it. So I reviewed average depreciation of the kind of car Mr B had. Actually – based on the fact Mr B's car was new when he got it in 2013 – this is probably a fair amount.

I'm also aware Mr B 'saved' £20,325 by not buying the car. The valuation for a car of his age and mileage is roughly £20,500 so I don't think he's particularly lost out in handing the car back.

But Mr B has been left with various charges from handing the car back. There's £1,273.13 for various small repairs along with excess mileage charges. Unfortunately Mr B brought his complaint to us at the same time as he was going to have to decide to give the car back. We weren't able to resolve this before he had to make that decision.

So taking all these factors into account, I still believe it's fair to ask Mercedes-Benz to put things right, along the lines of my provisional decision.

I believe this offers Mr B a way of not paying charges he wouldn't have paid if he'd ended up buying the car. And I believe he'd have ended up buying the car but for the problems with the TV tuner.

my final decision

For the reasons I've given, my final decision is to instruct Mercedes-Benz Financial Services UK Limited to carry out the following to put things right for Mr B.

- Refund £855 charged for the TV tuner along with 8% simple interest a year;
- Refund 10% of Mr B's monthly payments to reflect his lack of enjoyment;
- Add 8% simple interest a year to those payments;
- Remove the extra days' rental charge;
- Waive the charges for £1,273.13 and excess mileage; and
- Pay him £500 for the inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 January 2017.

Sandra Quinn
ombudsman