

## **The complaint**

Miss A complains that a car supplied to her under a hire purchase agreement with Mercedes-Benz Financial Services UK Limited (MBFS) was of an unsatisfactory quality.

When I refer to what Miss A or MBFS have said or done, it should also be taken to include things said or done on their behalf

## **What happened**

In April 2019, Miss A was supplied with a used car through a hire purchase agreement with MBFS. The cash price of the car was £21,052. There was a deposit of £2,000, and the amount of credit was £19,052; with 48 monthly payments of around £352 and an optional purchase payment of £8,625 at the end of the agreement. At the time of supply, the car was around three years old, and had covered approximately 28,000 miles.

In May 2023, Miss A refinanced the optional purchase payment to own the car outright by the end of the agreement in 2026. The amount of credit was for £8,234; with 36 monthly payments of around £257.

Miss A complained to MBFS in March 2024. She said everything had been great with the car until late 2023 when it started to make a rattling noise, for which she was quoted around £3,000 to repair. After the car was returned to her, she was making monthly payments for the repairs, on top of her monthly finance repayments, and she continued to experience worsening rattling noises. Miss A explained her main fear was that she was going to be left paying monthly payments for three years for an undriveable car that won't get her to work. In addition, she was disappointed the dealership didn't supply her with a courtesy car while her car was being repaired, given her personal circumstances and loyalty to them and MBFS.

MBFS responded to Miss A's complaint in May 2024. In their final response, they said there were no confirmed faults within the first six months of Miss A acquiring the car, so they weren't happy to accept rejection of the car as it wasn't inherently faulty. They also said there was no provision within the agreement to provide Miss A with a courtesy car and while the supplying dealership will always endeavour to do so, this is always subject to availability. MBFS suggested Miss A return the car to the dealership for investigation into the ongoing rattling.

In June 2024, the car broke down. It was recovered and moved to Miss A's home address, as it wasn't repairable at roadside. A visual inspection was carried out by the supplying dealership shortly after, which found the noise to be caused by bottom end engine damage. It was confirmed that the engine would need to be stripped but advised that the engine is replaced with a new one. The cost of repairs was quoted at £10,766.80.

Miss A referred her complaint to the Financial Ombudsman Service in August 2024. In summary, Miss A said:

- The car required significant repairs in the last year just to keep the car roadworthy.

- The car broke down and was deemed beyond repair only three months after repairs were carried out.
- She wasn't happy with the service she received when repairs were needed, as she was left without a car and unable to get to work.
- She is now paying for a car which isn't driveable and hasn't been able to get to work in months as the cost of a hire car isn't affordable.
- The issue has had a huge impact on her financially and mentally, and on her entire family.

To resolve the complaint, Miss A wants MBFS to terminate the agreement and allow her to keep ownership of the car so she can sell it for parts. She would also like MBFS to refund the amount she paid for the repairs she was advised were required, and the payments she made towards her finance agreement during the time her car was not fit to drive.

Our Investigator reviewed matters and said based on the mileage Miss A was able to cover before a fault occurred, they thought the problems appeared to be due to reasonable wear and tear, and didn't think MBFS supplied her with a car that wasn't of satisfactory quality.

The Investigator also noted the discrepancy with the mileage confirmed on the second finance agreement, but concluded this was administrative error that doesn't impact the quality of the car, and therefore couldn't reasonably ask MBFS to do anything based on this.

Miss A didn't agree with the Investigator. In summary, she said:

- She remains locked into the agreement until July 2026, so will be paying £257 a month until then for a car she is unable to use.
- In addition to the above, she's also repaying a loan that was used to cover the deposit, as well as road tax and insurance due to being unable to SORN the car while it remains on the road – which further increases her monthly outgoings for a car she is unable to use.
- She fundamentally disagrees that a full engine failure should be expected for a car that is only eight years old.
- The wheels of the car locked whilst she was on a dual carriageway, which could have led to a very serious accident.

As no agreement has been reached, the 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 taken into account 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.

Miss A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Miss A entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances.

Miss A acquired a car that was used, around three years old and had covered 28,000 miles when she took possession of it. It had a cash price of £21,052. So, what would be considered satisfactory quality would be notably different to if Miss A had acquired the same car brand new and at a greater cost. As this was a used car, it's reasonable to expect parts may already have suffered wear and tear when compared to a new car or one that is less travelled.

Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory – taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition, alongside other things such as their fitness for purpose, safety, and durability – so this is what I've considered here.

Miss A said within her complaint to MBFS that everything was great with the car until late 2023, when a rattling sound gave her cause for concern. She didn't report any issues with the car until November 2023. But prior to this, there were some minor works required to the coil springs and brake pads following an MOT – parts that are commonly impacted by wear and tear and require regular replacement and general maintenance to keep a car roadworthy. I've considered that these minor works required were at a time when the car had travelled more than 35,750 miles since the date of supply. So, considering the age and mileage of the car when these issues were noted and fixed, alongside the fact that all of those parts are subject to wear and tear, I think it is most likely that all of those needed to be fixed because of normal wear and tear and parts coming to the end of their life cycle.

