

## The complaint

Ms B complains that a car she acquired on a hire purchase agreement with Mercedes-Benz Financial Services UK Limited (MBFS) was misrepresented to her.

## What happened

I don't intend to set out in great detail the background to Ms B's case, as the majority of the facts are now agreed between the parties. However, in brief, Ms B entered into a hire purchase agreement with MBFS the fund the acquisition of a new car costing £26,071.40 on 28 September 2019. Ms B paid a deposit of £8,000 and was then expected to make 48 monthly payments of £420.69, after which she could pay a small fee of £10 to transfer ownership of the vehicle to herself. As part of the purchase Ms B agreed to pay a monthly direct debit for a four year service plan with the dealership, and to buy several insurance policies via the dealership, which ended up being financed by a credit agreement with a different lender.

It's no longer disputed that the dealership gave Ms B incorrect information about the potential fuel economy figures which could be achieved by the car. She was informed the car could achieve 42 miles per gallon when the correct figure she should have been quoted was 35.3 to 39.3 miles per gallon. In reality, Ms B found she was achieving around 25 or fewer miles per gallon and expressed concerns about this to the dealership and then to MBFS. A health check carried out at the dealership didn't reveal any mechanical issues with the vehicle. An independent inspector was then appointed by MBFS to road test the car and was able to achieve 34.8 miles per gallon over 100 miles.

MBFS didn't agree with Ms B's request to be able to reject the car, but once it became clear during our investigator's review of the case that the dealership had given incorrect information, it agreed that she could do so. The remaining issues in dispute relate to what kind of redress Ms B should receive, and as no agreement has been reached on this matter the case has been passed to me to decide.

There has been considerable back and forth between our investigator, MBFS and Ms B on what a fair resolution to the complaint should look like. Rather than narrate these negotiations I've summarised the current position of all parties below:

Our investigator's opinion was that MBFS should:

- Cancel the hire purchase agreement with nothing further for Ms B to pay, and remove it from her credit file.
- Collect the car at no cost to Ms B.
- Refund 10% of all monthly payments that she's made to reflect the fact that her use of the car has been impaired.
- Refund Ms B's deposit in full.

- Work with Ms B to effect the cancellation of the service plan and the insurance policies sold to her by the dealership, covering any costs involved in the cancellation process.
- Refund any payments made towards the service plan, as Ms B hadn't had the benefit of this.
- Pay 8% simple interest per year on any refunds, calculated from the date of payment to the date of settlement.

Ms B was broadly in agreement with our investigator, but MBFS was not. In general, it felt that the remedy being sought was disproportionately favourable to Ms B, but I could summarise its position as follows:

- It didn't agree that Ms B's use of the car had been impaired by the fact she was getting a low fuel economy, and her poor fuel economy was caused by the type of journeys she went on in any event. There were no faults with the car so it didn't understand how a partial refund of repayments for impaired use was fair.
- Returning all of Ms B's deposit meant she wasn't paying a fair amount for her usage of the car. Her monthly repayments would have been reduced by her large deposit, meaning she benefited from lower repayments. If all her deposit was refunded, her monthly repayments wouldn't be a fair reflection of her use.
- It agreed in principle that it would cover the costs involved in Ms B cancelling her insurance products and service plan, but it wasn't possible for it to help her with the practicalities of getting the policies cancelled as it had no influence over the respective insurers.
- Removing the agreement from Ms B's credit file wasn't an accurate reflection of what had happened with the account.

### **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.

The agreement Ms B entered into with MBFS is regulated by the Consumer Credit Act 1974 ("CCA"). Although MBFS was not involved in the incorrect information given to Ms B, it can be held responsible for any incorrect statements made by the dealership which brokered the deal. This is because section 56 of the CCA makes the dealership MBFS's agent for the purpose of the negotiations leading up to Ms B's entry into the hire purchase agreement. If the impact of the incorrect information is that Ms B entered the agreement when she otherwise wouldn't have, then there has been a misrepresentation and in general I think it would be fair that Ms B is returned, as far as is practicable, to the position she was in prior to her purchase.

Reading between the lines of MBFS's submissions to our investigator, I think it's apparent that it doesn't believe the incorrect information about the fuel economy really impacted Ms B's purchasing decision – in other words it doesn't think there has been a misrepresentation and its offer to Ms B is effectively being made as a "gesture of goodwill".

