

The complaint

Mrs C complains about a car she financed with Mercedes-Benz Financial Services UK Limited ('MBFS').

What happened

I am resolving complaints with minimum formality, and as the parties are familiar with the background I will only cover it briefly.

Mrs C financed a new car on hire purchase with MBFS near the start of May 2023. In summary, she says:

- The car broke down more than once due to battery issues early on – and she wants to return it.
- When the car broke down Mrs C got poor customer service in respect of the manufacturers breakdown and repair provision. Along with the third party courtesy car partner.

MBFS offered compensation of £318.89 in its final response to the complaint – but Mrs C did not accept this and escalated the matter to this service.

Our investigator recommended MBFS pay £200 for distress and inconvenience caused to Mrs C by the situation. MBFS agreed to pay this. Mrs C did not accept our investigator's view so the matter has been passed to me for decision.

I asked both parties for more information and am now issuing my finding. MBFS in responding to my enquires clarified that it is willing to pay Mrs C £318.89 it previously offered and the £200 recommended by our investigator.

I issued a provisional decision which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I won't comment on everything the parties have said – only matters I consider to be material to the complaint. This is not intended as a discourtesy but reflects my role resolving disputes with minimum formality.

I note Mrs C's partner is representing her in this complaint. For clarity, references to submissions by Mrs C will also be taken to include those of her representative.

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.

There has been comment in respect of what does or doesn't constitute a matter that this service can look at as part of this complaint. Or what MBFS is fairly responsible for in respect of the actions of third parties. I want to clarify this before proceeding.

Firstly, our investigator has stated this service is unable to look at customer service issues. That isn't correct. We can look at customer service issues in respect of the regulated financial businesses that complaints are made against (in this case MBFS).

There has also been commentary in respect of the responsibility of MBFS for the actions of third parties, including the manufacturer's breakdown service, and the hire car company. Mrs C says this service should be able to look at all their actions as agents of MBFS in respect of the supply of the car.

I think matters are not as straightforward as this. MBFS supplied and financed a car to Mrs C on hire purchase – so legally MBFS are responsible for its quality. Specifically supplying a car that is of 'satisfactory quality' under the Consumer Rights Act 2015. Resolving matters in respect of a car not being of 'satisfactory quality' will fall within the responsibility of MBFS – and that might reasonably include the actions of those working on its behalf. But it won't extend to MBFS being liable for all actions of third parties in relation to the car. In my view this would include matters such as disputes relating to the manufacturer's free breakdown cover (including Mrs C's complaint about where the telephone number for this is located in the car and the lack of a priority telephone line for certain customers) or general customer service issues relating to the manufacturer's network or the courtesy car service (such as perceived rudeness on the phone).

Mrs C has also alleged that there was 'some sort of low level scam' by the manufacturer/hire car company to get her to use a premium rate number to call them back. She has also accused representatives of the manufacturer of 'bullying' and the hire car company of 'pre-meditated fraud' by allegedly understating the opening mileage on the courtesy car agreement. Once again I consider these allegations go beyond the contractual liability of MBFS as a supplier of the car on finance. That isn't to say Mrs C cannot pursue these allegations with the relevant third parties or make reports to the relevant enforcement agencies if she wishes.

That is not to say MBFS isn't fairly liable for the general distress and inconvenience caused to Mrs C by the car not being of satisfactory quality. Such as the distress and inconvenience caused to her daily life from the car breaking down. And MBFS will be fairly liable to reimburse Mrs C for being without a car as a result of the car being of unsatisfactory quality (or having a loan car that isn't a 'like for like'), and any reasonable consequential losses flowing from the breach of contract.

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.

I note here Mrs C financed a brand new car. I think it's fair to say 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.

