DRN-5690885

The complaint

Mr M has complained about the quality of a car provided on finance by Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance ("MBFS").

What happened

MBFS supplied Mr M with a new car on a hire purchase agreement in December 2020. The cash price of the car was around £27,700. The hire purchase agreement required payments of around £385 for 48 months followed by a final payment of £10,200. Mr M paid a deposit of £2,500.

In June 2024, when the car was around three and a half years old and had covered around 25,600 miles, Mr M reported that the air conditioning unit stopped working entirely. He said there was a mechanical screaming noise and then the vents stopped delivering cold air. He said it happened within 30 seconds of getting into the car and turning on the engine. Mr M took the car to a third-party garage for a diagnostic.

Mr M said he was told that the compressor had failed on the air conditioning, and he paid around £1,370 for a repair. He said the mechanic said that the compressor had failed prematurely.

In addition, Mr M said that he'd had to pay around £190 to replace two tyre sensors. He complained to MBFS and asked for a refund of what he paid.

MBFS said that the faults had occurred too far on from the point of supply and ultimately did not uphold his complaint. He referred his complaint to our service, asking for a refund of what he paid plus interest and compensation for the inconvenience.

An investigator here looked at the complaint, she said that the car wasn't of satisfactory quality because it wasn't sufficiently durable. She said that MBFS should refund the cost of the repairs plus simple interest, and pay £300 for loss of use and compensation for the inconvenience.

Mr M agreed with our investigator, but MBFS disagreed. In summary it said:

- Any component can fail at any time, and it was difficult to put a timeline on things
- It couldn't see that the car had been serviced by a manufacturer approved garage
- There was no evidence to show that the car had been serviced by an approved garage throughout the agreement
- Without proof of regular servicing the car might not have been maintained in accordance with the manufacturer's guidelines.
- The Consumer Rights Act 2015 (CRA) said that the onus was on Mr M to demonstrate that the fault was present at supply or inherently faulty
- It was unfair that a third party had inspected and repaired the car without giving MBFS an opportunity.
- Had an authorised repairer inspected the car then the repairs would likely have cost less.

- The tyre sensors had corroded so this was more likely as a result of wear and tear rather than an inherent fault
- The award for distress and inconvenience was unfair as it hadn't been aware that Mr M was not kept mobile, and there was no opportunity for it to review this as the repair was carried out without its involvement

As MBFS disagreed the complaint was passed to me to make a decision. I issued a provisional decision which said:

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 (CRA) 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 CRA 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. In a case involving a car, the other relevant circumstances might include things like the age and mileage at the time of supply and the car's history.

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, and safety.

Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long will also depend on a number of factors.

The car was new when supplied and the cash price was around £27,700. So, I think it's fair to say that a reasonable person would have expected the quality to be high, and that the car wouldn't have had any major problems for quite some time.

Mr M was able to cover just over 25,500 miles since the car was supplied in a period of just over three years, which doesn't appear to be excessive and is well within the mileage cap on the agreement. But given the length of time the car had been in Mr M's possession the onus was on him to demonstrate the car wasn't of satisfactory quality.

Based on what I've seen, I'm satisfied that the car had a fault with the air-conditioning unit. This is evidenced by the repair invoice, and the expert opinion.

I wrote to Mr M to ask him for evidence on how he maintained the car. He's supplied evidence that the car was serviced in January 2022, January 2023 and December 2023. He's also pointed out that this was in line with the manufacturer's specifications in the handbook.

Mr M pointed out that the air conditioning unit doesn't have a specific requirement for servicing separately to the full and interim service, and he'd checked this in the handbook and by calling the manufacturer. He said the air conditioning did not have any problems and was functioning as expected up until the point the compressor failed. He said it was still running cold on the morning of the incident so had adequate gas otherwise it would have been running warm.

Considering this was a new car that had been serviced regularly and cost around £27,700, it seems unlikely that such a fault before it had driven 30,000 miles is a matter of wear and tear. It suggests something more fundamental was wrong with the car. And it seems that the car had been maintained as expected by the manufacturer which in my mind makes the fault less likely to be as a result of poor maintenance.