I can understand MBFS's position. After all, the incorrect information given by the dealership was not grossly inaccurate and Ms B has been able to use the car without problems, albeit getting a lower fuel economy than she was led to believe could be achievable. If the

incorrect information *didn't* impact Ms B's decision to enter the hire purchase agreement for this car, then there has been no misrepresentation and she may not be entitled to any remedy at all.

Our investigator thought the incorrect information was enough to impact Ms B's decision to enter the hire purchase agreement for the car. On balance, I think that was the right conclusion. I think it's apparent from the evidence available of the negotiations which took place before Ms B made her decision to get this specific car, that she was quite particular about her requirements and one of them was that the car would have a high fuel economy. I'm led to understand that the correct fuel economy estimate for this car was a range of 35.3 to 39.3 miles per gallon, or a single figure of 37.2 miles per gallon. While the difference between 39.3 and 42 is not very great, the difference between 35.3 or 37.2, and 42 is in my view significant enough that it could have influenced a reasonable person's purchasing decision. As fuel economy appears to have been very important to Ms B, I think it is more likely than not that the incorrect information she was given *did* cause her to go ahead when otherwise she wouldn't have done so.

MBFS has said that Ms B would never have achieved the fuel economy estimate anyway, because she drives the car in an urban setting with heavy traffic, and that she would have known her driving patterns would have a negative impact on how many miles she would get per gallon. While I suspect this is correct, I don't think it's as relevant to the question of whether or not Ms B was influenced by the incorrect economy figure as MBFS has suggested. I'm quite sure that Ms B was aware that she might not achieve the figure quoted to her. It is generally well known that official fuel economy figures are not always achieved in real-world driving – and I think it's probable that Ms B had this in mind when reviewing the figure and would have adjusted her expectations accordingly. But she would have been using the incorrect figure as a baseline, so she would have still ended up with a misleading impression of what was attainable.

Ultimately, I agree with our investigator that Ms B would not have agreed to go ahead with the deal had she been given the correct fuel economy figures. I turn now to the dispute over what should be done to put things right.

### **Putting things right**

As I mentioned above, I think Ms B should be put back in the position, as far as is practicable, that she was in before she entered the agreement. My starting point is that I think it's fair that Ms B should be able to treat the agreement as being at an end and to return the car, but that she should pay for her use of it.

MBFS doesn't think Ms B should get all of her deposit back, or have any refund of her repayments, but I think MBFS has missed an important point. One of the most common structures of a hire purchase agreement in recent years has been to have a large balloon payment at the end of the term of the agreement. The amount of this payment is set as the expected value of the car at the end of the term. The monthly repayments operate, in such an arrangement, effectively as a charge for the monthly use of the car. At the end of the agreement, the borrower can pay the balloon payment to complete their purchase if they wish.

Ms B's agreement is different. She has no balloon payment, which means her monthly repayments are not just a charge for her use of the vehicle, they are in part a contribution towards her ultimate purchase of the car. Because she will be handing the car back, this element of her repayments will be "lost". So while it may be true that her relatively high deposit means her repayments were lower than they would otherwise have been, she will be "losing" part of those repayments for the reason I've just explained. Redress is not always an

exact science, and I don't think it will be possible to work out exactly how much of Ms B's repayments were contributing to purchasing the car. I'm aware that Ms B has priced up a quote for the same model of car with a balloon payment, but not all of the variables in the quote are the same as her hire purchase agreement and so I don't think I can rely on it as a guide for determining how her payments were split.

I agree with MBFS that Ms B's use of the car has not been impaired. As far as I'm aware, apart from getting a lower than expected fuel economy, she has not experienced other issues. The performance and driveability of the car has been unaffected. It appears Ms B hasn't used the car a great deal, but I don't think that I could describe her use as having been impaired, or confidently attribute her limited use to the lower-than-expected fuel economy. On the other hand, I think a partial refund of her repayments is still reasonable, for the same reason that I think she should receive all of her deposit back: part of the repayments she has made were intended to go towards completing the purchase of the car and have been lost because the car is being returned. Our investigator recommended 10% of Ms B's repayments were refunded. Taking a broad view, accounting for the fact that the deposit was relatively large and that she will be getting this back in full along with compensatory interest, and that her use of the car hasn't been impaired, I think this is a reasonable percentage to refund.

