

The complaint

Ms H's complaint relates to problems she's had with a car Mercedes-Benz Financial Services UK Limited supplied to her under a hire-purchase agreement. Ms H is unhappy that Mercedes-Benz won't allow her to reject the car and terminate the hire-purchase agreement based on the issues she's experienced.

What happened

In September 2022 Ms H entered into a hire-purchase agreement with Mercedes-Benz. Under the agreement, Mercedes-Benz supplied a car to Ms H over a three-year term at monthly rental payment of £429.60. There was an optional final purchase payment of £18,900 in the event Ms H wanted take ownership of the car at the end of the term. Ms H also paid a deposit of £8,456.39.

After she'd had the car about a month Ms H started to experiencing problems with it. These are well documented in the complaint correspondence, but in summary included starting failures, trim issues and other electrical aspects, such as the passenger detection system and intermittent faults with the entertainment system and satnav. Ms H says she took the car back to the dealership ("D") for rectification work several times, but problems persisted and she eventually sought to reject the car.

Mercedes-Benz told Ms H that she was unable to reject the car as it had no record of any repairs D had carried out. It acknowledged that D had taken the car in on two occasions and provided Ms H with a courtesy car. But Mercedes-Benz said these didn't constitute repair attempts; only software updates, which it said were speculative measures to minimise issues with the car and ensure it was running with up to date software.

Ms H wasn't happy with Mercedes-Benz's stance and asked us to review the situation. Our investigator noted the problems Ms H had experienced with the car, which had been supplied new, and felt these were suggestive that it didn't meet the satisfactory quality threshold under the Consumer Rights Act 2015 ("CRA").

The investigator wasn't satisfied that Mercedes-Benz had taken appropriate steps in the circumstances, and felt it hadn't addressed the breach of contract arising from the lack of satisfactory quality. She considered that Ms H had given sufficient opportunity for the faults to be rectified, and that Ms H ought to have been entitled to reject the car and recover – with interest – money she'd paid under the hire-purchase agreement.

The investigator further acknowledged Ms H's use of the car had been impaired at times, and that this should be reflected by a 5% adjustment to the fair usage deduction provided for in the CRA, recommending that Mercedes-Benz also pay Ms H £150 compensation.

During the complaint Ms H also raised concerns over what appeared to be duplicated direct debit collections. The investigator incorporated this into her resolution, proposing that Mercedes-Benz investigate the reason for this, take appropriate steps to rectify any duplicated payments, and ensure that Ms H's credit file wasn't adversely affected by what had happened.

Mercedes-Benz didn't accept the investigator's conclusions. It said that D had been unable to replicate the issues Ms H had referenced. It asked to obtain an independent inspection to establish the existence of any faults. Mercedes-Benz also said that it was reviewing Ms H's payment concerns as a separate complaint.

Our investigator wasn't persuaded to change her assessment. She noted the car had been back and forth to the dealership on other occasions to those Mercedes-Benz had mentioned without successful fixes. She felt that Mercedes-Benz had already had sufficient opportunity to investigate and reach conclusions about the quality of the car prior to issuing its final response. It hadn't offered any other remedy or review at that point, other than declining to agree to Ms H's rejection of the car.

Mercedes-Benz maintained its position, and as the matter could not be resolved, the complaint has been passed to me for review and determination as the final stage in our process.

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 issues with the car

Because Ms H got the car from Mercedes-Benz as a consumer, the arrangements are covered by – among other things – the CRA. One effect of the CRA is that the hire-purchase agreement is to be read as including a term that the car would be of satisfactory quality. Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) matters such as appearance and finish, freedom from minor defects, safety and durability.

Ms H's claim is that the car Mercedes-Benz supplied to her failed to meet at least some of these requirements, and therefore that it was not of satisfactory quality.

There were clearly issues with the car. Ms H has provided evidence referencing several interactions with D about the problems she was experiencing. She described in some detail the situations she was in when the car let her down. Her sense of frustration with the car comes across, though she was clearly keen to have it fixed. It was only after the problems persisted that she looked to reject the car.

Here, it's not in dispute that over the time the car has been in Ms H's possession, she has identified a number of issues that have caused it to have to go into the garage on several occasions for investigation and potential remedial work. I can see why our investigator felt that was enough to show that the car didn't meet the test of satisfactory quality.

I've no reason to doubt what Ms H has said about the difficulties she was having with the car. Although Mercedes-Benz has said D was unable to replicate the issues that Ms H had described during the time the car was with it, that doesn't mean the problems didn't exist. That an intermittent problem couldn't be replicated during an inspection doesn't mean there's no fault; that is, after all, the nature of intermittent problems.

Given the car was supplied brand new, the standard a reasonable person might expect from it would be particularly high. They would be unlikely to consider as satisfactory a brand new car that manifested the problems described by Ms H.