I haven't been provided with any evidence that confirms the exact mileage in November 2023, when Miss A experienced the rattling sound. However, the MOT history confirms the recorded mileage was 71,551 in March 2023, and 79,963 in March 2024. So, on average, Miss A was travelling around 700 miles a month. I therefore consider, on balance, the mileage to have been approximately 76,000 when the fault presented in November 2023.

Miss A was quoted £2,617.25 for the required repairs, which included repairs to the brakes/hubs, linings/pads shoes, coolant, thermostat and water pump. It was found that the water pump actuation valve had broken, causing the water pump to seize, so both required replacement. It was also noted that the car was overdue a service by 31,400 miles.

Miss A financed the cost of the repairs, and paid back around £290 a month, over a nine-month period.

I've thought about whether these faults would make the car of an unsatisfactory quality, and I've specifically considered if the car was durable. And I don't think these faults indicated that the car was of unsatisfactory quality. I say this because the car was over seven years old at this point with mileage over 71,551, and more likely to be around 76,000. So, Miss A had been able to travel at least 43,551 miles, and most likely around 48,000, over a period of four and a half years before these faults were noted on the car. Considering the age and mileage of the car when these issues were noted and fixed, as well as all the parts requiring repair being subject to wear and tear, I think it is most likely that all of those also needed to be fixed because of normal wear and tear and parts coming to the end of their life cycle.

As the repairs required were not a result of Miss A being supplied with a car that wasn't of a satisfactory quality, I'm also unable to agree that MBFS were responsible for keeping Miss A mobile with a courtesy car while her car was being repaired.

After complaining to MBFS, Miss A took the car back to the dealership for investigation into the ongoing rattling in March 2024. Damage to the nearside and offside front gaiters was identified as requiring urgent repairs. Further issues were found where repairs were advised, including lipped discs, corroded rear brake metal backing plates, near side front wheel bearing play and wheel damage. It was also noted that a service was showing as overdue by 1,477 days on the dashboard. Miss A opted for only the urgent work to the gaiters to be completed at that time, and the car was later serviced in May 2024.

In June 2024, the car broke down while Miss A was on the dual carriageway, which was found to be due to an engine fault. The mileage at this point was 81,405, so Miss A had travelled around 53,405 miles since the point of supply, before the engine failed.

I acknowledge Miss A's concerns about an eight-year-old car requiring a new engine, and I sincerely empathise with the position this left Miss A in. But my role here is to determine if the car was not of satisfactory quality when it was supplied to Miss A – particularly, was it reasonably durable.

I've considered Miss A's point about a recall notice and note this related to the precautionary fitting of an additional fuse to the car's starter circuit. The recall notice states this is to prevent the extremely rare chance of the current limiter overheating or, in the worst-case scenario, catching fire. It also noted that this was only something that could happen where repeated attempts were made to start an engine that had already incurred severe damage and seized – not something that would cause the damage itself. So, on balance, I don't think it's likely that this recall notice applied to the problems Miss A experienced with her car based on the evidence available to me.

I also can't reasonably conclude that it's more likely than not that Miss A's car contained a defective part that would make the car of an unsatisfactory quality, solely based on the recalled notice. This is because the manufacturers will sometimes issue a blanket recall when it's been established that some cars may have an inherent manufacturing issue. So, a recall notice being issued doesn't automatically mean that every single car, subject to the recall, definitely has the defective part in question. And here, Miss A has told this service that she recalls contacting the retailer on receipt of the recall notice and being informed it didn't apply to her car. So, I've not been provided with enough evidence here to say that most likely there was a recall on Miss A's car which would render her specific car of unsatisfactory quality.

Based on the evidence that is available to me, including the age and the large number of miles Miss A was able to travel before she first noticed any rattling and then experienced the engine issues, I'm unable to reasonably conclude the faults Miss A complains about were present or developing at point of sale. And when considering if the car was reasonably durable, in addition to the large amount of miles travelled and age of the car, I also need to take into consideration the apparent lack of routine servicing, which is strongly recommended for the purposes of preventing the risk of significant faults and costly repairs. So, taking everything into consideration, I'm satisfied it's more likely than not that the faults Miss A has complained about were not because MBFS supplied her with a car that was of unsatisfactory quality.

As I can't say MBFS supplied Miss A with a car that was of an unsatisfactory quality, I'm unable to reasonably agree that they should terminate the agreement with nothing further to

pay, or that they are responsible for refunding Miss A for the repairs carried out, or any payments she's made towards the agreement. I realise this will come as a disappointment to Miss A, but I don't think MBFS needs to do anything further.

### **My final decision**

For the reasons explained, I don't uphold Miss A's complaint about Mercedes-Benz Financial Services UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 2 January 2025.

Nicola Bastin  
**Ombudsman**