

The complaint

Mr and Mrs O complain that Mercedes Benz Financial Services UK Limited ("MBFS") supplied them with a car was of unsatisfactory quality.

What happened

Mr and Mrs O entered into a hire purchase agreement to acquire a two-month-old car in December 2021. The mileage at the point of supply was 3,470 and the cash price of the car was £89,980. Mr and Mrs O purchased extras which increased the total amount on the transaction. Mr and Mrs O made an advance payment of £25,809.29 towards the agreement and took credit for £64,170.71, the total payable on the agreement was £97,819.29.

The agreement was created to last for 48 months with monthly payments of £1,500 and an additional purchase fee of £10 in the final month.

Mr and Mrs O have said they drove the car to Lithuania and while there, they took the car in for a service and were advised by the garage in Lithuania that the car had a driveshaft issue, and they were advised not to drive the car back to the UK. Mr and Mrs O have said they were told at the point of supply that they had a three-year UK and Europe warranty but found out when the car needed repair, that the three-year warranty in the UK didn't extend to Europe and they only have two years warranty cover in Europe.

Mr and Mrs O said there were significant delays with getting the parts needed to repair the car and the repair took around seven months. They had to leave the car in Lithuania during that time and take a flight back to the UK. Once the car was repaired, they contacted the dealer for a refund of the cost of repair and after going through a process – including filing a claim in court, it refunded the cost of repair.

Mr and Mrs O raised a complaint with MBFS about the lack of use of the car for the period it was undergoing repairs and the trouble and upset caused. MBFS didn't uphold their complaint and so they referred their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators.

Our investigator concluded that the car wasn't of satisfactory quality as it didn't think MBFS had supplied Mr and Mrs O with a car that was durable in line with the Consumer Rights Act 2015. Our investigator recommended that MBFS refund Mr and Mrs O's contractual payments for the months they were unable to use the car and a further £300 for the distress and inconvenience Mr and Mrs O suffered.

Mr and Mrs O accepted the investigator's findings, but MBFS didn't. It said the issues with the car arose more than six months after the car was supplied, and there was no evidence to show the driveshaft fault with the car was present and developing at the point of sale. MBFS also said it wasn't responsible for the delay with the parts needed to repair the car and asked for an ombudsman 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.

It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. I'm very aware that I have summarised in much less detail what has been submitted by the parties in this complaint. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr and Mrs O or MBFS but reflects the informal nature of our service, its remit and my role in it.

Mr and Mrs O complain about a hire purchase agreement, so our service can consider complaints relating to it. MBFS is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

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.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mr and Mrs O acquired a low mileage used car – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, considering 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, appearance and finish, freedom from minor defects, safety, and *durability*.

I will consider whether there was a fault with the car and if there was, I will consider whether that fault makes the car of unsatisfactory quality, which will mean MBFS will need to put things right for Mr and Mrs O.

Was there a fault with the car?

There are two job sheets from the garage in Lithuania which Mr and Mrs O took the car into while they were there. There was a job sheet from November 2023 and another in June 2024, the job sheets are in Lithuanian but at least one of them has been translated to English. The job sheet from November 2023 details the work that needs to be carried out, this included removing the sealing ring on the differential and left drive shaft and removing/installing front axle shaft. Also, MBFS in its response to this service said, *"it is confirmed that the fault on the car related to the driveshaft issue"*, this suggests it accepts there was a fault with the car.

Based on the information available, I'm satisfied there was a fault with the car. I will now decide whether this fault makes the car of unsatisfactory quality, if I decide it does, I will consider how MBFS should put things right.

Does the fault make the car of unsatisfactory quality?

As stated above, the CRA says one element of satisfactory quality refers to durability and the expectation here is that goods will last for a reasonable amount of time. In this case, the car has suffered a driveshaft issue which has meant Mr and Mrs O couldn't drive the car for around seven months.

The driveshaft of the car is a key component that should be expected to last long into the life of the car. Exactly how long will vary depending on a variety of things and it is difficult to put an exact expectation that would be applicable in every case. In this case, the driveshaft became faulty at around 13,400 miles and when the car was about two and half years old. I think that a reasonable person would consider this to be a premature failure. I say this because this car can be considered a high-end car which cost around £90,000 and Mr and Mrs O were paying £1,500 a month for. This is not an inconsequential amount and thinking about the mileage of the car and the age of the car, it should reasonably have been expected that the driveshaft will last longer than it has done here.

MBFS in disagreeing with the investigator has said there isn't sufficient evidence to show the driveshaft fault was present or developing at the point of sale and it lists a number of things it believes could cause a driveshaft fault including Mr and Mrs O's usage of the car. Despite MBFS' points, it hasn't provided any evidence pointing to the reason for the fault. In any event, it isn't reasonable for a car with such a profile as the one in this case to have such a failure at this stage, Mr and Mrs O had the car for two and the half years and had done 10,000 miles from the point of sale. I wouldn't have expected the car to have such a fault with around 13,400 miles on the odometer.

Overall, I'm satisfied that when considering the requirements of the Consumer Rights Act 2015 around durability, the driveshaft, a key component of the car was not sufficiently durable. And consequently, the car was not of satisfactory quality when supplied to Mr and Mrs O.

How MBFS should put things right

Mr and Mrs O have said they recovered the cost of repair from the dealer and as I've found the car wasn't of satisfactory quality, I would have asked MBFS to refund the cost of repair but as Mr and Mrs O already recovered this from the dealer, I think that fairly resolves that aspect of their complaint.

Mr and Mrs O have said they've kept up with their contractual payments even when the car was being repaired and MBFS hasn't disputed this. In the circumstances, I don't think it is fair for them to pay for the period they were without the car due to it being of unsatisfactory quality. I think MBFS should refund all payments made by Mr and Mrs O for the months they were unable to use the car. Mr and Mrs O have said the car was with the manufacturer approved garage in Lithuania, it's reasonable to assume that garage would have had the same capabilities and parts availability from the manufacturer as any UK based manufacturer approved garage. So, I'm inclined to think Mr and Mrs O would likely have faced similar delays had the car at the same issue in the UK. Mr and Mrs O have also confirmed they tried to find the part from UK garages as well.

The car was in the garage in Lithuania from November 2023 to June 2024, this a period seven months which MBFS should refund Mr and Mrs O's monthly payments. I think it is fair for interest to be added to these payments in the circumstances.

While I agree with MBFS that it wasn't directly responsible for the delay of the parts needed to repair the car, Mr and Mrs O had to pay for their airfare to return to the UK and back to Lithuania again to collect the car once the repair was completed. Also, due to the car being unsafe to drive they couldn't drive around Europe like they would have wanted and likely had to make alternative arrangements for them to stay mobile when in Lithuania and back in the UK. Having a car that suffered a significant fault and needed repairing, plus having to arrange alternative transportation, would have caused Mr and Mrs O some distress and inconvenience. In recognition of this inconvenience, it is fair for MBFS to pay Mr and Mrs O £300 in compensation.

Putting things right

To put things right, MBFS should:

- Refund all payments Mr and Mrs O made after November 2023 to June 2024.
- Add 8% simple annual interest to the amounts above, from the date of payment to the date of settlement†.
- Pay Mr and Mrs O £300 for the distress and inconvenience they suffered.

† HM Revenue & Customs may require MBFS to take off tax from this interest. MBFS must give Mr and Mrs O a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons given above, I uphold this complaint and direct Mercedes Benz Financial Services UK Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 22 July 2025.

Oyetola Oduola
Ombudsman