There were two other elements of the investigator's recommendations which were disputed. The first was whether or not the hire purchase agreement should be removed from Ms B's credit file. My view is that it should be – and that is because Ms B would not have entered the agreement but for the misrepresentation, so it appears fair to me that her credit file is treated as though she hadn't entered into it.

The second dispute was over the service plan and insurance policies sold by the dealership as a part of the purchase, and who would be responsible for cancelling these. Ms B wouldn't have taken out any of these linked agreements if there hadn't been a misrepresentation, so the same starting position applies as it does to the hire purchase agreement itself: Ms B should be returned to the position she would have been in, but should pay for any benefit she has received.

Although Ms B may not have needed to claim on any of the insurance policies, she has been covered by them and therefore it would be reasonable that she pays for the cover she has had in place. According to the interest-free finance agreement Ms B signed to pay for the insurance policies, the money for the policies was paid directly to the dealership. It's most likely the dealership paid the necessary policy premiums to the insurers in order for Ms B to benefit from the cover. It doesn't appear Ms B has copies of the policy documents.

I don't think it's unreasonable in the circumstances to ask MBFS to work with the dealership to assist Ms B in cancelling the policies and receiving a refund for any proportion of her cover which hasn't been used. If there are any administrative or other charges involved in cancelling the policies, MBFS should cover the cost of these. If the policies are non-cancellable and no refund is due from the insurer(s) then MBFS should calculate a pro-rata refund for the unused proportion of the policies and pay this to Ms B.

It will be up to Ms B to settle the finance agreement which paid for the policies. She may also need to speak to the insurers herself in order to cancel the policies, if it turns out the insurers will not speak to MBFS or the dealership.

In relation to the service plan, I understand Ms B has paid direct debits for this but has not used it to pay for the car's year one service. Again I don't think it's unreasonable to ask MBFS to work with the dealership to get the service plan cancelled and payments made for it refunded. The service plan doesn't appear to be an insurance policy. It looks to be a means

of spreading the cost of services over a period of time, so if it has not been used to service the car then it would be fair and reasonable for the payments made to be refunded in full.

To put things right, I am therefore directing MBFS to take the following actions:

- Arrange for the car to be collected from Ms B at no cost to her.
- Cancel the hire purchase agreement, end Ms B's liability for outstanding or future payments, and refund 10% of any monthly payments she has made. 8% simple interest\* per year should be added to the partially refunded payments, calculated from the date Ms B paid them to the date the refund is made.
- Refund Ms B's deposit. 8% simple interest\* per year should be added to this refund, calculated from the date the deposit was paid to the date it is refunded.
- Pay or otherwise cover any reasonable costs involved in Ms B arranging the cancellation of her service plan and optional insurance policies. If Ms B is not sure how to get in touch with the insurers to cancel, MBFS should work with the dealership to identify the insurers and provide reasonable assistance to Ms B in getting the policies cancelled. If the policies are non-cancellable and no refund is due from the insurer(s) then MBFS should calculate a pro-rata refund for the unused proportion of the policies and pay this to Ms B.
- If the service plan has not been used, refund the payments made towards this to date, along with 8% simple interest\* per year calculated from the date each payment was made to the date it is refunded.
- Remove the agreement from Ms B's credit file, as this is the fairest way to record the matter given the agreement would not have been entered into but for the incorrect information being given about the fuel economy. I note there is a second credit agreement with another lender for the insurance policies. I can't ask MBFS to remove any record of this other agreement, because they did not lend the money. But if Ms B is concerned about the presence of this agreement on her credit file then she can speak to the other lender about it. Providing a copy of this decision may be helpful.

\*HM Revenue & Customs requires MBFS to take tax off this interest. MBFS must give Ms B a certificate showing how much tax it's taken off, if Ms B asks for one.

### **My final decision**

For the reasons given above, I uphold Ms B's complaint and direct Mercedes-Benz Financial Services UK Limited to take the actions set out in the "putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before **19 April 2021**.

Will Culley  
**Ombudsman**