

## **complaint**

Mrs R complains about issues she's experienced with a car supplied with finance from Mercedes-Benz Financial Services UK Limited.

## **background**

In February 2019 Mrs R was supplied with a car and entered into a hire purchase agreement with MBFS.

Mrs R experienced a problem with the bonnet not closing. The car was returned to the dealer in February 2019 and a repair was carried out.

Mrs R continued to experience the same issue. She said when she was travelling over a certain speed the warning light came on to show that the bonnet was open.

Mrs R complained to MBFS. She asked to reject the car. MBFS advised Mrs R to book the car back into the dealer for further investigation.

The dealership inspected the car and found that one of the manually adjustable straps was extended which meant the bonnet wouldn't sit closed. It said this must've been adjusted since the repairs were carried out.

Based on this information, MBFS declined the request to reject. It said the manually adjustable straps could be adjusted by anyone and weren't an inherent fault.

Mrs R wasn't happy with the response and complained to this service.

Our investigator upheld the complaint. He said the third party garage reports and the independent engineer's report stated that there were alignment issues with the bonnet despite a repair having been carried out by the dealer. The investigator said he didn't think the issue should've occurred so soon after the point of supply and felt that the car wasn't of satisfactory quality. He recommended rejection.

MBFS didn't agree. It said that if the repairs hadn't been satisfactory it would've expected Mrs R to have returned the car to the dealer sooner than she did. It also felt that the dealerships comments about the manual adjustment to the rubber straps had been overlooked. MBFS said the issue was caused by external influences and not as a result of an inherent defect. It didn't accept the findings of the independent report and said the conclusions were based on customer feedback. It also said the initial repair was carried out without any acceptance that there was a fault.

## **my findings**

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

Because MBFS has supplied the car under a hire purchase agreement, there's an implied term that it has to be of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. I would expect a second hand car, such as that supplied to Mrs R, to have a degree of wear and tear. So in order to uphold this complaint I would need to be satisfied that the car

wasn't of satisfactory quality at the point of supply due to an inherent defect as opposed to general wear and tear.

Mrs R and MBFS disagree about whether the car had a fault at the point of supply. In order to reach a decision I need to look at all of the available evidence and determine, on the balance of probabilities, whether I think the car was of satisfactory quality at the point of supply.

Mrs R experienced problems with the bonnet within a very short time of the point of supply – she has said that it first happened on the day the car was collected. The car was repaired by the dealer. Mrs R has said that following the repair she didn't drive the car for a while but when she did she realised that the issue hadn't been fixed.

MBFS has said that the dealer found no fault with the car when it was returned but carried out adjustments to the panels for realignment.

Under the Consumer Rights Act 2015, where a fault arises in the first 6 months, there's a presumption that it was present or developing at the point of supply, unless the business can show otherwise. The business is allowed one attempt at repair. If the repair isn't successful the consumer can reject the car. After 6 months the burden of proof is reversed and it's up to the consumer to show that the fault was present at the point of supply.

Because the issue with the bonnet arose in the first 6 months, it's up to MBFS to show that there wasn't an inherent fault.

I've taken into account the comments made by the dealership when the car was returned to them for further investigation. These comments suggest that the manually adjustable straps have been adjusted causing the bonnet not to close properly. The dealership said the straps must've been adjusted since the repairs were carried out because Mrs R wouldn't've accepted the car back after the repair if the bonnet wasn't shutting in line.

I've also taken into account the reports from the two third party garages. The first (H) said there were unequal gaps at the rear of the bonnet caused by alignment issues. It recommended adjustments to make the bonnet shut on both sides more easily. The second (G) said the lines across the top of the bonnet didn't line up correctly. It believed something was twisted or the bonnet had been removed and misaligned when reinstating.

An independent engineer's report can help in deciding whether or not a fault was present at the point of supply. In this case an inspection was carried out by ACE. The engineer found that the bonnet was out of alignment to the offside. He also found that the bonnet catch loops were loose and that when closing the bonnet the nearside catch needed several attempts before the catch would lock into place because the bonnet catches were out of alignment. The engineer concluded that a bonnet alignment had been carried out which required further investigation and adjustment.

All of the reports – the third party garage reports and the ACE report – conclude that the bonnet is misaligned. The only report which suggests why this might be the case is the G report, which suggests that either something is twisted or the bonnet been removed and misaligned when reinstated. It doesn't say when this might have happened.

I've considered all of the reports carefully. And I've taken into account the comments made by the dealership. Only the dealership has said that the bump stops have been adjusted and

that this is the cause of the issue. If it was the case that the bump stops had been extended, and that this was the cause, I would've expected at least one other of the reports to have mentioned this. But none of them have.

On the balance of evidence, I'm persuaded that the other three reports outweigh the dealership's comments.

I've considered the pre sale photos of the car. I can't see any evidence of misalignment. That said, I can't be certain of when the photos were taken or of whether something happened to the car between the photos being taken and the car being supplied to Mrs R which might've caused the bonnet to become misaligned. It's for this reasons that I can't be certain that the bonnet wasn't misaligned when the car was supplied.

I've had regard to the fact that the dealership has already attempted a repair. I've noted the point made by MBFS about no fault being diagnosed but if this were the case I don't think the dealer would've realigned the panels for no reason. I'm persuaded by the weight of evidence that the bonnet is misaligned. Under the relevant legislation, and because the business has had one attempt at repair, I'm of the view that Mrs R should be allowed to reject the car.

I appreciate that MBFS think the issue has been caused by an external factor. I've already explained why I don't think the bump stops are the cause of the problem. The weight of evidence is against this conclusion. In addition, I haven't seen any conclusive evidence that the car has been tampered with.

Taking all of the available information into account, I think it's more likely than not that there was a fault with the bonnet at the point of supply. I'm not satisfied that MBFS has rebutted the presumption that the fault was present at the point of supply. The dealer has attempted a repair and this has been unsuccessful. MBFS should allow Mrs R to reject the car.

### **my final decision**

My final decision is that I uphold the complaint. Mercedes Benz Financial Services UK Limited must:

- Allow Mrs R to reject the car
- Arrange for the car to be collected at no cost to Mrs R
- Refund the deposit together with 8% interest from the date of payment to the date of settlement
- Refund two monthly instalments to reflect impaired use
- Refund the ACE report fee
- Remove any adverse data in relation to the agreement on Mrs R's credit file
- Pay £150 compensation for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 5 June 2020.

Emma Davy  
**ombudsman**