

The complaint

Mrs R complains that a car she acquired with credit from Mercedes-Benz Financial Services UK Limited (MBFS) wasn't of satisfactory quality.

What happened

Mrs R entered into a credit agreement with MBFS on 27 May 2021 to acquire a new car. The credit to buy the car was granted by MBFS under a personal contract agreement. This meant MBFS was the owner of the car and Mrs R was, in essence, paying for the use of it. As owner, MBFS was responsible for the quality of the car.

The cash price of the car was £29,148. Mrs R paid a deposit of £2,832 and the total payable under the agreement was £31,433. This was to be repaid in 48 monthly instalments of £323 with an optional final purchase price of £13,075 (all figures rounded).

Mrs R told MBFS in August 2022 that the car wasn't of satisfactory quality and she wanted to return it. She explained that the car had an intermittent fault where the display screen goes blank without warning and she can't see the information she needs to drive safely, including the fuel sign. Mrs R said that the car had been in for repairs but the fault remained. She told MBFS that she didn't want the car anymore because she didn't want to pay for a car that wasn't safe to drive.

MBFS said that Mrs R had been to the selling dealership twice for warranty repairs – the instrument cluster display was repaired in February 2022 and the total failure of the multimedia display in August 2022. Both visits involved software updates – the first to the instrument cluster, the second to the control unit. MBFS said that it didn't consider the software updates as repairs but as speculative measures undertaken in the first instance. It didn't support Mrs R's rejection of the car because of the timing of the incidents. They had occurred after Mrs R had the car for six months and so MBFS said it fell to her to prove the car was faulty when the agreement began in order for it to take responsibility. MBFS offered Mrs R £250 compensation as a goodwill gesture for the inconvenience the matter had caused her.

Mrs R wasn't happy with this response and referred her complaint to us. She said that the fault had manifested within six months of driving the car. She also said that the fault was intermittent but ongoing despite the attempted repairs. Mrs R said the fault impaired her use of the car as she's concerned about what would happen should the display screen fail without warning.

One of our investigators looked into the complaint and recommended that it be upheld. They found that it was more likely than not that the intermittent fault Mrs R was experiencing was there from the onset and wasn't something a reasonable person would expect in a new car. They proposed that the agreement is ended with nothing further for Mrs R to pay and the car is collected at no cost to her. They also proposed that Mrs R's deposit plus interest is returned to her along with an award for distress and inconvenience.

Mrs R accepted this recommendation. MBFS didn't comment on our investigator's view and

asked for the complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on 17 April 2023 explaining why I planned to uphold Mrs R's complaint and proposing how to resolve things for her. I thought Mrs R should either be allowed to return the car or be offered a price reduction. MBFS acknowledged my provisional decision but didn't comment on it or provide any further information. Mrs R accepted it and confirmed she now wished to return the car to resolve her complaint.

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.

Neither party has provided any further comment or new information for me to review following my provisional decision. Having reconsidered the matter again I see no reason to depart from my provisional conclusions and I am upholding Mrs R's complaint. I'll set out again my reasons for doing so in this final decision.

As before, I've borne in mind the Consumer Rights Act (CRA) 2015 when considering this complaint. This implies a term into any contract to supply goods that those goods will be of satisfactory quality. Satisfactory means what a reasonable person would expect, taking into account the description of the goods, the price and any other relevant circumstances. 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. The relevant circumstances in this complaint would include, for example, the nature of the fault and the age and mileage of the car.

The CRA gives customers solutions if they find themselves with faulty goods. They can reject the goods if the fault happens within 30 days, or have the goods repaired or replaced. Outside of this period the supplier has the chance to repair the goods before anything else happens. If this doesn't solve the problem and it's found that the fault was there or developing when the goods were supplied, then a consumer might be entitled to other solutions such as a price reduction or a final right to reject the goods.

In this case a fault manifested with Mrs R's car more than 30 days after it was supplied. My first consideration is whether the fault was there or developing from the start or whether it arose later, for example through wear and tear caused by normal usage. If I find that the fault was present from the outset, does this mean that the car didn't conform to the contract at the time or, in other words, was of unsatisfactory quality? If so, what should happen now?

I'll begin by sharing what Mrs R told us. She said that the fault happened a couple of months after the agreement started. She'd mentioned it when visiting a Mercedes garage and then had the fault looked at when she visited another Mercedes garage a number of times. She'd been told the fault had been repaired but it kept happening.

