

The complaint

Mr A complains Mercedes-Benz Financial Service (MBFS) supplied him with a car that he believes wasn't of satisfactory quality.

What happened

In October 2022, Mr A entered into a 60 month personal contract purchase (PCP) agreement for a used car. Its cash price was £37,623, it was over three years old and had travelled around 11,900 miles. Mr A paid a deposit of £12,000 and the rest was financed with a loan by MBFS. The monthly instalments were £407. The optional final payment was £11,125 should Mr A decide to keep the car when the agreement ended.

According to Mr A when test driving the car, he noticed there was a bubbling noise which he pointed out to the dealership but he was told it was nothing to be concerned about. However the dealership denies having this conversation with him.

In January 2023, the car was returned to the dealership due to a manufacturing recall related to a software update. Around this time, Mr A also paid to have the tyres replaced.

In March 2023, Mr A reported an error message was showing on the car's dashboard. He contacted the dealership and the car was booked to be inspected in April 2023. However before it was returned, the car broke down. It was recovered to the dealership.

They said there were blocked holes in the car's sunroof which was leading to water leaking inside the car which was impacting the electronics. They said the repair wouldn't be covered by warranty but as a gesture of goodwill, the manufacturer had agreed to cover the cost. The relevant part (the wiring loom) was ordered but due to external factors and the fact it needed to be built abroad, they couldn't say when it would arrive for the repair to be carried out.

The car remained at the dealership for several months. During this time, Mr A was provided with a courtesy car. However given the significant time it was taking and the communication difficulties with the dealership, he complained to MBFS. He asked to reject the car.

MBFS said they wouldn't accept rejection. They confirmed a repair would be carried out as a gesture of goodwill and it was necessary to wait for the relevant part. In the meantime they had provided a courtesy car. To reflect the time he was without his car, MBFS offered a 10% refund of the monthly instalments from April to September 2023, totalling £224 which was later paid to Mr A. Regarding the concerns about the dealership, MBFS said they couldn't comment on that as they were a separate entity.

Unhappy with their response, the complaint was referred to our service.

The car was repaired and returned to Mr A in January 2024. However he reported there were several scratches on the bodywork which weren't present prior. He also said the same error messages were appearing on the dashboard (adaptive high beam, and camera view restricted). The car was returned to the dealership, they carried out an update to remove the warning messages and polished the car.

The investigator recommended the complaint was upheld. Given the time and mileage since purchase, she believed the fault with the sunroof was present or developing at supply meaning the car wasn't of satisfactory quality. She went on to say despite the repair, faults remained. She said Mr A should be allowed to reject the car and MBFS should do a number of things to resolve the matter including the refund of the deposit.

MBFS disagreed and maintained their stance. In summary, they commented:

- If Mr A heard a bubbling noise when testing driving the car, it's unlikely he would've agreed to buy the car without agreement it would be fixed;
- The fault would've presented itself sooner if it was present at supply. It was reported five months after purchase so it's likely to have been caused by an external influence;
- If the dealership's technicians believed it was a manufacturing fault they would've made a claim under warranty;
- Based on the car's history, there is no record of the fault prior to Mr A buying it. He hasn't provided sufficient evidence the fault was present at supply;
- The manufacturer covered the cost of the repair as a gesture of goodwill and Mr A was provided with a courtesy car to keep mobile;
- An engine management light (EML) can be an indicator that there is outdated software, with no other associated symptoms. It doesn't necessarily mean there is a fault;
- The adaptive high beam assist is a comfort feature, it doesn't impact the use of the car
- The car wasn't damaged whilst in the dealership's care but as a gesture of goodwill, a polish was carried out and an update performed to remove the warning messages;
- As a resolution, Mr A should be refunded three months of contractual payments to reflect the time without the car.

Since the investigator's opinion, Mr A has reported ongoing issues with the car, this includes but not limited to:

- The same warning messages appear on the dashboard (adaptive high beam, and camera view restricted):
- There is a near field communication (NFC) error message;
- The infotainment screen intermittently goes blank;

The car was returned to the dealership around April 2024 for further inspection. A faulty diesel particulate filter (DPF) sensor was found to be causing the warning messages. He was told it wasn't related to the previous repair to the wiring loom in January 2024. A repair was carried out as a gesture of goodwill and the car was returned to him.

However shortly thereafter, he reported that the car's alarm inexplicably activated and despite multiple attempts to turn it off, it wouldn't deactivate so he had to disconnect the battery. He also discovered a significant amount of water present in the front passengers footwell. He provided a video of the water inside of the car to our service, MBFS and the dealership. The car was returned to the dealership again where it has remained since. He says he hasn't been given a diagnostic report but he has been provided with a courtesy car which he remains driving.

In August 2024, I issued a provisional decision outlining my intentions to uphold the complaint, I said:

"In this case, Mr A acquired a car that was around three years old and had travelled around 11,900 miles. As this was a used car it's reasonable to expect parts may already have suffered some wear and tear when compared to a new car or one that is less travelled.

