

The complaint

Mrs A complains about two separate cars supplied to her by Mercedes-Benz Financial Services UK Limited ("MBFS") when she took out two different agreements with them.

What happened

Mrs A referred a complaint to us along with her representative. As the complainant is Mrs A, for ease, I have addressed my decision to her only throughout, when referring to what she and her representative have told us.

Mrs A acquired a car ("Car A"), using a hire purchase agreement in November 2021. The car was used and the recorded mileage of the car on the agreement was 11,957. The cash price recorded on the agreement was £22,770. Mrs A said Car A was partly funded by her part-exchanging a car and the proceeds of it, £2,300, was used as a deposit. The agreement was for 60 months.

Mrs A said there were issues with Car A. She said that it was unsafe as the electrics failed on it multiple times including on motorways. Mrs A also said they were identified by both the supplying dealership and also another manufacturer dealership. Mrs A said she returned Car A and the agreement ended in October 2022.

Also, in October 2022, Mrs A acquired another car ("Car B"), using a personal contract plan agreement with MBFS. At the point of supply, Car B was used, and the agreement recorded its mileage as 45,737. The deposit on the agreement was recorded as £85.93. Car B was also a different model to Car A. The cash price recorded on the agreement was £22,952.01 and it showed a deposit of £85.93. The agreement was for 48 months.

Mrs A believed Car B was a replacement car for Car A and described it as a "*straight swap*". And so, she said she believed everything else would remain the same as the terms she agreed to when she acquired Car A. She specifically said she thought it would be a hire purchase agreement. Mrs A also said she paid a £500 admin fee, which she believed she would receive back once the paperwork had been completed.

Mrs A complained as she said she wasn't aware the agreement to acquire Car B was a personal contract plan agreement. And that she later understood that the £500 she had paid was mainly towards the negative equity resulting from Car A's agreement ending.

Mrs A, among other things, wanted to return Car B; for MBFS to reimburse her the £500 she paid when she took out the agreement to acquire Car B; and for MBFS to reimburse her the deposit she had paid to acquire Car A. Mrs A also believed she should have been given the opportunity to reject Car A, rather than made to take out another agreement with MBFS.

MBFS responded and explained that they didn't uphold her complaint. In summary, they explained Mrs A wasn't offered rejection for Car A as all reported defects with it were rectified. And, in the interests of providing good customer service, they offered to swap Car A for Car B as Mrs A had lost faith in Car A. They also explained that as Car A was in negative equity, they gave a higher value for Car A so that Mrs A only had to pay £500 to

acquire Car B. MBFS also said Mrs A agreed to and asked for a personal contract plan agreement.

MBFS also went on to explain that Mrs A had a negative equity of £414.04 with Car A, which left a remaining amount of around £86 after the £500 was paid, which was recorded on the personal contract plan as a deposit towards acquiring Car B.

While MBFS didn't uphold Mrs A's complaint, they offered £350 in recognition of the time it took to investigate her complaint and for the distress and inconvenience this may have caused her.

Mrs A remained unhappy with MBFS's findings, and so, referred her complaint to our service.

During our involvement, MBFS provided our service with details of the repairs carried out to Car A. They confirmed a software update was carried out in December 2021 for "*shift quality, automatic transmission/dual clutch*". And they said Car A was diagnosed as having a fault in December 2021, which was subsequently repaired in January 2022. The repairs carried out were to the earth wire.

Mrs A also explained that she didn't believe MBFS responsibly lent to her and did a thorough affordability check. And she said MBFS should have known that the annual permitted mileage of 10,000 miles listed on the personal contract plan wasn't enough from conversations held with the supplying dealership before taking out the agreement.

Our investigator upheld Mrs A's complaint. In summary, he said that there was a fault with Car A and that this fault meant that the car wasn't of satisfactory quality at the point of supply. And so, Mrs A should have been entitled to reject the car. Our investigator also concluded that the agreement to acquire Car B had been misrepresented and that Mrs A had been misled into paying £500 without being told what the money was actually being used for.

To put things right, among other things, he said MBFS needed to end the agreement for Car B; collect the car; refund the £500 payment made; refund the deposit Mrs A paid towards the agreement to acquire Car A; refund premiums paid for Car A between January 2022 and October 2022; and also pay £500 for distress and inconvenience.