The fault involves the display going blank and usually happens on start-up. Mrs R said that it happens intermittently and without any discernible pattern. She told us that this has caused her such inconvenience and ongoing concern that she doesn't want to keep the car. In one example Mrs R explained that she was attended by a breakdown service who wouldn't take the car to a garage as it was actually working, although she had experienced the issue again and couldn't drive it. In another example Mrs R was to attend a social engagement with family and couldn't drive to the venue, which was 50 miles away, as planned because the fault had occurred again. Mrs R told us that it's curtailed her use of the car because she's concerned if she travels far from home that she would be stuck if the display failed again. She said she uses the car for local journeys but even at that is worried about what could happen.

MBFS shared their complaint investigation notes with us which makes reference to Mrs R's account records. An incident involving a flat tyre was noted in January 2022, followed with an engine management light issue in March. In July a recurring intermittent fault was noted and, in August, an issue with the car's instrument cluster. The notes refer to the two garages Mrs R visited and state that both garages carried out diagnostic checks on the car. The notes include a record from one of the garages – the one Mrs R visited a number of times. The first entry is from January 2022 which mentions a breakdown and a flat tyre; the next mentions an issue with the instrument cluster in February; a breakdown, dashboard blank and recurring intermittent issues in July; and total failure of the display in August.

The notes conclude that Mrs R's complaint should be upheld as there is a fault with the car but that she has no grounds to reject it. In its final response to her complaint, MBFS said that Mrs R had been to a Mercedes garage for two warranty repairs, first on 4 February 2022 and second on the 30 August. It said that the first incident was 9 months after the start of the agreement, and the second was 15 months afterwards. MBFS said that the timing of these events meant the fault was outside of its responsibility as a finance provider, and so it didn't support Mrs R's rejection of the car. It also said that it didn't consider software updates as attempts to repair as they were speculative measures undertaken in the first instance.

It doesn't seem to me that there is any dispute about there being a fault with the car. MBFS said in its final response to Mrs R about her complaint that it was aware she had attempted to have it repaired on numerous occasions but unfortunately the fault still remained. Mrs R told us as recently as March 2023 that the fault was still occurring more or less on a monthly basis. I've accepted that this is indeed the case and considered when the fault most likely began or was developing.

Mrs R has been consistent in what she's told us about when the fault first happened and its continued occurrences. MBFS's complaint notes don't say when Mrs R first mentioned the fault either to it directly or during her visit to the first Mercedes garage. I think it's more likely than not that Mrs R experienced the fault before 2022 but I can't be sure when. The nature of the fault is that it is intermittent, so there's an inherent uncertainty about when exactly it developed. Taking everything into account, I think it's more likely than not that the problem Mrs R is continuing to experience with the display was there or developing from the onset of the agreement.

Given that Mrs R acquired a brand new car, it seems to me that it ought to be problem-free for a reasonable period of time. The nature of the fault isn't one which was likely to have occurred due to wear and tear or any misuse on Mrs R's part. I've concluded that the car was of unsatisfactory quality when it was supplied. Mrs R has given MBFS the opportunity to repair the fault but this hasn't happened and, as far as I'm aware, MBFS haven't offered Mrs R a replacement car. Because of this I think it is fair that Mrs R is allowed to exercise her rights under the CRA, including the right to reject the car. As mentioned, Mrs R wishes to return it.

I don't have a current mileage figure but Mrs R told us in December 2022 that the car had travelled 14,618 miles. I can accept that Mrs R's use of the car was curtailed by the fault however it seems she was managing to drive it almost up to the annual mileage of 10,000 permitted under the agreement and I've assumed she's continued to do so. Considering this and the agreement terms, I think it's fair that MBFS retains Mrs R's monthly repayments as payment for the use of the car but her deposit should be returned to her.

I've also concluded that some compensation is appropriate in this case to reflect the impact that this experience has had on Mrs R. She's explained that she experienced distress and inconvenience because she was provided with a car that wasn't of satisfactory quality. There

isn't a specific calculation for awards to compensate for the emotional impact of errors. We have an approach which I've borne in mind alongside everything else when making this decision. Our investigator recommended an amount of £250 which seems to me to be a fair and reasonable amount in the context of this case and Mrs R accepted this. I don't intend to suggest a different amount now.

Putting things right

In order to put things right for Mrs R, MBFS now needs to:

- End the agreement with nothing further for Mrs R to pay and collect the car at no further cost to her; and
- Refund Mrs R's deposit contribution of £2,832 plus 8% simple interest per annum* from the time of payment until the time of reimbursement; and
- Pay Mrs R an amount of £250 (less any amount that has been already paid in this regard) to reflect the distress and inconvenience this matter has caused; and
- Remove any adverse information from Mrs R's credit file in relation to the agreement.

* If MBFS considers that it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs R how much it's taken off. It should also give Mrs R a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue and Customs if appropriate.

My final decision

For the reasons I've explained above, I am upholding Mrs R's complaint about Mercedes-Benz Financial Services UK Limited and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 7 June 2023.

Michelle Boundy
Ombudsman