I have to reach a decision on the available evidence and sometimes the issues aren't clear cut. In this case I think that on the balance of probabilities the problem with the air conditioning unit was inherent in the car and as such it would have been present at the point of supply. So, I'm satisfied that the car was not of satisfactory quality at the point of supply because it wasn't sufficiently durable.

I'm less persuaded, however, that replacement of the tyre sensors was as a result of an inherent fault. Unlike the air conditioning, I don't have any expert opinion on whether the sensors failed prematurely. I've taken MBFS comments into account, and in particular what it said about corrosion being caused by external factors. It is my understanding that the sensor lifespan can vary and is impacted by factors such as physical damage and corrosion. MBFS pointed out that Mr M had said the sensors had corroded so much they required replacement by angle grinding them out. So, I think the failure of these items, on balance, is more likely than not due to wear and tear or an external factor. So, I'm not currently intending on making a direction that the cost of repairing the sensors should be refunded. The CRA sets out that (outside of the short term right to reject period) if the goods don't conform to the contract the consumer has the right to ask for a repair. Mr M has already paid for a repair, but MBFS have said that it hasn't had an opportunity to inspect the car before the repair and it could have offered a repair at a reduced cost. So, I need to consider if Mr M's actions have prejudiced MBFS' position here.

Mr M has said that MBFS had an opportunity to inspect the car. But based on what I've seen he first complained on 28 June 2024, and paid for the repair around a week later on 4 July. I can understand that he might have needed to get his car back, but I don't think he's given MBFS sufficient opportunity to consider what he's said, and decide next steps before he paid for the repair. As I explained earlier, the onus was on him to show that the car wasn't of satisfactory quality, and I think he's only been able to provide suitable evidence of that (in the form of the opinion from the mechanic) after the repair had already been made.

If MBFS arranged a repair I think it likely it would have arranged for the supplying dealer to carry it out. I note that the supplying dealer is also part of the manufacturer network. I've not been shown that the repair the manufacturer approved garage would carry out would be fundamentally different to what Mr M's garage carried out.

The problem in this case is that MBFS didn't have sufficient evidence that the car wasn't of satisfactory quality until after the repair had been completed. So, it seems the car was brought back to conforming to the contract by the repair, albeit at a cost incurred by Mr M. But I'm not persuaded that he should be reimbursed the full amount because I can't see that he mitigated the situation by giving sufficient evidence that demonstrated the car wasn't of satisfactory quality, before he went ahead and paid for a repair.

I've not yet seen anything to show that the overall cost of this sort of repair would be any less than what Mr M paid. However, I find it likely that MBFS could have arranged the repair at a reduced cost to itself, and at no cost to Mr M. I can see that in its contact with the manufacturer it was told that if the car was fully serviced at least some of the cost might have been met by the manufacturer as a gesture of goodwill despite it being outside of warranty. I'm not saying that Mr M intentionally took an action that would adversely impact his rights under the CRA. But I can't ignore that any repair should have been arranged through MBFS for the purposes of the CRA. So, I don't think it would be fair for MBFS to *have to pay the full amount here, simply because Mr M chose to continue with a repair.*

In these circumstances working out a fair remedy isn't an exact science. It's my role to have regard for the law but I can also consider what is fair and reasonable in all the circumstances. I don't have any information about how much the manufacturer might have contributed in this particular instance. I have to decide, on a quick and informal basis, the most appropriate way for a complaint to be decided, based on the evidence provided to me. But in this case, I think it would be fair for MBFS to meet Mr M halfway and reimburse 50% of the cost of the repairs to the air conditioning unit. I'm also proposing that 8% simple annual interest is added from the date of the final response rejecting the complaint, until the date of settlement. Either party can supply any comments or evidence in response to this provisional decision.

