

The complaint

Mr M complains that Mercedes-Benz Financial Services UK Limited (MBFS) refused to let him reject a faulty vehicle.

What happened

In July 2019 Mr M acquired a new car at a cost of £42,000 funded by a Personal Contract Plan agreement with MBFS. After some 18 months the car developed a fault with the coolant system and it was taken back to the dealer. It took over eight months for it to be repaired. Mr M had courtesy car for most of the period. Shortly after the car was repaired the oil warning light came on and it was returned to the dealer for more repairs.

MBFS rejected Mr M's rejection request, but offered him £250 for the inconvenience he had suffered. The dealer also offered him £1,000.

The matter was referred to this service while the car was awaiting repair and it was considered by one of our investigators who recommended it be upheld. She thought that the coolant system of a new car should last longer than 18 months and the 37,552 miles it had covered. As such she didn't consider the car had been durable and therefore wasn't of satisfactory quality.

MBFS didn't agree and said that it was entitled to an opportunity to repair and this had been done. It said that the coolant system wasn't a crucial part of the car and its repair was covered under warranty. It couldn't be expected to be fault free.

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 need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the 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 relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all 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 the mileage at the time of sale and the vehicle's history.

Under the relevant law 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 the goods.

Mr M acquired a brand new, expensive car and had every right to expect it to be durable. I accept that cars with their many moving parts can suffer faults, but that does not necessarily lead to the conclusion that a repair is the appropriate solution.

I note MBFS says the issue wasn't crucial, but it stopped the car being available to Mr M for some eight months. I also note that the repairs were fairly costly. The time taken and expense incurred do not suggest that this was some minor matter. The car had a fault which prevented it from being used and took a long time to fix. That is not something one would expect from a £42,000 purchase.

I have taken note of the point made by MBFS that it was entitled to effect one repair. This has been done and the oil light came on again which resulted in the car being taken back for more work. It seems the dealer had the one attempt, but the car remained faulty.

The investigator has taken advice on the expected life of the coolant system and that is that it should last for at least seven years and over 90,000 miles. This car only lasted 18 months. I do not consider that to be satisfactory and I consider the car not to have been fit for purpose.

Putting things right

Mr M should be allowed to reject the car.

My final decision

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

- end the agreement with nothing further to pay,
- refund Mr M's deposit if any was paid,
- pay back all the monthly payments for the periods Mr M didn't use the car, from 21 March 2021 to present to cover any loss of use of the car because of the inherent quality issues,
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement,
- remove the agreement from Mr M's credit report and
- pay Mr M the £250 compensation previously offered for the inconvenience caused.
- HM Revenue & Customs requires MBFS to take off tax from this interest. MBFS must give Mr M a certificate showing how much tax they've taken off if he asks for one

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 May 2022.

Ivor Graham
Ombudsman