

The complaint

Mr B complains about the quality of a car he acquired under a hire purchase agreement with Mercedes-Benz Financial Services UK Limited (MBFS).

When I refer to what Mr B and MBFS have said and/or done, it should also be taken to include things said and/or done on their behalf.

What happened

In February 2022 Mr B entered into a hire purchase agreement with MBFS to acquire a brand-new car. The cash price of the car was around £56,539 with the total amount payable being approximately £64,578. There were around 48 monthly payments of around £506 and an optional purchase payment of £25,300.

Mr B said he was mis-sold a brand-new electric car, because immediately after getting the car on the very second day he noticed it was not achieving the milage that he was told categorically it will achieve. He said the car was sold to him on the premise that it would be able to travel 257 miles in one single charge of 100%. However, it has never achieved this milage, even if he stops switching on extras such as music, heated seat, radio, phone etc. Mr B said the car only does around 180-190 miles on a full charge.

Mr B said that he received correspondence from the supplying dealership after the sale that proves the car was misrepresented to him. Mr B said he had not raised this issue earlier, as he was dealing with certain personal family circumstances, and because originally, he could not find the email that was sent to him from the supplying dealership. Also, Mr B said that the supplying dealership never informed him about the range calculation or that it was based on the Worldwide Harmonised Light Vehicle Test Procedure (WLTP). Mr B said that the car has been serviced a few times and there had been no technical evidence to suggest that it has a fault. As he was unhappy with the range he is getting, he raised a complaint with MBFS.

In April 2024, MBFS wrote to Mr B and said they will not be upholding his complaint. As such, they will not be looking to accept a rejection of Mr B's car. They said the supplying dealership advised them the car had no fault with the battery, and that the issues had to do with a number of outside factors such as driving style, weather conditions, internal car accessories, just to mention a few.

MBFS said the advertised range of all cars are generated as an industry standard using the WLTP method. The conditions of these are defined by EU law, and a test is used to determine the range they are allowed to publish. MBFS said this is the only figure they can use in their marketing material for the car and those ranges reflect a mixture of both city and motorway driving. They test the car against real world parameters and are designed to give a more accurate indication of the maximum miles he could achieve. This figure is not designed to evidence exact figures and is used as a comparison tool for a consumer to be able to make an informed decision against other makes and models. MBFS said that while the testing provides realistic maximum figures, it is not able to determine the exact range a driver may get, as it will not take into consideration a number of variables. As an example, these include the temperature/weather conditions, how the car is loaded, traffic conditions,

driving styles, and journey types can all influence the range achieved. In addition, the usage of systems consuming electricity within the car such as air conditioning/heating, heated seats or screen demisters can also contribute to further reduction of the range achieved. All batteries are impacted by ambient temperature, and this can in turn affect their performance, and this applies to batteries regardless of their size or capacity. They said when a battery is operated in colder temperatures, this can result in a slightly reduced battery capacity or a less efficient charge. The range is therefore slightly reduced at that time and will improve when temperatures return to a higher level. They also said that generally, electric car range is slightly reduced during winter, and the way that the battery is being charged could also have an impact on the range. MBFS said that if Mr B is using a household 3-pin plug to charge the battery, it does take significantly longer and may not charge his battery up to 100%. Higher rate chargers offer a faster and more efficient charge. In this correspondence MBFS also explained other ways Mr B could get a higher range.

Unhappy with the above, Mr B referred his complaint to the Financial Ombudsman Service (Financial Ombudsman).

Our investigator was of the opinion that the complaint should not be upheld. The investigator thought that the car was not misrepresented, and the investigator said he has not seen any evidence that this car was not of satisfactory quality.

Mr B disagreed with the investigator. So, the complaint 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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law and, where appropriate, what would be considered good industry practice at the relevant time.

Mr B has provided a lot of information, but I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focused on those that are central to me reaching, what I think is, the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

Mr B acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. MBFS is the supplier of the goods under this type of agreement and can be liable if the goods provided were not of satisfactory quality or if the supplier misrepresented the car or the finance at the point of sale. Section 56 deals with “antecedent negotiations” and it explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier (in certain circumstances) before the consumer takes out the credit agreement.

What I need to decide in this case is whether the car Mr B acquired was misrepresented to him by MBFS and/or their agents. To make a finding of misrepresentation, I would need to be satisfied that Mr B was told a false statement of fact that caused him to enter into a contract he would not have entered into otherwise. And if I am not satisfied there has been a

misrepresentation, for completeness I will also consider if the car was of unsatisfactory quality when supplied.

In summary, Mr B feels that the supplying dealership guaranteed him that he would receive a range of 257 miles on a full charge. And he told our service that on the very second day after the car's acquisition, he noticed it was not achieving that mileage. He emailed the dealership and asked why the charge status was showing 229 miles at 100% percent as he thought the car is supposed to do 257 miles. The reply he received said: "The range at 100% is calculated on historic driving ie if you've had the heating on, heated seats and rear window demister and driving style. If you turn all of the above off when charging it will show the you maximum available range." So, Mr B said this is proof he was guaranteed the car would have a range of 257 miles.