Here, in summary I note Mrs C says:

- The car wouldn't start on the 19 June 2023 but then started once the battery was recharged;*
- The car wouldn't start on 20 June 2023 and the manufacturers breakdown service found the battery was flat and jump started it;*
- The car wouldn't start on 21 June 2023 which resulted in the breakdown service coming out again and recommending the car go in to a dealership for further investigation.*

It appears Mrs C has provided one breakdown report from 21 June 2023 to corroborate the events described above. However, Mrs C's testimony on what happened with the car is detailed and credible. I think it likely the car wouldn't start several days running as she said – and this is what ultimately prompted her to have a dealership take a look at things.

However, despite what our investigator concluded, there does not appear to be agreement with Mrs C and MBFS about whether the car was faulty or of unsatisfactory quality. It seems (from her testimony) MBFS told her no fault was found. And MBFS has submitted commentary from the dealer which confirms it could not find the battery was faulty but that it put a new one in to attempt to solve the issue.

Despite this, on balance, it appears there was likely a fault with the battery. Noting that it seems unusual for a battery in a new car to discharge itself each day over three days unless there was a fault of some-kind. I note after the replacement Mrs C was not having the same problems which also points to the battery being faulty.

The question now is whether a battery needing replacement at this time is something which means the car as supplied was not of satisfactory quality (and therefore a breach of contract by MBFS under the CRA). A battery is a consumable item that will suffer wear and tear and require periodic replacement. However, I note the car was supplied brand new – and the battery started to fault about 6 weeks after supply. I also note the breakdown report from the 21 June shows the car had covered 1,766 miles. Which is notable, but it isn't excessive. I don't think a reasonable person would expect to need to replace the battery in such circumstances so I consider the car was not of satisfactory quality when supplied.

As the car was not of satisfactory quality Mrs C had the right to a remedy. Here, I note the battery was replaced free of charge. I would consider this to be a 'repair' and a reasonable remedy under the CRA, noting Mrs C was outside her 'short-term' right to reject when the problems started.

I note Mrs C has said she wants to reject the car and has referred to 'three' repairs being attempted. However, I don't agree rejection is fair here. From the records I have from the dealership I only see one entry in respect of a repair in June 2023. And while the CRA does not define what a repair is I consider it unreasonable to include attempts by the breakdown service to jump start the car or running preliminary diagnostics. I also note that even if I were mistaken about this (which I do not consider I am) I do not see persuasive evidence Mrs C attempted to reject the car before the battery was changed in any event (this appeared to

occur later on when Mrs C wrote to the manufacturer in July 2023).

In summary, I don't consider rejection to be a fair remedy here. However, I have considered whether further losses can reasonably be claimed against MBFS.

I don't appear to have any official confirmation from MBFS about how long the car was in for repairs – but I am willing to accept (in accordance with Mrs C's detailed testimony) it was around 6-7 days. I would usually say MBFS should pay for a pro-rated week or so of monthly payments to reflect Mrs C not having a car but paying for it. But here I note a courtesy car was provided. However, I am aware:

- Mrs C says the specification of the hire car was not the same as her financed vehicle – primarily it had less seats; and*
- Mrs C says she was overcharged for fuel and it should be less than the £20.40 billed.*

I don't have a lot of information from MBFS to confirm what hire car was provided and how the specification differs from the financed vehicle. However, I am willing to accept Mrs C's testimony on this. It isn't clear how this impacted Mrs C's use of the car during the relatively short hire period. However, I note that MBFS has offered her a partial rental refund of around £319 when a full pro-rated refund for 7 days without the car comes out to around £195. Because Mrs C was provided a car I wouldn't fairly be recommending a full refund for the time without the car. But the offer from MBFS gives her this and more. It follows, I can't fairly say MBFS should pay more to reflect the different specification of hire car as the offer of this part rental refund is more than I would have usually recommended in the circumstances.

I also don't know exactly how the fuel charge breaks down and whether £20.40 is fair or not in the circumstances. However, noting my findings above in respect of the offer of a partial rental payment– I don't consider MBFS needs to provide further compensation for consequential loss here in any event.

