

## **The complaint**

Mr C complains about the quality of a car he financed with Mercedes-Benz Financial Services UK Limited ('MBFS').

## **What happened**

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr C took out a hire purchase agreement in March 2023 for a new car with MBFS.

Mr C says that the car had an oil leak that was discovered to be a manufacturing fault in late 2023. He says this was repaired – but it took some time and he didn't have a 'like-for-like' courtesy car provided.

Mr C also says that in April 2024 the car lost power at a roundabout – which the dealer's service department was unable to identify or diagnose. He says this made him too nervous to want to keep the car.

MBFS looked into the matter. It confirmed that the dealer had been unable to replicate the loss of power issue – so did not accept Mr C's request to reject the car. However, it offered compensation for Mr C not having a 'like for like' car when it was in for repair – and for any distress and inconvenience caused.

Mr C ended up accepting an amended offer of compensation from MBFS and selling the car. However, he says that MBFS has not compensated him for the loss of power fault, or the financial loss incurred due to him having to sell the car.

Our investigator concluded that MBFS had acted fairly but Mr C asked for an ombudsman to look into things. In summary, he says:

- The issue with the car's 'dramatic loss of power' has not been sufficiently addressed – and caused the car to go into limp mode on a roundabout and for several miles to the dealership – this issue is a danger to life;
- he would not have sold the car if MBFS could have replicated the fault with loss of power and carried out the necessary repairs;
- the dealership refused to give him a copy of the diagnostic readings – and it makes him suspicious that they were covering up a serious issue with the car; and
- he would like an ombudsman to look at things and seek expert advice on the engine data if it can be obtained.

## **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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. MBFS is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

MBFS supplied a brand new car to Mr C so I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.

Unfortunately, it appears that around December 2023 the car went in for repairs to deal with an oil leak. This was due to a faulty part. It seems (from the dealer job sheet) Mr C had covered around 15,000 miles by this stage – but I still don't think the reasonable person would consider this fault to be reasonably expected in the circumstances noting the car was supplied brand new and this issue occurred within the first year.

Repairs were carried out for this initial issue and appeared to have been successful. When considering the CRA – this repair appears to be a reasonable remedy.

Mr C has described an issue which occurred with the car later on - in April 2024 where he says it lost power on the road and went into limp mode. However, the problem is that when the dealer took the car in it appears to have been unable to replicate the issue.

Because the issue with the loss of power couldn't be replicated or diagnosed it is difficult for me (as a non-expert) to say for sure that the car had an inherent fault related to loss of power. An expert would be able to look more closely at things – and identify why this might have occurred, ruling out potential external factors as a cause and pinpointing the presence of any potential ongoing defects.

From the limited information I have, it seems the dealer found a fault at the time (which it says was related to the catalytic convertor) and carried out a fix. But I don't think it would be fair to say this allowed Mr C to reject the car in the circumstances. I say this because, Mr C

was satisfied to have this issue addressed with a repair. The problem was Mr C didn't want the car back unless the dealer was able to replicate a loss of power issue and specifically diagnose what could have caused it. However, noting the dealer could find no evidence that the car was being handed back to Mr C with an ongoing fault related to loss of power (and that Mr C said the car was working as expected after) I don't think it is fair to say MBFS should have taken back the car at that point. And while I understand Mr C wanted more assurances than he got – I don't think that it would have been fair for MBFS to do more in the circumstances. I will explain.

Mr C has asked why the dealer was unable to provide an engine diagnostic and thinks it might be covering up something more serious related to the engine. But there is nothing persuasive to suggest the dealer would be covering something up as Mr C alleges. I know Mr C would like this service to get further engine data and interpret it – but my role here is informal and I am not an expert (nor would I commission a report as part of my role resolving disputes). And while I accept that a detailed expert inspection would have been useful here I note Mr C had the car for around a year at the time he took it in for this issue. So, had Mr C continued to have concerns it would not have been unreasonable for him to have sought out his own report.

Because I don't consider MBFS had to fairly accept the car back at this stage – it follows that I don't consider it liable for Mr C's decision to part exchange the car. But even if I were to accept that Mr C had the right to reject the car at this stage, it doesn't necessarily follow that MBFS are liable for losses due to Mr C's decision to resolve the dispute by part exchanging the car if there were other avenues available to him to pursue the matter in mitigation (such as obtaining a report and escalating the matter through informal or formal dispute resolution).

I am sorry to hear about Mr C's distressing experience in the car and I note that this made him lose confidence in it. I want to make it clear that my findings here are not intended to downplay what sounds like an upsetting experience for Mr C and the passenger in the car. However, for the reasons I have described I don't think MBFS should have fairly accepted rejection based on the information available to it at the time.

I think that having issues with a brand new car are frustrating and distressing – but as I don't know enough about the loss of power issue it is difficult to fairly base my award on that. But I note primarily what Mr C says about the first issue, where Mr C says he was out of the car for an extended period – and the courtesy car he had was of a lower spec. I don't have the exact details of how long Mr C was out of the car to get that fixed (from what I can tell it was around 4 months) or how different the courtesy car was and the specific impact on Mr C from that. However, I note Mr C has now accepted an offer from MBFS worth £1,300 in total to put this right. It doesn't strike me as a clearly unfair amount in the circumstances – and importantly Mr C appears to have accepted that this fairly compensates him for the issues outside of MBFS's refusal to allow rejection of the car. So I am not going to direct MBFS to pay more here.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 May 2025.

Mark Lancod  
**Ombudsman**