Our investigator also put forward an alternative settlement offer in the interests of resolving things quickly, which he said Mrs A would accept. Among other things such as for the car to be collected and for the agreement to end, the alternative offer was for MBFS to make a single payment of £7,000 as full and final settlement.

Mrs A accepted our investigator's findings. MBFS disagreed with the investigator's outcome. Among other things, MBFS didn't believe they supplied Car A when it wasn't of satisfactory quality. And, they also believed the terms and conditions were clearly stated on the front page of the finance agreement Mrs A took out to acquire Car B. MBFS also believed the investigator's findings were heavily weighted towards Mrs A's testimony and didn't consider the evidence they had put forward.

Our investigator responded to MBFS and explained he reached his outcome as MBFS hadn't provided evidence to the contrary of Mrs A's version of events, when requested.

The complaint was then referred to an ombudsman. And so it was passed to me to decide.

During our involvement, MBFS reached out to Mrs A and explained that they had paused monthly instalments on the agreement for Car B since May 2024.

MBFS confirmed the car had been returned to them in September 2024 and they have since settled the agreement. MBFS said they waived damage charges in excess of £5,000 and Mrs A's monthly instalments due from May 2024 to when the car was returned were also written off.

I issued a provisional decision on 16 October 2024 where I explained why I didn't intend to uphold Mrs A's complaint. In that decision I said:

"There are two main aspects to Mrs A's complaint against MBFS. Firstly, Mrs A believes she should have been offered to reject Car A when faults were discovered with it. Secondly, Mrs A believes the agreement she took out with MBFS to acquire Car B was misrepresented to her. I have considered these points in turn.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Some of the points raised to our service about the agreement, including that it wasn't affordable to Mrs A and the issues with the mileage allowance, don't appear to have been raised to MBFS nor commented on in its final response. So I won't comment on these issues in my decision.

Mrs A complains about two cars supplied to her under types of hire purchase agreements. Entering into consumer credit contracts such as these are regulated activities, so I'm satisfied I can consider Mrs A's complaint about MBFS.

Satisfactory quality of Car A

When considering what's fair and reasonable, I take into account relevant law and regulations. The Consumer Rights Act 2015 ("CRA") is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – MBFS here – has a responsibility to make sure goods are of satisfactory quality. Satisfactory quality is what a reasonable person would expect – taking into account any relevant factors.

I would consider relevant factors here, amongst others, to include the car's age, price, mileage and description. So, it's important to note here that the car Mrs A acquired was used. I can see this car was over two years old, cost around £22,800 and had been driven around 12,000 miles when Mrs A got it.

So, I think a reasonable person would accept that it would not be in the same condition as a new car and was likely to have some parts that are worn. But a reasonable person would still expect the car to be free from larger faults and would've expected trouble free motoring for some time.

In order for me to consider whether Car A was of satisfactory quality at the point of supply, I first need to consider whether there was a fault with the car – and whether this fault was present or developing at the point of supply.

Mrs A says the car was unsafe as the electrics failed on it multiple times. She also says two different mechanics and two different manufacturer garages also deemed the car unsafe.

MBFS has explained they diagnosed a fault on 6 December 2021, which they subsequently repaired on 7 January 2022. They provided a screenshot that said:

*“Reverse camera inop, no fault codes in camera
Fault codes in in mbux for no coms with reverse camera...
Carry out wiring checks, confirms coms lost with control unit for revers [sic] camera when
vehicle put into revers [sic]
Cure – Carry out repair to earth wire”*

The date at the top of the screenshot provided is 7 January 2022. So, I’m satisfied that there was a fault with the car shortly after it was acquired by Mrs A.

I’m also satisfied that this fault was likely present or developing at the point of supply, considering it presented itself within a month or so of the car being acquired.

One of the remedies available to Mrs A if a car is found to be of unsatisfactory quality under the CRA is repair. Our investigator believed the information MBFS supplied to our service didn’t clearly show if a repair was conducted or if the repair was successful. However, I disagree. I think the information MBFS supplied show that investigations were carried out and that repairs to the earth wire were made in January 2022. I say this as I’ve seen a copy of the repair notes which say:

“... carry out repair and recheck all ok”

So, in this instance, I’m satisfied the fault which made the car of unsatisfactory quality was repaired by MBFS. I haven’t seen any evidence to suggest faults persisted with the car after it was repaired in January 2022. So, from what I have seen, this repair seems to have resolved the fault with the car.

