

## **The complaint**

Mr M is unhappy with the redress settlement from Mercedes-Benz Financial Services UK Limited (MBFS), regarding a vehicle that was rejected for it being of unsatisfactory quality.

## **What happened**

In June 2023, Mr M acquired a new car using a hire purchase agreement with MBFS. The cash price of the car was £39,825. Mr M paid a deposit of £20,000 so the total amount financed on the agreement was £19,825 payable over 48 Months.

Mr M said that within the first four months of being supplied the car he identified about six issues with it which included issues with the window foam, chrome finisher misalignment, faulty wiper, loose rear view mirror and ambient lighting not working properly.

Mr M said he brought the car back to the dealership for repairs, but he experienced delays and some of the issues kept recurring.

Mr M said he requested a rejection of the car in July 2023 which MBFS agreed to. However, as part of their settlement MBFS decided against reimbursing to Mr M a credit card transfer fee of £326.25 that he incurred.

On 1 August 2023 MBFS issued their final response to Mr M's complaint. They upheld the complaint about the quality of the car and agreed to facilitate a rejection of it along with a refund of the deposit, some rentals taken, private number plate fee and insurance cancellation fee. They also paid Mr M compensation for distress and inconvenience. However, they declined to reimburse a balance transfer fee that Mr M incurred as they didn't consider that it was because of the rejection.

Unhappy with their decision, Mr M brought his complaint to our service for investigation. Having considered all the information on file one of our investigators recommended that Mr M's complaint shouldn't be upheld. The investigator concluded that the offer from MBFS was fair as the rejection of the car had nothing to do with the balance transfer fee.

Mr M didn't accept the investigator's view. He said as he paid the deposit using the credit card, if the car was of satisfactory quality, he would have continued making the repayments, however as the car was rejected, he still has to make the monthly repayments to settle the fee.

However, as the investigator's view remained unchanged, Mr M asked that his complaint be referred to an ombudsman for a final decision.

## **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.

In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and 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.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr M complains about a hire purchase agreement. Entering into consumer credit contracts like this is a regulated activity, so I'm satisfied we can consider Mr M's complaint about MBFS. MBFS is also the supplier of the goods under this agreement, and is responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is relevant in this case. It says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory, fit for purpose and as described*". To be considered as satisfactory, the CRA says the goods need to meet the standard that a reasonable person would consider satisfactory, considering 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 consider might include things like the age and mileage at the time of sale and the vehicle's history.

Here, the car was acquired new, with a cash price of around £40,000. So, I think a reasonable person would expect the level of quality to be higher than a second hand, more road-worn car and that it could be used – free from defects – for a considerable period of time.

Neither party has disputed the quality of the car or that it was supplied with defects. Mr M pointed this out to MBFS in his complaint to them with images of some of the issues, and in their final response MBFS has confirmed there were defects with the car and had agreed to a rejection of it.

So, with that being the case, I've not focused on whether the car was of satisfactory quality. In my decision I've considered whether MBFS has made a fair offer of redress to Mr M in the circumstances.

In their final response MBFS confirmed they would:

- Cancel the agreement with no negative impact on Mr M's credit file
- Refund the deposit he paid for the car
- Refund any monthly rentals taken
- Pay £250 in compensation for the distress and inconvenience caused.

In addition to this MBFS also agreed to refund the private number plate retention fee of £80 and the insurance cancellation fee of £34.50.

Mr M however felt that in addition to what MBFS had agreed to refund to him, they should also reimburse to him a balance transfer fee of £326.25 that he incurred when he transferred the balance of a credit card that he used to pay for the deposit.

Having considered all the information and evidence provided I'm satisfied that MBFS have acted fairly in how they've decided to settle the complaint.

The main consideration is to ensure Mr M is put back in the position had he not taken the car, and I believe the refunds provided by MBFS fairly does this.

I acknowledge there may be other consequential costs involved, for example choices made by Mr M because of having a new car; however, I think in the circumstances it's reasonable to separate out choices that were not integral to the supply of the vehicle.

Entering into the agreement, paying the deposit, and maintaining the monthly rentals were integral to the fulfilment of Mr M's adherence to his contract with MBFS. Likewise having a licence plate and car insurance are also necessary actions, so I think it's fair that any fees incurred as a result of rejection are reimbursed.

Mr M said that he incurred a fee on his credit card as he transferred the balance that was used to make his deposit payment. Mr M argues that although the car has been rejected, he still has to pay the credit card balance transfer transaction fee. I acknowledge what Mr M has said here, and I also recognise that receiving the deposit back doesn't take away the fact he still has to pay the credit card fee, which he only made as a result of supporting the purchase of a car.

I acknowledge the decision to use a credit card to pay for the deposit may have been necessary for Mr M, however in an email exchange with MBFS in August 2023, Mr M said the fee was for a balance transfer that was offered to him by his bank, after he'd paid for his deposit. The balance transfer, as described by Mr M wasn't a necessary transaction to secure the supply of the car. Mr M said he was offered a preferential interest rate as part of the transfer, and the decision to go ahead with it was independent of the contract between himself and MBFS. It was a choice Mr M made which didn't impact the supply of the car.

All things considered, I'm satisfied that MBFS have acted fairly in their settlement offer to Mr M, and so I don't require then to take any further action with regards to this complaint.

### **My final decision**

Having thought about everything above along with what is fair and reasonable in the circumstances I don't uphold Mr M's complaint against Mercedes-Benz Financial Services UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 March 2024.

Benjamin John  
**Ombudsman**