

complaint

Mr N complains to Mercedes-Benz Financial Services UK Limited ('MBFS') about the quality of a car it supplied him through a Hire Purchase agreement.

background

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision of 13 September 2019. A copy of that provisional decision is attached here and forms part of this final decision.

In my provisional decision I set out why I was minded to uphold this complaint. I invited further comments from both parties, before I would reconsider the complaint and issue my final decision.

Mr N responded to the provisional decision and accepted it. MBFS did not respond to the provisional decision by the deadline I set. And to date I have not seen any further submissions from it.

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 still consider my provisional findings to be fair and reasonable in the particular circumstances. Neither party has added anything which gives me cause to change these.

Therefore, my final decision is the same, for the reasons as set out in the attached provisional decision.

my final decision

My final decision is that I uphold this complaint and direct Mercedes-Benz Financial Services UK Limited to:

- end the finance agreement and collect the car at no further cost to Mr N;
- refund his deposit minus £500 road fund contribution (£11,401);
- refund him 15% of each monthly rental payment;
- pay a pro rata refund for any unused time in relation to the GAP, Minor Damage and Tyre and Alloy insurances that Mr N is unable to recover himself for cancelling the policies early – including refunding the cost of any early cancellation fee(s);
- refund him for any service plan costs he has paid over and above £840, if Mr N does not use his 2020 service; and
- remove the finance agreement from his credit file.

MBFS should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If MBFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr N how much it's taken off. It should also give Mr N a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 7 November 2019.

Mark Lancod
ombudsman

provisional decision

complaint

Mr N complains to Mercedes-Benz Financial Services UK Limited ('MBFS') about the quality of a car it supplied him through a Hire Purchase agreement.

background

At the end of January 2017 Mr N financed a new car with a cash price of just over £56,000.

Mr N contacted MBFS in May 2017 to complain about handling problems with the car. He says these problems have continued – and they appear to have worsened.

In summary he says:

- the car is crabbing and juddering severely when manoeuvring (such as reversing and pulling out of junctions) at low speeds at (or near to) full lock
- he wasn't expecting it to crab so badly to the point where the car is moving sideways (and sometimes feels as though it skids)
- the issue seems worse in wet and colder weather
- the issue causes excessive noise
- it feels unsafe for him and his family
- the tyres on the car are wearing out more quickly because of the issue

MBFS confirmed the manufacturer is aware of the '*tyre skipping*' issue on certain models of this car caused by the different positioning of the front axle differential on right hand drive cars (compared to left hand drive models). It said this was a '*comfort issue / characteristic*' which is more pronounced during cold weather and when larger wheels and low profile tyres are fitted. It offered Mr N a set of 'all season' tyres at no additional cost to improve his comfort.

Mr N says this didn't fully fix things and he wants more done to put things right.

Our investigator took a look at things and thought a brand new car, especially one of this price, should run smoothly, and the tyres that came with it should be fit for purpose. The investigator didn't think it fair for Mr N to pay for all season tyres going forward to alleviate the issue. The investigator thought it was reasonable for Mr N to reject the car and get a partial refund (to reflect his use so far).

MBFS doesn't agree. In summary, it says expert testing confirms the issue is not caused by a fault and the car is safe to drive. And using all season tyres will significantly improve the customer experience.

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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The finance 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 is 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. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle'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, safety, and durability can be aspects of the quality of goods.

My starting point is MBFS supplied Mr N a brand new car with a purchase price of almost £60,000. With this in mind I think it is fair to say that a reasonable person would expect the level of quality to be not only higher than a cheaper more road worn vehicle, but also to be of a high standard compared to similarly specified but more inexpensive new cars.

The issue Mr N has described with the handling of the car is something which he reported in the first few months of using it, and MBFS and the manufacturer acknowledge it is an inherent issue. So it is clear to me that it hasn't been caused by Mr N or usually expected wear and tear.

The key question here is whether the issue renders the car, as supplied, of unsatisfactory quality. MBFS have pointed to it being an acceptable '*characteristic*' rather than something which would give rise to a case for rejection under the CRA.

I have thought about whether or not the way Mr N's car is handling is considered to be a normal and acceptable characteristic of that model or type of car. I have had regard to the fact that cars will handle in a particular way that will not necessarily be considered a defect. Depending on what type of car you choose (and to some extent how much you spend) there will be reasonably varying degrees of mechanical noise, vibration and smoothness.

However, while I accept that a 'skipping' sensation and additional handling noise might be more common in certain types of car (such as the model which Mr N purchased). I also recognise there will be situations where the particular nature of the issues experienced by a consumer can go beyond the standard that a reasonable person would consider satisfactory. This is relevant to the legal test in the CRA and one that I have had regard to when considering what is fair and reasonable here.

