

## **The complaint**

Mrs K complains Mercedes-Benz Financial Services UK Limited (MBFS) supplied her with a car that she believes wasn't of satisfactory quality.

## **What happened**

The details of this case are well known by both parties and have been clearly outlined by the investigator so I won't repeat them again here. Instead I will focus on the reasons for my decision.

## **What I've decided – and why**

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I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided to uphold Mrs K's complaint, I will explain why.

Mrs K acquired a car under a regulated credit agreement. MBFS was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) is relevant 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". To be considered "satisfactory", the goods would need to 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. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

Mrs K was supplied with a brand-new car. So I think it's fair to say that 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.

I'm aware around a year after acquiring the car (November 2022), Mrs K complained about a number of issues. This includes but not limited to:

- The ignition not starting the car;
- The display unit goes blank intermittently;
- At times, the car goes into reverse when in the drive gear;
- It makes a loud hissing noise when charging;
- It takes an excessively long time to charge or it doesn't charge at all.

According to MBFS a fault was found with the coolant and it was repaired but they were unable to find any other faults as reported. The car had travelled around 5,000 miles at that point. Despite further trips to the dealership in subsequent months reporting the above issues, no faults were found.

However in September 2023 the dealership identified there was a fault with the gear selector and the air conditioning compressor. The car had travelled around 7,800 miles by that time.

I've already set out the expectations of a new car. Based on the evidence presented to me - job cards, videos, pictures, Mrs K's testimony, the findings of the dealership, etc, it's evident there were faults with the coolant, gear selector and air conditioning compressor. Given when the issues first presented (around a year after acquiring the car), I don't find a reasonable person would expect to experience such issues so soon after supply and having travelled such low mileage. It would appear they were intermittent faults hence why it took some time for it to be identified. I agree with the investigator that such faults are key functions of the car and them not working as it should caused inconvenience to Mrs K. In the case of the faulty gear selector, I consider that a safety concern.

MBFS has argued as the faults were found after six months of the car being in Mrs K's possession, the onus is on her to demonstrate they were present at supply. However I wish to remind MBFS that durability is one of the factors when considering satisfactory quality. In this case, I find these parts failed prematurely which might indicate there was already a problem from the start. Overall, I find the car wasn't reasonably durable meaning it wasn't of satisfactory quality at supply.

Where there is a breach of contract and it's outside the short time right to reject (30 days), the CRA says there is one opportunity to repair. I must stress this applies to the whole car, not to each individual fault identified. I would expect such a repair to be carried out at no cost to the consumer and in a reasonable time frame. Here, repairs were carried out to the coolant and in September 2023 the gearbox was replaced. So it's clear the opportunity to repair has happened.

Based on the job cards the fault with the air conditioning compressor remains unresolved and the relevant part is on back order without an expected time of delivery. Mrs K has been told not to use the air conditioning as the car may shut down. In following such instructions, she has explained this is impacting the use of the car especially when driving in certain weather conditions so it's causing considerable inconvenience.

In light of the same, the car isn't fault free. Mrs K has explained she can't use the car as expected and she's lost faith in it. Given the number of repairs already, she doesn't want a further one and I can understand why she feels this way. I also don't find it's reasonable she has to wait a considerable long time for this further repair for the compressor especially as the delivery date remains unknown. This only strengthens my opinion that MBFS should allow Mrs K to reject the car.

*Putting things right*

Having found the car wasn't of satisfactory quality at supply and rejection should be allowed, MBFS should end the agreement, collect the car, refund the deposit/part exchange and remove adverse information about this agreement from Mrs K's credit file.

Based on the mileage covered, it's clear Mrs K has had use of the car so it's fair she pays to reflect that so I won't be saying MBFS need to refund all the monthly payments. The investigator has already set out the times she was left without the car or a courtesy vehicle. I understand MBFS has already offered £300 to compensate her for the 14 days she was left without a car (up to June 2023). However it would appear thereafter, there were further instances where this happened. Mrs K says when the car was returned to the dealership, she wasn't provided with a courtesy car between 26 July and 7 September 2023 and for a couple of weeks later in September 2023 when the gear selector was replaced. I equate that to be approximately two months where she was left without a car so I find MBFS should also refund that amount of monthly instalments to reflect this further loss of use. Due to this, I won't be asking MBFS to pay a separate award for the cost of taxis.

Although Mrs K has been able to use the car, faults were present and one remains outstanding. So to reflect the impaired use, I find it's fair for MBFS to refund 10% of the monthly instalments paid from November 2022 (when the faults were first reported) up to the date of settlement.

Mrs K has requested to be compensated for a number of other costs. For the delivery fee, registration, body panels in white, I can see this was a part of the agreement so it was factored into the overall monthly payments. As Mrs K is ending the agreement and receiving a proportion of the monthly instalments back, I won't be asking MBFS to refund this.

For the insurance, I won't be saying MBFS need to refund this. This is because Mrs K has had the benefit of such a policy –to protect her from insured events like theft, damage, etc. I don't consider this to be a cost as a result of being supplied with a faulty car. Once the car is returned, she should be able to cancel the policy and she can contact the insurer directly to see if she can receive a refund for any part unused. She also said she's paid for a two year service package (£360) but I've seen insufficient evidence about this, it doesn't appear to be subject to the initial agreement. But for similar reasons as the insurance, I'm not intending to say MBFS needs to refund this.

I've carefully read Mrs K's submissions about the impact this situation has had on her. I understand MBFS has already offered to pay £150 for the time taken to respond to the complaint. She's mentioned multiple trips to the garage, long periods of time to charge the car, the worry of driving a car that she believes wasn't safe, at times being left without alternative transport, etc. Given the same and the overall trouble and upset caused I find MBFS should increase the £150 compensation to £350. To be clear, that is in addition to the £300 offered for loss of use as outlined above.

### *Summary*

Taking everything into account, I'm not satisfied the car was of satisfactory quality at supply due to the faults with the coolant, gear selector and air conditioning compressor. MBFS must put things right as outlined in this decision.

## **My final decision**

For the reasons set out above, I've decided to uphold Mrs K's complaint.

To put things right, Mercedes-Benz Financial Services UK Limited must:

- End the agreement with nothing further for Mrs K to pay;
- Collect the car at no cost to Mrs K;
- Refund the cash deposit and/or part exchange amount (less any dealer contributions);
- Refund the equivalent of two months instalments to reflect the loss of use of the car after June 2023;
- Refund 10% of the monthly instalments paid from November 2022 onwards;
- Pay 8% simple interest per year for all the above refunds calculated from the date of payment up to the date of settlement;
- Pay £300 compensation to reflect the loss of use of the car up to June 2023 (as already offered);
- Remove any adverse information about this agreement from Mr K's credit file;
- Pay £350 compensation to Mrs K for the overall trouble and upset caused.

\*If Mercedes-Benz Financial Services UK Limited considers tax should be deducted from the interest part of my award it should provide Mrs K with a certificate showing how much it has taken off, so she can reclaim that amount if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 4 March 2024.

Simona Reese  
**Ombudsman**