

complaint

Mr A complains that a car that was supplied to him under a hire agreement with Mercedes-Benz Financial Services UK Limited, trading as Mercedes-Benz Finance, wasn't of satisfactory quality.

background

A new car was supplied to Mr A under a hire agreement with Mercedes-Benz Finance that he electronically signed in September 2017. The car wouldn't start in November 2017 and Mr A called out an assistance service. The car then had a software update in December 2017. Mr A says that he was still having issues with the car's sat-nav, hands-free and locking of the car and that it was becoming dangerous to drive in February 2018 so it was taken to another dealer. He complained to Mercedes-Benz Finance but wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. He said that the car had been taken to the dealer twice and no fault was found. So he thought that it'd be unreasonable to say that there'd been an opportunity to resolve the issues. And he said that he wouldn't be asking Mercedes-Benz Finance to accept rejection of the car.

Mr A has asked for his complaint to be considered by an ombudsman. He said that he was going to arrange an independent inspection of the car – but he then said that it would be impossible to find an electrical fault without stripping the car down. He's responded to the investigator's recommendation in detail and says, in summary, that:

- he's given the dealers sufficient chance to remedy the car and the car went back to the dealer twice for a week each time where it attempted to find the fault and had sufficient chance to remedy it;
- it performed software updates on both occasions to try and fix what it believed to be an electrical fault within the car;
- he shouldn't need to prove that the fault exists - it should be the duty of the dealer to supply evidence that there's no fault or fix the fault or replace the faulty product – but it hasn't done so;
- the courtesy car that was provided to him was too small and wasn't the like-for-like replacement that he'd been promised;
- he's lost time off work and let down his customers as a direct result of the issues with the car; and
- he shouldn't be paying the full amount for a car that's not working correctly.

my findings

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

Mr A had an issue with the car not starting in November 2017 – about two months after the car had been supplied to him. He called out the manufacturer's assistance service. Its notes say:

"No fault found, member also saying left hand side of dash goes off intermittently. There is a software update available for this but will take 94 minutes, advised to get booked into the dealer for this."

The car's software was updated in December 2017 but Mr A says that the car was becoming dangerous to drive in February 2018 so it was collected from him by the assistance service and taken to a specified manufacturer's dealer. But Mercedes-Benz Finance says that the dealer could find no fault stored in the car's diagnostic system so a software update was undertaken and the car was then returned to Mr A. The car's mileage was recorded as being 9,959 miles.

Mr A clearly feels very strongly that there are faults with his car and that it's dangerous to drive – and he wants to reject the car. But the assistance service was unable to find a fault when it was called out in November 2017 and the two manufacturer's dealers that looked at the car in December 2017 and February 2018 were also unable to find a fault and performed software updates.

Mr A said that he'd arrange for the car to be inspected by an independent expert – but he then said that it would be impossible to find an electrical fault without stripping the car down. I can understand Mr A's frustration about the need to provide evidence of the fault. But I'm not persuaded that there's enough evidence to show that there's a fault with the car. And in the absence of that evidence, I'm not persuaded that it would be fair or reasonable for me to require Mercedes-Benz Finance to allow Mr A to reject the car.

Mr A has also complained about the courtesy car that was provided to him. I can also understand his frustration about this issue but the courtesy car was provided by the dealer – and I'm not persuaded that it would be fair or reasonable for me to require Mercedes-Benz Finance to take any action in response to Mr A's complaint about the courtesy car.

I'm not persuaded that there's enough evidence to show that Mercedes-Benz Finance has acted incorrectly in its dealings with Mr A about the car. So I find that it wouldn't be fair or reasonable in these circumstances for me to require it to allow Mr A to reject the car, to pay him any compensation or to take any other action in response to his complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 August 2019.

Jarrold Hastings
ombudsman