Mrs A believes she should have been given the option to reject the car due to the faults present with it. But, I haven’t seen anything to suggest Mrs A tried to reject the car at the time. And, in any event, considering the car had been repaired, I’m satisfied Mrs A’s rights under the CRA had been broadly met. So it follows that I don’t think MBFS needs to do anything further in relation to Car A.

Misrepresentation in relation to the agreement for Car B

Mrs A complains, among other things, that she believed the agreement she took out to acquire Car B was the same as that taken out when she acquired Car A. In summary, she believes the terms of the agreement was not explained to her, along with being misled about the reason why a £500 payment was required. On the other hand, MBFS say Mrs A was aware of the terms of the agreement she had entered into.

I have carefully considered what Mrs A has told our service here, alongside what MBFS has said.

When considering what’s fair and reasonable, I take into account relevant law, regulations and guidance. Section 56 of the Consumer Credit Act 1974 (“S56”) is relevant to this complaint. S56 explains that, under certain circumstances, a finance provider is liable for what was said by a credit broker or supplier before a credit agreement is entered into. I’m satisfied S56 applies here. So, I can consider what Mrs A says she was told about the car and finance by the dealer before she entered into the contract.

I've considered if a misrepresentation has occurred here. I would consider a misrepresentation to have taken place if Mrs A was told a 'false statement of fact' that induced her into entering into the agreement when she otherwise would not have.

I have seen a copy of the PCP Agreement Mrs A took out with MBFS in October 2022. On its first page, it clearly shows in bold, upper case and in a larger font at the top, "AGILITY AGREEMENT (PERSONAL CONTRACT PLAN)". Below this text, it also said "Hire Purchase Agreement...". Its first page also provides a description of the car being supplied, along with its recorded mileage. This agreement was signed by Mrs A.

Mrs A believes the agreement for Car B was misrepresented to her by being told the agreement for Car A and Car B were the same.

While I appreciate Mrs A believes she thought the agreement would be a like-for-like agreement and the new car acquired would be a "straight swap", the evidence doesn't suggest so. I'm mindful that an entirely different model of car, with a different age and mileage had been acquired. And while the cash price and monthly repayments for both cars under their respective agreements were similar, they were still different. I'm satisfied a false statement of fact hasn't been given here as the agreement for Car B set out the cash price and monthly repayments required. I think it would be reasonable to assume the finer details around its cost and deposit paid would be different. And this is reflected on the agreement which I'm satisfied Mrs A saw at the time.

Mrs A also believes the agreement was misrepresented by being told it was a hire purchase. I'm satisfied a false statement of fact hasn't been given here as the agreement set out clearly on its front page that it was a hire purchase agreement.

Mrs A also says there was a misrepresentation in relation to the £500 payment she made. She says she wasn't told what the £500 was for and that she was in negative equity on the previous agreement for Car A. The deposit on the agreement was recorded as £85.93.

I have noted that there is no mention on the agreement of a £500 payment. There also isn't any mention of a trade in, or the negative equity from the previous agreement and car. I also haven't been provided copies of an invoice or sales receipt for the £500 payment made. So, I can appreciate Mrs A's comments that she was unaware of what value the supplying dealership gave her for Car A and what the £500 payment was for.

The supplying dealership explained that they conducted the deal so that they gave more for the value of Car A, which meant only a £500 payment was needed. And that around £414 of the £500 payment was towards the negative equity resulting from Car A's agreement ending.

On the other hand, Mrs A has told our service that she believed the £500 payment was an admin fee and that she believed it would be returned to her once the paperwork had been completed. Firstly, if the fee was described to Mrs A as an admin fee, then it would be unusual for it to be returned. An admin fee is generally paid for administrative purposes, and it isn't usually refunded. Secondly, I can't see that Mrs A queried why she hadn't received a refund for the £500 payment made shortly after paperwork had completed in October 2022. I think it is likely Mrs A would have queried the return of her money shortly after October 2022 if she thought it was a refundable fee.

I've also thought about the value of cars more generally. It is widely known that the value of a car will go down. By changing a car within a year of a 60 month agreement, negative equity would be extremely likely. Considering everything here, and given that Mrs A needed to settle her agreement for Car A, I think it is more likely than not that a conversation was

held around the value of Car A and that the remaining amount she paid would be put towards the deposit for the agreement to acquire Car B.