I have considered overall distress and inconvenience. In doing so I note Mrs C's partner has mentioned the distress and inconvenience caused to him with the car including being late for business meetings. I am very sorry to hear about that, however, I cannot make awards for any distress and inconvenience or consequential losses he is claiming. The eligible complaint here is MBFS's customer – which is Mrs C. However, that is not to say the issues with the car have not impacted Mrs C – I am sure they have. It is very frustrating to have financed a brand new car and have the battery go flat several times. And while it appears to have been Mrs C's partner who was inconvenienced in having to drop the car off at the dealership and collect it for repair – I still think this likely had an impact on Mrs C too.

I have considered the information on our website about our awards for distress and inconvenience. I note that a level of minor inconvenience is expected in everyday interactions. However, here the inconvenience caused by the car not being of satisfactory quality is more than the level of frustration and annoyance that might be expected from day to day life and required a reasonable amount of effort to sort out. I note here that MBFS has agreed to pay £200 which our investigator recommended. I think this is more than fair in the circumstances. Noting that MBFS's offer of a partial monthly rental reimbursement goes beyond what I would usually have directed in these circumstances.

I note MBFS has claimed Mrs C has received £250 compensation from the dealership in respect of this matter. Mrs C has confirmed she hasn't. However, regardless of that – the complaint here is against MBFS and what I consider to be its obligations in respect of the quality of the car it supplied. I don't know if the dealer's offer concerned the quality of the car (and consequential losses/distress flowing from that) or broader issues with the manufacturers wider customer care offering (such as its breakdown service) that I don't

consider MBFS fairly responsible for here. If MBFS is concerned about future double recovery for the same issues that is a matter for MBFS to liaise with other parties about. But it doesn't change my decision here.

Mrs C can now decide if she wants to accept my decision to resolve her complaint with MBFS. I note she has requested compensation far in excess of the total amount on offer here (I understand Mrs C wants a refund of finance instalments equivalent to around £20,000) so I expect she won't agree with my decision. However, she is free to reject my decision and may (after taking relevant advice as she sees fit) wish to pursue her claim against MBFS in court.

My provisional decision

I uphold this complaint and direct Mercedes-Benz Financial Services UK Limited to:

- *Pay Mrs C the £318.89 part monthly rental refund it has offered; and*
- *pay her £200 for distress and inconvenience.*

MBFS provided no further comment.

Mrs C responded to say, in summary:

1. MBFS should be held accountable for the failings of its subcontractors and wants me to reconsider the *'position that MBFS can avoid responsibilities by using partners and subcontractors'*.
2. The level of compensation *'does not cover our out of pocket expenses let alone our time, stress and distress'*. Noting that as the car is of a high price the distress and stress caused is *'exponentially greater'*.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

I want to be clear that my position is not that MBFS can avoid its responsibilities by using partners and subcontractors. I have explained in my provisional finding what I consider MBFS is fairly responsible for here in respect of its supply of a car, and that this might include the actions of those working on its behalf. However, I don't consider that MBFS is generally responsible for all the actions of third party manufacturers and retailers – particularly those issues that are more remote and/or don't directly relate to the supply of the car (such as the manufacturer's complimentary breakdown service/its general customer care provision).

Mrs C has also continued to refer to distress and inconvenience suffered by her and her partner. But I have already explained (while I am sorry to hear about the distress and inconvenience he suffered) I am not able to make awards for her partner. I also don't consider Mrs C has persuasively shown she has suffered out of pocket expenses in excess of the award here – or that the award for distress and inconvenience is unreasonable in the circumstances. I do not find her submissions in regard to the cost of the car to be persuasive noting that the pro- rated refund offered by MBFS is based on the monthly rental cost of the car and exceeds what I would usually have recommended in any event (for the reasons already given).

I understand Mrs C wants more compensation than is on offer here, however I draw attention to the following from my provisional finding:

... she is free to reject my decision and may (after taking relevant advice as she sees fit) wish to pursue her claim against MBFS in court.

Putting things right

See below.

My final decision

I uphold this complaint and direct Mercedes-Benz Financial Services UK Limited to:

- Pay Mrs C the £318.89 part monthly rental refund it has offered; and
- pay her £200 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 23 April 2025.

Mark Lancod
Ombudsman