Similarly, if MBFS had sufficient evidence the car wasn't of satisfactory quality earlier, it might have been able to reduce the impact on Mr M by asking the repairing garage to supply a courtesy car.

I've thought about the compensation. I appreciate this has been ongoing for some time. I can't generally hold MBFS liable for delays in repairs or inconvenience where it didn't yet have sufficient evidence that the car wasn't of satisfactory quality. But I appreciate that Mr M was put to some inconvenience by having been supplied goods that I don't think were of satisfactory quality. And MBFS is the supplier of the goods under this sort of agreement. Mr M had to visit a garage because the car wasn't of satisfactory quality. This would have been inconvenient for him. Overall, I consider £150 compensation, to be broadly fair in all the circumstances and reflective of that inconvenience.

Considering all the circumstances, I think the steps I've set out are a fair and reasonable way to resolve the complaint. Mr M might choose not to accept my decision, and then he'll be free to pursue the matter by any other means, such as through the courts.

MBFS responded to the provisional decision. It said that it did not agree. It said that it wasn't fair to be penalised for a fault four years into an agreement, where there was no evidence that the fault was inherent at the point of supply. It said that as Mr M had chosen to take the car outside of the manufacturer network it was incredibly hard to comment further on the state of the part. In closing it said it would accept the decision to try and bring the matter to a close.

Mr M responded, and I've summarised his comments here:

- He thought an incorrect conclusion had been applied to the facts of the case
- Mr M agreed with the decision that MBFS were liable for supplying a car that wasn't of satisfactory quality
- Mr M disagreed with the answer on the tyre sensors. Although he wasn't able to provide an expert opinion, he thought that rusting and corrosion on part of a car that was only three years old was an inherent fault.
- He had not been asked to supply this evidence and if he had known it was material he would have approached his mechanic at the time.
- He could confirm with a witness statement sworn with a statement of truth that the mechanic had said the tyres sensors were notoriously bad and that for the cost they charge for them they should be better.
- He said that older cars with plastic or rubber valves don't carry the same fault.
- The sensors could not have failed by his cause. It hadn't been in an accident and the sensors were replaced on different sides of the car.

- He accepted that the sensors were corroded, but a car shouldn't rust if left out in the rain. Cars are meant to survive many years, and it is a fundamental requirement that a car is protected from environmental influences. The car is a metal product which cost £30,000 and designed to be driven in all weather conditions, and should be protected from corrosion. It shouldn't have failed so soon which meant it wasn't fit for purpose.
- Mr M disagreed that 50% of the cost of the repair was fair. He said that he had to have the fault diagnosed and repaired to prove the fault to MBFS. MBFS didn't accept the evidence and never would have regardless of the timing, so MBFS has not been prejudiced.
- He did not have an obligation to go to MBFS first, this is not what the CRA says in circumstances where a consumer wants to potentially reject the goods.
- He wasn't necessarily solely seeking a right to repair, replacement or rejection under the CRA. He was seeking damages to compensate for a loss as a result of a breach of contract.
- He thought that MBFS would not have offered a gesture of goodwill, based on the facts and conduct of MBFS. It had disputed the findings of the mechanic without proper reason, claimed the fault was not inherent and declined his claim. It had also disagreed with the investigator's opinion. So as MBFS hadn't changed its position it wouldn't have reached a different conclusion and more likely it would continue to decline liability. So his actions hadn't prejudiced MBFS position.
- He wrote to MBFS on 28 June and it was aware of the fault and the expert opinion. But it took just under eight weeks to respond substantively to the complaint which was not a reasonable period to be without the car, and it did not ask to inspect the car.
- His actions were mitigation against the inevitable rejection of the complaint. So, he should be awarded the full amount. In any case the percentage offered was unfairly weighted towards MBFS.
- Mr M said he was prepared to accept the £150 compensation if the ombudsman decides that MBFS is only liable for the air conditioning. But if the ombudsman agrees that MBFS are liable for the tyre sensors then he would like the £300 set out by the investigator re-instated because he had multiple additional visits which caused further inconvenience.