On balance I'm not currently minded to find that Mercedes-Benz has dealt fairly with the situation by declining Ms H's claim for the reasons it has. I can further understand why Ms H has the concerns she does about the car, and why she wants to return it. Noting the remedies available to Ms H under the CRA, I also think Ms H would be entitled to reject the car.

I say this because, while Mercedes-Benz doesn't consider the software updates sufficient to amount to an attempt at repair, they were at least in part an effort to see if the problems could be rectified by doing so. Further, I'm satisfied that Ms H has provided D and Mercedes-Benz with sufficient time and opportunity to carry out repairs. The relevant sections of the CRA says:

"Section 24 Right to price reduction or final right to reject

(5) A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations—

(a) after one repair or one replacement, the goods do not conform to the contract;

(b) because of section 23(3) the consumer can require neither repair nor replacement of the goods; or

(c) the consumer has required the trader to repair or replace the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.

(6) There has been a repair or replacement for the purposes of subsection (5)(a) if—

(a) the consumer has requested or agreed to repair or replacement of the goods (whether in relation to one fault or more than one), and

(b) the trader has delivered goods to the consumer, or made goods available to the consumer, in response to the request or agreement."

These requirements were met in Ms H's situation when the car was returned to her and the problems persisted, meaning the car remained of unsatisfactory quality.

The issue of duplicated direct debits

This matter came up during our dealing with the complaint Ms H made about the quality of the car supplied to her. While I'm conscious it was a source of concern to Ms H, that doesn't mean I can incorporate it within this complaint. Under our rules, Mercedes-Benz was entitled to deal with it as a separate head of complaint, which it tells us it has done.

I haven't been provided with details of Mercedes-Benz's response to that issue, but it is entitled to take into account any bearing actions proposed or undertaken as part of that response might have in light of the resolution I'll go on to set out.

Putting things right

I'm aware that Ms H feels the situation has been going on for too long, and felt the car was insufficiently reliable such that she bought a new one. I also understand that she's been dealing with some personal issues that have meant she's had to prioritise those matters.

Ms H has told us she used the car recently and the speed dropped without warning, which could've caused an accident. She feels that's further evidence that the car's faulty, in addition to the electrical issues already identified. Ms H has said she thinks the adjustment

for the impaired use should be greater than our investigator proposed, suggesting at least a 50% figure.

I appreciate Ms H's perspective, and it's not my intention to understate the impact the situation has had on her, or on the way she feels about it. That said, the arguments about the car's quality are well-rehearsed and I don't consider further evidence of them is necessary to permit rejection of it. Further, I think the remedy our investigator proposed is a fair way to resolve the complaint, addressing as it does the current position while recognising the use Ms H was able to make of the car despite the problems with it. That broadly reflects the statutory remedy to which Ms H might be entitled in exercising her right to reject the car under section 20 of the CRA.

So to resolve matters, Mercedes-Benz should collect the car at no cost to Ms H, terminating the hire-purchase agreement with no further payments due from her after August 2023, being the point at which Mercedes-Benz should have permitted her to reject the car and collected it from her¹. This should also be the position reflected on her credit file. I further require that Mercedes-Benz reimburse Ms H's deposit, and a proportion of the earlier payments she made under the hire-purchase agreement in recognition of impairment to her use of the car. Mercedes-Benz should also compensate Ms H for the distress and inconvenience she's been caused by its actions.

For clarity, the actions Mercedes-Benz needs to take to resolve Ms H's complaint are as follows:

1. Refund Ms H's deposit of £8,456.39
2. refund 5% of the monthly hire-purchase payments Ms H made between September 2022 when she first reported the faults and August 2023 when her rejection of the car should have been actioned
3. Refund all payments Ms H made in connection with the hire-purchase agreement after August 2023
4. Amend its records to show that the hire-purchase agreement was settled with no further payments due from Ms H from the point specified in 3. above
5. Amend any information reported on Ms H's credit file to reflect the position in 4. above
6. Pay interest on the amounts in 1., 2. and 3. above, calculated at an annual rate of 8% simple from the date of each payment (and in the case of the deposit mentioned in 1., the point specified in 3.) until the date it pays this settlement
7. Pay Ms H £150 to compensate her for the distress and inconvenience that she's been caused by its actions

My final decision

My final decision is that I uphold Ms H's complaint. To settle it, Mercedes-Benz Financial Services UK Limited must, within 28 days of receiving Ms H's acceptance of this decision, take the steps I've set out in 1-7 above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 14 November 2024.

Niall Taylor

¹ Section 24(9) of the CRA has the effect that Mercedes-Benz would not be entitled to make a deduction for use during any period in which Ms H had the car only because of a failure to collect it

Ombudsman