Based on the evidence presented to me, it's evident there was a fault with the sunroof. It had caused water to leak inside the car which impacted its electronics. Both parties agree there was a fault. However what is in dispute is whether that fault was present at supply and if it meant the car wasn't of satisfactory quality.

But first, I'm aware Mr A has mentioned issues with the recalls and the tyres. I wish to point out that I don't consider the manufacturer recalls meant the car was faulty at supply. Recalls are often preventative measures to avoid faults from developing in the future. Also in regards to the tyres, I consider that to be a result of wear and tear given it was a used car and Mr A had been driving it for a few months at the point it was replaced.

Turning back to the faulty sunroof, I've carefully considered the submissions from both parties. I've thought about MBFS' points including the car's history, the dealership's comments, etc. I've also thought about Mr A's version of events including when he reported the faults, the breakdown report and his correspondence with the relevant parties involved, etc.

Having done so, I note Mr A first identified there was an issue with the car around March 2023 when he noticed warning messages on the dashboard which is why he made arrangements for it to be looked at by the dealership in April 2023. However the car broke down before that the appointment and roadside assistance had to be called for it to be recovered.

From my understanding, at that point the car had travelled well less than 8,000 miles since supply. I don't believe a reasonable person would expect to experience such a fault within less than six months and having covered such mileage. Especially when bearing in mind the relative low mileage and young age of the car at supply. It's worth noting at the point of the fault, the car had travelled less than 20,000 miles.

MBFS has suggested the fault was a result of external factors. They haven't said it's down to Mr A's use or maintenance of the car but they also haven't provided a reasonable explanation nor evidence as to what external factor(s) may have caused this. They've also said if the fault was present at supply it would've presented itself sooner however I don't necessarily agree. It's likely to depend on factors such as the weather conditions during the time Mr A had the car and where it was stored e.g. was it kept in a garage away from the weather elements.

I believe it's fair to say, a reasonable expectation is that water wouldn't leak inside a car due to rainfall, it's meant to protect passengers from this (even for cars that are significantly worn or old). So it's surprising to hear this has happened without adequate explanation as to how or why such a fault would occur.

In the absence of persuasive evidence that the fault was down to Mr A or any other detailed explanation, I can't reasonably say it was a result of Mr A's actions or simply down to wear and tear. On balance, given the car's age and mileage when identified, I find it was more likely than not the fault was present or developing at supply. Therefore I find the car wasn't of satisfactory quality meaning there was a breach of contract.

Where this happens and it's outside the short term right to reject the car (30 days), the CRA allows for one opportunity for repair. I would expect this repair to be carried out at no cost to the consumer, completed within a reasonable period of time and without significant inconvenience to the consumer. In this case, it was agreed that the manufacturer would cover the repair cost as a gesture of goodwill. Having determined the car wasn't of

satisfactory quality, had this repair cost not been covered, I would've said MBFS would've been liable to do so as ultimately they are responsible for the car's quality.

I acknowledge it took a considerable amount of time for the repair to be carried out. This was because the relevant part (the wiring loom) had to be built in another country. I note the repair wasn't carried out until January 2024 which is over nine months after the fault was initially identified. I consider that to be a significant amount of time. So I can understand Mr A's upset and frustration about the same but I'm glad to see he was provided with a courtesy car to keep him mobile.

The car was repaired and returned to Mr A in January 2024. He reported the dashboard warning messages remained present as before and there were visible scratches to the car's bodywork. MBFS confirmed an update was carried out to remove the warning messages. In regards to the scratches, I don't have sufficient evidence of the car's bodywork before it was returned to the dealership so I can't reasonably say it was caused by them. However I pleased to see they polished it as a gesture of goodwill.

Despite these repairs, a DPF fault was later said to be the cause of the warning messages and a further repair was carried out around April 2024. Mr A has also provided video evidence of the infotainment system intermittently going blank.

Shortly after the repair in April 2024, Mr A reports there was an incident where the car's alarm went off and it could only be stopped by disconnecting the battery. Following that incident, he has provided a video which shows a pool of water in the front passenger seat.

Following this incident, the car was returned to the dealership but I haven't been provided with a diagnostic report about what was found. So I've relied on the video evidence. I'm satisfied it was filmed after the car was repaired in January 2024. Given the presence of water in the passenger's footwell (which is similar to the issue identified before), I believe it's fair to say the fault remains meaning the repair failed to fix the issue.

Based on the correspondence I've seen, it appears Mr A has been told by the dealership further repairs would be required which he would be liable to pay. If that's the case, I don't consider that to be fair because in my opinion the previous repair has failed. Mr A waited a considerable amount of time for the car to be repaired in the first place, however the same fault appears to remain. Moreover there is no guarantee a further repair would be carried out in a reasonable period of time or that it would indeed fix the issue.