So I'm more persuaded by what the supplying dealership has said around the purpose of the £500 payment and I think it is likely this was communicated to Mrs A, given she also had sight of the agreement taken out to acquire Car B and that she signed it. So, I think it is unlikely a false statement of fact has been given. It follows I don't think the finance agreement was misrepresented to Mrs A.

In summary, I don't think MBFS needs to do anything further in relation to this complaint.

MBFS made an offer of £350 in total in recognition of the time it took to investigate Mrs A's complaint and for the distress and inconvenience this may have caused her. This award was made in relation to complaint handling only, so I make no comment nor finding on it. If Mrs A wishes to accept this offer, if she hasn't already, then I suggest she contacts MBFS directly about it to see if it is still available.

I understand that Mrs A has now returned Car B to MBFS and MBFS has settled the agreement, with nothing further to pay. As Mrs A has returned the car and MBFS has accepted this, I will also make no finding on this matter."

Responses to the provisional decision

MBFS responded and said they do not have any further information to provide and will wait to hear the final decision.

Mrs A responded and asked for an extension to the deadline that was given to respond to the provisional decision.

Mrs A later responded and explained, among other things, that there were further issues with Car A, such as warning lights appearing and she said all electrical items stopped working. She also said the car appeared to try and stall.

Mrs A went on to explain the times she took the car to be repaired and the repairs carried out to it. Mrs A explained she was told the car wasn't fit for purpose and she said the dealership agreed to swap Car A for Car B.

Mrs A said she believed the £500 payment she made was an administration charge and included a £100 delivery charge. Mrs A also said that she did receive a payment for around £450, which she assumed was her deposit, but later realised it was a payment for Car A being returned to her.

Mrs A also said that although MBFS and the dealerships may not have been aware of faults with Car A at the point of supply, they would have been aware of them when issues arose.

Mrs A said she believed Car B was sold to her without an affordability check taking place. And she says MBFS should have known that Car B wasn't suitable for her financial circumstances, had they carried out the right checks.

Mrs A also explained the details around why MBFS later got in touch with her and offered to collect the car. Mrs A also provided a copy of the correspondence between herself and MBFS.

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'm not persuaded to change my opinion from the provisional decision I made.

I'm aware I've summarised Mrs A's further comments very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here. Namely, Mrs A believes she should have been offered to reject Car A when faults were discovered with it. Secondly, Mrs A believes the agreement she took out with MBFS to acquire Car B was misrepresented to her.

There are aspects to Mrs A's complaint I haven't commented on, as they don't appear to have been raised to MBFS previously nor commented on in their final response.

Mrs A was granted an extension to the deadline given to respond to the provisional decision.

I appreciate the further comments Mrs A has made about her experience with Car A, but as I previously said, no evidence has been provided to show that issues persisted after repairs were carried out in January 2022. No job sheets or an independent inspection, or photos or videos of issues have been provided before the deadline I set in my provisional decision. And I haven't seen anything to suggest Mrs A tried to reject the car at the time. So, from what I have seen, I'm not persuaded by Mrs A's comments here.

Turning my attention now to the £500 payment Mrs A made which she believed was an administration charge. As I said in my provisional decision:

"...if the fee was described to Mrs A as an admin fee, then it would be unusual for it to be returned. An admin fee is generally paid for administrative purposes, and it isn't usually refunded. Secondly, I can't see that Mrs A queried why she hadn't received a refund for the £500 payment made shortly after paperwork had completed in October 2022. I think it is likely Mrs A would have queried the return of her money shortly after October 2022 if she thought it was a refundable fee."

As Mrs A hasn't supplied anything to suggest she contacted MBFS about the payment made, I'm not persuaded by her comments here.

Turning my attention now to how Mrs A believes the dealership should have been aware of faults as they arose, a few weeks after the point of supply. As I've already explained previously, I accept that Car A had faults which made the car of unsatisfactory quality. But I'm also satisfied from what I have seen that Mrs A's rights under the CRA were broadly met here by MBFS repairing the car. I also don't think it was MBFS's responsibility to inform Mrs A of her rights under the CRA.

So, in summary, I don't think MBFS need to do anything to put things right.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 3 December 2024.

Ronesh Amin
Ombudsman