My findings are based on the particular circumstances of this complaint and specifically the situation concerning Mr N's car.

safety and other relevant considerations

There has been some focus on whether Mr N's car is safe or not. Expert evidence I have seen (and I note that not all of it relates specifically to Mr N's car) broadly acknowledges a 'skipping' issue but does not indicate that it affects safety. And overall there isn't anything persuasive to show this handling issue means Mr N's car is unsafe.

However, in considering whether a car is of satisfactory quality its safety is not the only relevant consideration. Ultimately, there are other relevant considerations to think about. Despite reassurances over safety – if certain issues with the car are making the driver feel unsafe or uncomfortable, or having some other kind of negative impact on the vehicle that is also important when considering the overall question of satisfactory quality.

what MBFS and the manufacturer said

I have looked at the various submissions. It is quite clear that MBFS and the manufacturer acknowledge there is a known issue with certain cars of this kind exhibiting a 'skipping sensation'. From what MBFS and the manufacturer have said it appears that *some* (rather than all) cars in this group have exhibited the front tyre skipping. Information submitted by the manufacturer indicates it is a small percentage of overall users having problems of this nature.

So it seems that what Mr N has described is not necessarily the same as others with the same model - and he is likely part of a smaller percentage of users experiencing this. This strikes me as being at cross purposes to the issue being categorised as a usual and acceptable 'characteristic' of a particular model of car. Because that would indicate that all users of that model experience it rather than some.

I note that MBFS offered Mr N free all season tyres as a solution. And I also note that the manufacturer made a statement acknowledging how this might not be a practical solution for some and it was investigating alternative ways to help minimise this 'characteristic'. I acknowledge that there might be an element of goodwill here. However, had this issue been one that is normally expected I find it less likely that Mr N would have been offered free tyres of a different kind and reassurance of ongoing efforts to minimise it.

I was also recently made aware of a manufacturer 'fix' for skipping concerns involving adjustments to the steering rack of cars in the same family of models as those identified in some of the expert reports which MBFS submitted. I am informed this isn't available to Mr N due to the specific model of car he has. However, I question why a fix has been put in place for something that appears to have previously been categorised as a normal characteristic.

what Mr N has said

Mr N indicates that in his case the issues with the car as supplied were particularly pronounced.

I note that Mr N complained about this issue early on and has been consistent throughout about how it has affected day to day driving. He clearly doesn't think what he is experiencing is normal, and it is causing him concern to a degree that he feels worried about using the car in certain conditions. While his submissions are not scientific or expert tests – they are something I have had regard to when grappling with the question of whether the car as supplied was of satisfactory quality based on the standard a reasonable person would expect.

In Mr N's early submissions he states that the issue is '*quite bad and pronounced*' and that he '*wasn't expecting it to crab so badly going around bends and pulling out of junctions*'. My impression is this has been problematic not necessarily due to the existence of some 'crabbing' or 'skipping' but due to the perceived severity in the individual circumstances. It is also worth noting that Mr N has said this is his third car of the brand which indicates he isn't inexperienced when it comes to driving cars of this price and performance.

Mr N has also said fitting new all season tyres did not eliminate the problem completely. However, I think that alternative tyres are more relevant to a proposed resolution, rather than the key question of whether the car was of satisfactory quality at the time of supply.

the expert report on Mr N's car

Several of the reports submitted by MBFS are not about Mr N's car or clearly about the exact same specification model he has. They appear to be carried out on models with different size wheels. And while I have had regard to these reports to an extent (as they appear to cover the same 'family' of models) I think it can be more useful to consider a report on the individual car Mr N has.

The expert report on his car ('Report A') acknowledges a slight vibration in handling but says this is normal for the type of car. It doesn't really support a wider problem with the car. However, the report isn't very detailed - in particular as to the nature of the testing. Mr N has made it clear that when reversing out of his drive and pulling out of junctions he experiences the issue, particularly in wet and cold conditions (he said it isn't as noticeable in better weather). It isn't clear how much of this particular driving the engineer carried out or in what conditions and he also only completed a relatively short 8 mile road test.

Mr N disputes the contents of the report strongly and says that the conditions were mild and that the engineer did not include all the details discussed (including excessive tyre wear) in his report.

The report isn't clear about what tyres were on Mr N's car. But I note that Mr N said the car had 'all weather' tyres on at the time - which are broadly accepted as significantly reducing the issue.

Overall, I find this report less persuasive in showing Mr N's car was likely of satisfactory quality when it was supplied, especially in light of Mr N's credible testimony and the other evidence available.

excessive tyre wear

In support of his case Mr N has said this issue has caused his tyres to wear excessively. A report from a tyre specialist retailer has said the tyres are wearing '*excessively and abnormally and that Mr N needs new front tyres every 5-6000 miles*'. The report goes on to say that '*clearly something is not right with the car. The tyre edges wear out as though they have been driven around a high speed track*'.

