

The complaint

Mr L is unhappy that a car supplied to him under a hire purchase agreement with Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance ('MBFS') was of an unsatisfactory quality.

What happened

In January 2024, Mr L was supplied with a used car through a hire purchase agreement with MBFS. He paid a £2,816.32 deposit and the agreement was for £29,577.68 over 60 months; with 60 monthly payments of £533.12 and an optional final payment of £10,525. At the time of supply, the car was just over four years old, and had done 12,360 miles (according to the mileage stated on the agreement).

Mr L says that, when he was driving the car home, the oil warning light came on. He says he contacted the supplying dealership, who told him this was just the weather affecting the sensors. However, on checking the oil, he found it to be overfilled. The dealership asked him to return the car, but Mr L didn't want to drive it and cause any damage because of the excess oil. So, the dealership sent someone to drain and refill the oil at Mr L's home.

Mr L asked for the dealership to check the car for any damage caused by the excess oil. They did this and told him there was no damage. However, on having the car returned to him, Mr L said there were multiple incorrect warning lights, for example that the coolant level was low when it wasn't. Mr L had the car checked by a local garage who found a number of fault codes. So, on 26 February 2024, he asked MBFS to be able to reject the car.

MBFS didn't agree to rejection, as they said the dealership had inspected the car and found no faults. The car subsequently broke down on 27 May 2024 and was initially recovered to a manufacturer's garage. They said the car was suffering from water ingress. The car was then recovered to the dealership who said the cause of the issue was a blockage of leaves.

Mr L wasn't happy with what'd happened, and he hasn't had use of the car since 27 May 2024. He brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said the car hadn't been of a satisfactory quality when it was supplied to Mr L, as it had been overfilled with oil. And the dealership's rectification of this was classed as the single chance of repair. The investigator also thought the water ingress would now mean the car required a second repair, something Mr L didn't want. So, they thought Mr L should be allowed to reject the car with a refund of his deposit; a refund of the payments he'd made since 28 May 2024; and a further £200 compensation for the distress and inconvenience he'd suffered.

MBFS didn't agree with the investigator's opinion. They said that Mr L could've overfilled the oil and, even if he didn't, then draining and refilling the oil didn't count as the single chance at repair. They also said that the blockage of leaves happened after the car was supplied to Mr L, and this didn't make the car of an unsatisfactory quality.

The investigator didn't think MBFS's comments changed their decision, so this matter has been passed to me to decide.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr L was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, MBFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless MBFS can show otherwise. So, if I thought the car was faulty when Mr L took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask MBFS to put this right.

It's not disputed there is a current problem with the car supplied to Mr L, nor that the ingress of water is affecting the electrics and, therefore, the operation of the car. However, what is disputed is what caused this and whether it's the responsibility of MBFS.

MBFS have sent in an email from the dealership, dated 18 June 2024, which says *"the cause of the leak is a blockage of leaves. It is impossible to determine when this happened, but it is likely to be post-delivery due to the pre delivery inspection."* Based on this email, it's clear the dealership is saying that, not only is the leaf blockage the cause of the leak, but the leaf blockage would also be obvious on any reasonable inspection of the car, for example the type undertaken prior to delivery.

However, this is not the only inspection that has taken place on the car, and the car was inspected by a manufacturer's garage on 28 May 2024, shortly after it broke down. Following this inspection of the car the manufacturer's garage said:

"We removed the undertrays to gain access to the plug connector to the exhaust flap actuator & have found excessive water coming through the wiring. The customer had mentioned he'd had issues from the point of sale. There are various wires / connectors & CAN communication lines under the drivers side carpet, which we suspect maybe causing the current breakdown issue ... unfortunately there is no way

of our team being able to say how long the suspected water ingress has been happening.”

What this report doesn't mention is there was a leaf blockage (that was / wasn't causing the water ingress) something I would've expected them to mention if a leaf blockage could be identified by any reasonable inspection of the car. What's more, as the report clearly says that Mr L was suffering with issues with the car from when it was supplied to him, if this was the cause of the water ingress, then the leaf blockage must've been present from the point of supply – something the dealership says isn't possible because of their pre-delivery inspection.

I've also considered the actual report of findings by the dealership when they inspected the car after it was recovered to them. This report is dated 11 June 2024, and says:

“Checked connections at exhaust flap motor found water in wiring, removed all seats and carpets from inside car, found water puddling inside, checked all wiring / plug connections inside the vehicle for corrosion found found [sic] all wiring appears to be undamaged, carried out water test of vehicle found water dripping into vehicle through bulkhead seal for air conditioning and heater pipes. On inspection of bulkhead area found water marks and signs of past water build up under windscreen area. Poss caused by blocked drains. This build up of water may have caused bulkhead seal to start leaking into vehicle interior.”

Based on this comprehensive inspection of the car, two things are clear to me – there had been a failure of the bulkhead seal which had allowed water ingress into the car, which in turn was causing problems with the electrics; and there was evidence this was a longstanding issue.