MBFS said they were provided information from the supplying dealership. They said they cannot say for certain what was or was not said between the sales executive and Mr B on or before the point of sale, but the sales team would have gone through specific training about electric cars. The details regarding electric cars are clearly stated in all brochures, as well as listed on all free-standing lecterns next to any electric showroom demonstration car. The maximum range of an electric car at full charge will depend on a number of factors the consumer can control, and external factors such as the prevailing weather conditions that the consumer cannot control. They felt that, as Mr B was not able to provide any substantial evidence to support his claims of mis-sale, they would refer him to the owner's manual and the information that was freely available and common knowledge at the time of the purchase in 2022. They say all of this would show that Mr B was provided with the car he agreed to acquire, and that it was common knowledge both then and now that the maximum range of an electric car at full charge will depend on a number of factors.

I've taken into consideration what both sides have said and provided.

First, I should explain that car economy/battery range figures are obtained by following prescribed test procedures and are provided by manufacturers as a comparison tool only. They are not necessarily setting out what the car will regularly achieve, and do not constitute a guarantee.

I was not present at the time of acquisition to hear everything discussed, but when things are unclear, I make my decision on the balance of probabilities. And, as I was not there at the time Mr B entered into the hire purchase agreement, I do not know if any guarantees or promises were made to him regarding the actual range the car would achieve. As such, I have considered all evidence that is available.

Mr B is adamant that he was told he definitely would get 257 miles' range by the supplying dealership and that he saw an advertisement from the manufacturer in December 2021 regarding the car providing 257 miles range in one full charge. Seeing the advertisement he thought this car would meet his objective, therefore, eventually he went to the supplying dealership, and there he explained his requirement for the car achieving at least 250 miles. But not even once he was told about the actual range the car would be achieving, and about the WLTP. So, I have considered this too, but I do not have enough evidence to say that most likely it was guaranteed to him that he would get 257 miles on a full charge. From the email exchange that Mr B had with the supplying dealership, I can see that the mileage range was explained as a 'range' and one that is calculated based on historic driving. It was said that it can be impacted by many factors such as car options used and by the environment.

Also, I can see that the manufacturer's website indicates that a car's range is affected by several factors, some of which are in the driver's control, while others are not and that it may

vary from the actual range a car might achieve. The brochure for the car also indicates that the figures shown may not reflect real-life driving results and will depend upon a number of factors. I think it is more likely than not that these types of statements were also included on the website around the time Mr B entered into the hire purchase agreement, in the brochures he might have seen and, especially, in the advertisement for the car he saw in December 2021. So, it is possible that similar statements were made to him by the supplying dealership before he entered into the hire purchase agreement. As such, I have not seen enough evidence to be able to say that most likely Mr B was guaranteed that he would always be able to drive the car 257 miles on a full charge. As such, I'm not satisfied that by not reaching the advertised range, the car was misrepresented to him.

I understand that Mr B expected to be achieving a mileage range greater than what he is currently achieving. But it is important to note that the full battery charge can fluctuate, and the driving range is impacted by lots of different factors, to name a few: outside temperature or weather, driving style, use of certain car options/features, and its load (including how many people and/or items are in the car). So, the fact that the car is reaching lower ranges on a full charge is not conclusive evidence that the car, most likely, would have consistently achieved far below the advertised maximum range, at least shortly after it was acquired. And with the passage of time batteries of all types degrade. The rate of degradation can be affected by various factors such as number of miles the car had travelled, its age, the way in which it was charged, driven, and used. But based on the issues Mr B has raised, I have also considered whether there might be a fault with the car and whether this could be causing the problems Mr B complains about.

The CRA covers agreements such as the one Mr B entered into. Under the agreement there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered to be 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. I think in this case, those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA 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.

In Mr B's case the car was brand-new. So, I think a reasonable person would expect it to be of a higher quality than a cheaper and/or previously used car. I think it would also be reasonable to expect the car to last a considerable period of time before significant problems occur, and it would be reasonable to expect it to be free from even minor defects shortly after it was acquired.

Mr B was of the belief that he should have been entitled to reject the car.

The CRA sets out that Mr B has a short term right to reject the car within the first 30 days, if the car is of unsatisfactory quality, not fit for purpose, or not as described, and he would need to ask for the rejection within that time. Mr B would not be able to retrospectively exercise his short term right of rejection at a later date.

The CRA does say that Mr B would be entitled to still return the car after the first 30 days, if the car acquired was not of satisfactory quality, not fit for purpose, or not as described, but he would not have the right to reject the car until he has exercised his right to a repair first – this is called the final right to reject. And this would be available to him, if that repair had not been successful.

First, I considered if there was a fault with the car.

Mr B said that the car has been serviced a few times and there had been no technical evidence to suggest that it had a fault. MBFS also said the supplying dealership has indicated that there is no fault with the car or its battery. Based on this, and the evidence available in this case, I cannot say that most likely there was a fault present which would render the car of unsatisfactory quality.

While I appreciate Mr B's strength of feeling regarding his complaint, I do not think I've seen enough to say that, most likely, there has been a breach of contract or misrepresentation. So, it is not fair or reasonable for me to require MBFS to take any further action regarding Mr B's complaint.

My final decision

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 May 2025.

Mike Kozbial
Ombudsman