The CRA says if a car is not of satisfactory quality, there's been an opportunity of repair however there is still a problem or the repair has failed, rejection should be allowed which is what I think should happen in this case. There's been more than one repair but the car remains faulty. Mr A says he has lost faith in the car and given the circumstances I can understand why. When thinking about the overall timeline of events including what I consider to be a failed repair, I find Mr A should be allowed to exercise his final right of rejection.

Putting things right

MBFS should end the agreement, collect the car, refund the deposit (£12,000) and remove any adverse information from Mr A's credit file about this agreement.

Although there were faults, it's clear Mr A has had use of the car (although for a limited number of months). I also need to take into account he was provided with a courtesy car when he was left without his own. I note his comments that the courtesy car wasn't a like for like replacement. In light of the same, I don't intend to say he should be refunded all of the

monthly instalments paid as it's fair he pays to reflect use of the car and courtesy car which he is still using at the time of writing this decision.

In their final response, MBFS agreed to refund 10% of the monthly payments from April to September 2023 to reflect the time he was without his car, I consider that was a fair course of action. However matters have moved on since then and Mr A was left without his car for several months thereafter and when it was eventually returned, it remained faulty. Therefore I find it's fair for MBFS to refund 10% of the monthly payments from October 2023 up to when both the courtesy car is returned and the agreement ends to reflect the continued impaired use. If there is any period of time before the agreement ends, whereby Mr A makes the contractual payment(s) but he's left without the use of a courtesy car, those monthly payment(s) should be refunded in full.

Mr A has commented he should be refunded the tax and insurance he's paid on the car as he hasn't had full use of it. As both are legal requirements and conditions of the agreement, I won't be saying MBFS need to refund this.

Mr A has outlined the impact of this situation on him. This includes multiple trips to the dealership, extensive correspondence with MBFS and the dealership, the worry of not knowing whether the car would work, having to call breakdown recovery, etc. For this, I agree with the investigator that MBFS should pay £400 compensation to Mr A for the upset and trouble caused.

Summary

I'm sorry to hear the car supplied to Mr A didn't perform as expected. Taking everything into account, I find the car wasn't of satisfactory quality at supply due to the fault with the sunroof which allowed water to leak into the car and it damaged some electric components. To put things right, I intend to say MBFS should allow Mr A to reject the car and they should put things right as outlined".

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.

Both parties were invited to respond to the provisional decision. MBFS provided no further comment. Mr A broadly accepted the findings but commented:

1. He's had to pay road tax and insurance for almost two years which has amounted to £3,000 even though he hasn't had use of the car for significant periods of time. He doesn't believe that's fair and wants to be compensated for the same.
2. For the courtesy cars, he never encountered the same issue with the blocked sunroof despite driving and parking the car in the same spot. He says this supports the car was faulty at supply.
3. The courtesy car isn't of the same value and specification, his own is worth a lot more. So the 10% refund of the monthly instalments isn't enough to reflect that.

I thank Mr A for his further comments which I've carefully considered. Concerning points one and two, my opinion remains unchanged and for the same reasons as my provisional decision so I won't repeat them again.

For point three, I acknowledge Mr A's strength of feeling about the courtesy car not being a like for like replacement. He's outlined it was of a lower specification, worth less than his own

and if that car was taken out on finance the payments would've been lower than what he pays. However he hasn't provided sufficient evidence to support the same. So I can't fairly accept his comments that the monthly payments he paid towards this agreement were worth notably more than the value of the courtesy car.

It's clear he feels strongly about this and I appreciate the situation he finds himself in. Working out how to put consumers back in the position they would've been in had there not been a breach of contract isn't an exact science. However as a service, we try to put the consumer as close to that position as we can.

Overall, I've taken a broad view in this case. Given I'm saying MBFS should refund the deposit, refund 10% of the monthly payments from October 2023 onwards with compensatory interest, amongst other things, I find this is a fair resolution in the circumstances.

On the basis I haven't been provided with any further information to change my decision I still consider my provisional findings to be fair and reasonable in the circumstances.

My final decision

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

To put things right, to say Mercedes-Benz Financial Service must:

- End the agreement with nothing further for Mr A to pay;
- Collect the car at no cost to Mr A;
- Refund the £12,000 deposit;
- Refund 10% of the monthly instalments paid from October 2023 up to when both the courtesy car is returned and the agreement ends;
- If there is any period of time before the agreement ends, whereby Mr A makes the contractual payment(s) but he's left without the use of a courtesy car, those monthly payment(s) should be refunded in full;
- Pay 8% simple interest per annum on the above refunds from the date of payment to the date of settlement*;
- Remove any adverse information about this agreement from Mr A's credit file;
- Pay £400 compensation to Mr A for the trouble and upset caused.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 October 2024.

Simona Reese
Ombudsman