I've also noted that, on 11 June 2024, the dealership said there was a possible blocked drain which may have caused the bulkhead seal to fail; whereas on 18 June 2024 the dealership was saying that the leak was caused by leaves blocking the drain. I've not seen any evidence of any further inspection between these dates that would cause the dealership to be able to arrive at this definite conclusion, nor have the dealership / MBFS explained what caused a possibility to become a definite. In fact, the only thing I've seen happen between these dates is Mr L continue to request rejection of the car.

Finally, the dealership has provided photographic evidence of *“leaves in the bottom of the area where the drain hole is”, “more images of leaves where the drain hole is”,* and an image showing *“where the water line has been flowing with more signs of leaves/debris.”* While the supporting photographs show evidence of longstanding water damage – areas of rust – what they don't show is any leaves or other debris.

Based on this evidence, I'm not satisfied that the car broke down with water ingress into the wiring as a result of a leaf blockage that happened after the car was supplied to Mr L. The report from the dealership referring to evidence of past water build up, along with photographic evidence showing clear rust in the areas the water was entering the car, satisfy me this was a longstanding issue caused by the failure of the bulkhead seal. Something that wouldn't be reasonably expected to happen on a car of this age, mileage, and price.

As Mr L had issues from when the car was supplied to him, and the car broke down about four months after supply, I'm satisfied that, under the CRA, MBFS are responsible for this and need to do something to put things right.

Putting things right

Section 24(5) of the CRA says “a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.” This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it’s not a single chance of repair for the dealership AND a single chance of repair for MBFS – the first attempted repair is the single chance at repair. What’s more, if a different fault arises after a previous repair, even if those faults aren’t related, the single chance of repair has already happened – it’s not a single chance of repair per fault.

The investigator has argued that the repair to the car needed because of the overfilling of oil, was the single chance of repair. However, MBFS disagree, saying that the overfilling of the oil wasn’t a fault, therefore the rectification work isn’t the single chance at repair.

While this is noted, I’ve also considered section 23(2) of the CRA, which states:

*If the consumer requires the trader to repair or replace the goods, the trader must –
(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given that MBFS have been in possession of the evidence referred to above for months, and for the reasons given this clearly shows a longstanding issue with the car, by failing to act on this evidence and arrange for the car to be repaired they have failed to comply with Section 23(2)(a) of the CRA. In these circumstances, Mr L should be able to reject the car.

The car broke down on 27 May 2024, and has been in the possession of the supplying dealership from shortly after this date. Mr L hasn’t been supplied with a courtesy car since the breakdown so, since the end of May 2024 he’s been paying for goods he was unable to use. As, for the reasons already stated, I’m satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as MBFS failed to keep Mr L mobile; I’m satisfied they should refund the payments he made during this period. This refund will also compensate Mr L for any additional transport costs he may’ve incurred due to not having the car MBFS supplied.

Mr L has also incurred costs in having the car diagnosed by the manufacturer’s garage. Given that the car wasn’t of a satisfactory quality when supplied, I think it’s only fair that MBFS reimburse these costs.

Mr L also feels he should be refunded the cost of taxing and insuring the car since May 2024. However, I don’t agree these costs should be refunded, and I’ll explain why.

It’s a legal requirement that a motor vehicle is both taxed and insured. And this is needed whether the vehicle is being driven or not. The insurance covers the vehicle for risks not associated with being driven, i.e., fire, theft, and third-party damage, so Mr L was still benefitting from the insurance payments, whether he was driving the car or not.

Regarding the road tax, if a motor vehicle isn’t being used and not being stored on a public highway, it can be declared as being off the road through a SORN. This mitigates the need to pay road tax. While I appreciate that the car was in possession of the dealership, it was still possible for Mr L to confirm with them that it wasn’t being stored on a public road (something that was highly unlikely) and advise them that he was registering the car as being off the road. In doing so, he could’ve mitigated this cost.

Finally, I think Mr L should be compensated for the distress and inconvenience he was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended MBFS pay Mr L an additional £200, to recognise the distress and inconvenience he's been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mr L would've felt by having to arrange for the overfilled oil to be rectified, followed by the subsequent breakdown. So, this is a payment I'm directing MBFS to make.

Therefore, if they haven't already, MBFS should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr L;
- remove any adverse entries relating to this agreement from Mr L's credit file;
- refund the deposit Mr L paid (if any part of this deposit is made up of funds paid through a dealer contribution, MBFS is entitled to retain that proportion of the deposit);
- refund the payments Mr L had paid between the breakdown of the car on 27 May 2024 and when the agreement ends;
- upon receipt of proof of payment, reimburse Mr L for the costs of the May 2024 diagnosis of the faults on the car;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr L made the payment to the date of the refund[†]; and
- pay Mr L an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (MBFS must pay this compensation within 28 days of the date on which we tell them Mr L accepts my final decision. If they pay later than this date, MBFS must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires MBFS to take off tax from this interest, MBFS must give Mr L a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr L's complaint about Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 April 2025.

Andrew Burford
Ombudsman