Mr N has also submitted evidence to show his tyres have been replaced several times. From what he has sent it appears that he had three sets of replacement front tyres in the first 20,000 or so miles (four sets on the car in total including the original factory set). He has also sent in photos to show what appears to be heavy wear on the tyre edges. This level of tyre wear seems unusual and supports what the specialist has said. It also seems that a service manager at the dealer has said that replacing tyres at 6,000 miles would be unusual unless there was a '*steering / geometry*' issue with the car.

Mr N has also said the car is used for domestic purposes, mainly for local trips by his wife to take their daughter to and from school. So it seems unlikely the car is being driven in such a manner that would explain what appears to be excessive tyre wear.

The manufacturer has said the skipping effect does not cause damage or excessive tyre wear. But I don't think this in itself is enough to persuade me that in the individual circumstances of Mr N's case it isn't causing these adverse effects. And I note that Report A does not fully address the issue of tyre wear.

In the circumstances the more likely explanation for what appears to be unusual and accelerated tyre wear, is a wider problem with the steering system of the car.

noise

I also turn to the issue of noise. Mr N has said that the handling issue is '*quite loud*' and you can hear what sounds like '*thudding*' as the car is being manoeuvred in his driveway. He has sent in a video to show this. While the audio quality of the video is not the best I can hear what appear unusual and irregular thudding noises as he turns the wheel at low speed on his drive. I can see why this noise might be alarming when carrying out parking manoeuvres.

I have noted that the expert reports submitted by MBFS are not inspections of Mr N's car, and don't appear to test the exact same model either. However, they do comment on what appears to be a similar issue with this family of cars. The description of the noises in these reports is as follows:

Report B - 'odd' (car fitted with all-weather tyres and on full lock)

Report C - 'grating' or 'graunching' (car fitted with standard tyres and on full lock)

I also note that the manufacturer describes the issue of skipping with this family of models as being noticeable to the customer through a 'clunk' noise.

It seems this evidence supports what Mr N says about the handling issue with his car being linked to undesirable noise. While cars create noise of all kinds I think it is fair to say that 'loud thudding', 'grating', 'graunching' and 'clunking' are not what the average person would associate with a new car costing almost £60,000.

There is also the question of what is causing these noises. It isn't clear but I have reservations over parts not performing as they should causing possible detrimental long term effects on the car.

description

One of the things that has been identified by MBFS and broadly highlighted across the expert reports is that the issues Mr N has come across appear to be generally evident during low speed handling and when the car is placed on full lock. There also appears to be a suggestion that a performance car such as this is more prone to the type of issues Mr N is experiencing. And that it would be reasonably expected.

However, I think the average domestic buyer is going to commonly come across low speed driving and situations (such as coming in and out of a driveway or parking spot) when full lock is required.

MBFS has indicated there was a disclaimer given to consumers to make them aware of this handling issue but it says Mr N didn't sign one. Mr N says he didn't get shown this and it was given to customers who got the car after he did. From the evidence I have I can't see where Mr N was made aware that he might reasonably expect the type of issues he has experienced during usual domestic driving conditions due to the nature of the car he had chosen. In fact I have considered the general description attributed to this model by the manufacturer and despite a mention of sportiness there is a particular emphasis on its suitability for everyday use and superior comfort in that use.

So I don't think the handling issue being evident during low speed / full lock is particularly mitigating here. Nor do I think from the description and marketing of the car that Mr N would necessarily have reasonably expected what he appears to be experiencing.

satisfactory quality

This case is not clear cut. While there is a recognised issue there is clearly a dispute about how bad the handling problems are in Mr N's particular case. Mr N has been quite credible and persuasive about how bad these are while Report A doesn't really go into enough detail to satisfy me that Mr N is not accurately describing his experience during particular driving conditions.

I note that the evidence provided does not persuasively indicate this is a safety issue, however some of the reports do indicate there are some particular noises associated with it. My overall impression is that these noises do not appear to be in line with what a reasonable person might expect from a car of this price and description.

Mr N's evidence supports there being an unexpected noise issue with his particular car. And he has also shown persuasive evidence of an impact on his tyres which have not been fully explained by the expert who examined his car. While comments from experts have indicated this is unusual and indicative of a wider problem (possibly with the steering geometry).

I also note that Mr N reported the issue early on – and in this particular case I don't think that MBFS has done enough to show that he hasn't got an inherent issue with his car that goes beyond what a reasonable person would consider to be satisfactory taking account of all the relevant circumstances including price and description.