I'll now go on to make my final decision.

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.

I'd like to thank both parties for responding promptly to the provisional decision.

I've attempted to summarise above the responses that I received from Mr M and MBFS as I want them to know that I've carefully considered all the points made and the evidence provided. I don't intend to address the same points again as in my provisional decision. Instead, I've tried to concisely explain why the additional comments and evidence I've received since I issued my provisional decision haven't changed my mind.

MBFS said that it didn't agree there was evidence that there was an inherent fault with the air-conditioning. I've already explained why I think there was an inherent fault in my provisional decision so I'm not going to go over this point again. And I acknowledge what it said about agreeing with the decision in order to bring matters to a close.

Mr M said that he might have been able to provide an expert report on the tyre sensor had he known earlier that it might be required. We're considering MBFS' response to the complaint, and it didn't have this evidence at the time it considered the claim. We look at the evidence provided to us by both parties. And although he's also offered to provide witness statements, it would not be appropriate for me to take this into account. This is because I don't possess the powers to interview people, cross examine, or compel them to give sworn testimony. But I can give Mr M an answer based on all the facts and evidence before me, including his testimony. But if he thinks he can get a better outcome through the court, then he doesn't need to accept my decision and he'll be free to pursue the matter by other means, getting legal advice as necessary.

I still don't have sufficient evidence to persuade me that its more likely that the tyre sensors were inherently faulty. Not every part of a car is designed to last for many years. Parts of a car that are subject to wear and tear might need to be replaced or maintained during the lifetime of a credit agreement, and won't be the responsibility of the finance provider. I can't ignore that the sensors are on a moving part, and also closest to the ground so more likely to be subject to adverse weather and road conditions. I don't have an expert opinion on whether the sensors were inherently faulty, and even though I've taken Mr M's testimony about what his mechanic said into account, I don't think that goes far enough for me to persuade me of the lack of durability of this part. I'm not saying that Mr M has caused the sensors to fail. Just that I can't determine in this case that they weren't sufficiently durable.

I accept and agree that Mr M is entitled to make a claim for damages because of a breach of contract, as opposed to other remedies that are set out in the CRA. I've listened and understand why he doesn't think it is likely that MBFS would ever have changed its position no matter his actions. But considering the length of time the car had been in his possession the onus was on him to demonstrate that the car was not of satisfactory quality. He didn't have sufficient evidence that the car wasn't of satisfactory quality when he first contacted MBFS, and the evidence only came about during its time to consider the complaint, but crucially *afte*r he'd already paid for a repair. He could have presented MBFS with a diagnosis/opinion from his expert, without committing to a repair, and then MBFS would have had the option to get that confirmed through its own network. The car was still MBFS' asset until Mr M had finished his payments under the agreement. And if it agreed that there was an inherent fault it could have arranged a repair at a lower cost to itself. Because Mr M didn't give MBFS sufficient evidence that the car wasn't of satisfactory quality *before* he paid for a repair, I still think it has prejudiced MBFS position, and it wouldn't be fair to award the full amount.

MBFS hasn't given an indication of how much the manufacturer might offset the cost, but the Financial Ombudsman has previously seen instances where this sort of contribution is made. So, in the absence of anything further indicating a more precise remedy, I think meeting Mr M at the halfway point is still a fair and reasonable way to resolve the complaint on a quick and informal basis, as I'm required to do.

Overall, while I know Mr M will be disappointed with my decision, I don't find I have the grounds to direct MBFS to pay him the damages he's seeking. I haven't seen anything further to change my decision on the compensation amount.

My final decision is the same as set out in my provisional decision, and above.

My final decision

My final decision is that I uphold the complaint and direct Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance to:

• Reimburse Mr M 50% of the cost of the repairs to the air conditioning unit
• Pay 8% simple annual interest on the above from the date of the final response to the date of settlement*
• Pay £150 compensation for the inconvenience caused

* If Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 August 2025.

Caroline Kirby
Ombudsman