This is not a straightforward case. But my decision is on the balance of probabilities. On balance, for the reasons I have given above I think that Mr N's car was not of satisfactory quality when it was supplied to him. And therefore, on a fair and reasonable basis I think he is entitled to a remedy.

proposed solution and a fair way forward

It is clear that all season tyres have been proposed as a solution to the issue. I am not persuaded it does completely eliminate the problem – but it seems to improve it.

Mr N has indicated that even after he had these tyres fitted they still wore out prematurely. In any event, I also question whether it is practical for him to continue to buy all season tyres on an ongoing basis, especially when the car was sold and marketed with different tyres. And from my research it appears that all season tyres are generally more expensive - which will mean an additional ongoing cost.

In my mind, the attempt to remedy this by offering all season tyres essentially is the attempt at 'repair'. But in the circumstances I don't think it is an effective long term remedy. Therefore, I have had regard to the other remedies in the CRA and what would be fair and reasonable in the particular circumstances of Mr N's complaint.

All things considered, I don't think the solution proposed is one that Mr N should have to accept if he doesn't want to. So I think Mr N should now be allowed his final right to reject the car. This would mean the car is collected from him, the finance agreement is cancelled and Mr N has his deposit refunded (plus interest).

Mr N's deposit contribution as reflected on the finance agreement is £11,901 but in addition to including contributions toward the cost of the car in the form of cash payments and a part exchange this also included payment of £500 for the first year road fund licence. Mr N has already used this road fund licence so I think it fair to take this off any refund of his deposit.

Mr N says he paid upfront for three insurances (GAP for £625, Tyre and Alloy for £850 and Minor Damage for £499). These all run until 19/2/2020. Mr N has benefited from the coverage these have given him up until now. However, if Mr N accepts my decision and hands back the car before expiry of the insurances I think it fair MBFS pay him a pro rata refund to reflect any unused time on these policies. It might be possible for Mr N to claim back a rebate himself for cancelling the policies early but that isn't clear at this stage. I think it fair that Mr N try to do this first and then if he does receive any money back MBFS will cover the amount he is unable to recover (and any early cancellation fees). If MBFS want proof of what Mr N got back (and what he didn't) they can ask Mr N who I expect can get something from the insurer(s) to show this.

It is unclear if Mr N has made any claims on these insurances. But in any event it doesn't appear likely that any claims would lead to double recovery should Mr N accept my decision (for example in relation to the cost of replacement tyres). However, I invite both parties to add any clarity on this matter in response to my provisional findings.

Mr N also says he is paying for a £1,260 service contract on a monthly basis. He has provided an invoice to support this. Mr N says it covers his annual service costs around February each year. It appears Mr N has already had the annual service due in 2018 and 2019 and is due a 2020 service before the contract ends. So if Mr N accepts this decision and hands back the car without using his 2020 service then MBFS should fairly refund him anything he has paid to the plan over and above £840 (which represents 2/3 of the cost of the plan).

From the evidence I've seen Mr N has been getting regular use from the car (he says he wouldn't have used it if he could've but it is his only car) – so I think it is fair for MBFS to retain the majority of his £577.57 monthly rentals. However, Mr N's driving experience has been impaired somewhat by the issues he has experienced. Mr N has not had a loss of major features on the car but he is still paying a lot each month for a driving experience that I am not convinced is to the standard he would normally expect. So I think he should get a relatively small amount of each monthly rental back to reflect this.

Mr N has also spent a considerable amount on tyres since owning the car - while some of this might have been spent in any event on balance it seems he has likely spent a lot more on tyres than he would've in that same time period were it not for the handling issues.

Mr N says he has spent £3,731.50 on tyres and provided receipts to support that. However, from what I can see he has double counted deposits of £705 and £385. Therefore, I think he has spent £2,641.50 - which is still a considerable amount nevertheless.

This is not a science but all things considered I think it would be fair for MBFS to refund 15% of his monthly payments as compensation. 15% is around £85 a month and aims to compensate him for the impairment to his driving experience caused by the car not being of satisfactory quality. And also compensate him for the additional expense he has had on tyres since owning the car.

my provisional decision

My provisional decision is that I uphold this complaint and direct Mercedes-Benz Financial Services UK Limited to:

- end the finance agreement and collect the car at no further cost to Mr N;
- refund his deposit minus £500 road fund contribution (£11,401);
- refund him 15% of each monthly rental payment;
- pay a pro rata refund for any unused time in relation to the GAP, Minor Damage and Tyre and Alloy insurances that Mr N is unable to recover himself for cancelling the policies early – including refunding the cost of any early cancellation fee(s);
- refund him for any service plan costs he has paid over and above £840, if Mr N does not use his 2020 service; and
- remove the finance agreement from his credit file.

MBFS should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If MBFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr N how much it's taken off. It should also give Mr N a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

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