

The complaint

Mr R complains about the quality of a car supplied to him on finance by Mercedes-Benz Financial Services UK Limited ('MBFS').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

MBFS supplied Mr R with a brand new car ('Car 1') on hire purchase in April 2022. However, Mr R had issues with that car and in July 2022 it was replaced by the dealership for another ('Car 2'). Mr R then had further issues with Car 2 and in December 2022 it was replaced for another ('Car 3').

Mr R says he had only accepted Car 3 under protest and it also has several issues. Mr R wants to be able to end the agreement and reject the car.

Our investigator upheld the complaint and said that Mr R could reject the car and end the agreement. MBFS disagreed with the view – in summary, it said that in its response to his complaint in March 2023 it offered Mr R a refund of some rentals, and further support with any ongoing repairs or faults. It says that this was a fair response to the complaint at the time – and had it known of the issues since then it might have acted differently, but wasn't given the opportunity to do so.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

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 here') 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.

MBFS supplied Mr R with a brand new car. So I think it's fair to say that 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.

Mr R has explained that the car he collected had problems from an early stage including issues with the parking camera not functioning and issues with engine warning and passenger airbag lights. It appears that attempts to repair these ended up damaging the car further. There appears to be no dispute by any party that Car 1 was not of satisfactory quality or that the repairs did not work out. However, for completeness, I am persuaded of the same from the information I have including Mr R's credible testimony and timeline about the problems and the fact that the car was replaced shortly after supply.

Replacement is a valid remedy under the CRA. However, when looking at what is fair as a resolution to this complaint I think it important to note that this had come after MBFS (through its dealer) had already been given the opportunity to repair the issues with the car. Which means that under the CRA (which permits one attempt at repair or replacement) Mr R actually was able to exercise his final right to reject at this stage. There isn't any information to indicate he was given that option.

Car 2 (which I understand was nearly new) also appears to have been problematic. There appear to have been issues with breakdowns and engine warning lights from an early stage. This is not what a reasonable person would expect in the first few months of contracting for a brand new car. No parties appear to dispute that Car 2 was not of satisfactory quality either. And similarly I am persuaded of the same from Mr R's credible testimony and the fact the car was replaced in a short timeframe.

At this stage it appears that in order to remedy the initial breach of contract with Car 1 there had been several attempts at repair and a replacement. Under the CRA remedies it is quite clear that Mr R was entitled to exercise his final right to reject as either repair/replacement had failed to remedy the outstanding breach of contract. But once again there is no information to indicate Mr R was given this option. And I think at this stage it would have been fair not just because the CRA allows it – but because he was paying for a brand new car and clearly suffering multiple issues and extended inconvenience.

Mr R has indicated to this service that he didn't want yet another replacement at this stage. He said he accepted it under protest. I think that is very likely to be the case considering the issues to date. So, even if I accepted that replacement was a fair remedy for Car 1 (and as I have said there are question marks over this) I don't think it was a fair remedy for Car 2.

MBFS has pointed to events that have transpired since its final response letter which it says it has not fairly been able to respond to. I think these are fairly something to take into consideration as part of this complaint as they are intrinsically linked to the complaint about the quality of the car made to MBFS in the first place. And I note that MBFS is aware of these now but has not explained how it would put them right. However, even if I disregarded these more recent events it is quite apparent that by the time MBFS issued its final response in March 2023 – there was already more than sufficient evidence to show that Mr R should fairly have been given the option of rejecting the car. At this stage he was in a second replacement (Car 3) after a timeline of multiple issues and repairs. All this information would have been reasonably available to MBFS at the time through reasonable investigation of the history of the matter. Furthermore, at the time of investigation MBFS could likely have learned that Mr R had already reported issues to the dealer with Car 3 (such as a knocking noise which I can see he emailed it about in December 2022).

So when MBFS responded to Mr R's complaint it wasn't fair for it to simply offer compensation for certain months of finance payments / distress and inconvenience. In line

with the remedies in the CRA it should have offered Mr R the final right to reject. And had it done so I think Mr R would have accepted that.

As I have indicated - Mr R has provided more recent and credible information to show that Car 3 has been problematic – with warning lights going off leading to a module replacement, and some unresolved issues around the airbag warnings. This all certainly reinforces rejection as a fair and reasonable remedy now. But as I have already indicated – even disregarding these more recent matters – there was already sufficient and strong information available to MBFS to support rejection as a remedy as part of Mr R's legal rights under the CRA.

MBFS could have offered rejection previously, it follows that I think it fair and reasonable that it now allow Mr R to reject the car as a resolution to this complaint. The agreement should be brought to an end at no further cost to Mr R and he should have his deposit/part exchange contribution refunded so he is not disadvantaged.

I am persuaded that Mr R has benefited from the agreement so far as he has broadly been kept mobile with the use of a vehicle of sorts. However, I note that due to the multiple issues with the various cars Mr R has said he has had to drive different courtesy cars for extended periods, which sometimes were not of a suitable and equivalent specification. Furthermore, there appear to have been some infrequent occasions where cabs were necessary. MBFS has not provided persuasive evidence to discount Mr R's account which seems credible considering he has had the car replaced twice and is now on Car 3. So I think Mr R's use of the car overall can fairly be considered impaired to a degree.

I also note Mr R has been caused significant worry and frustration by this case. It appears that all three cars have presented worrying issues – and Mr R has described in particular his concern about the airbags and the safety of his family. The strain of this matter has gone on for an extended period (around two years now) and has not been fully resolved. Mr R has also apparently suffered significant inconvenience from going in and out of the garage multiple times to get the various problems with the various cars looked at. I believe what he says and have also seen evidence of things he has reported, photos of ongoing warning lights and issues which have been looked into at the garage.

I have carefully thought about all the things Mr R has said and the particular circumstances here. Our investigator had recommended MBFS refund Mr R 5% of the monthly payments he has made to broadly reflect impaired use and pay him £750 for distress and inconvenience. I think it arguable that the impaired use award could be a bit more and the distress and inconvenience slightly less – but this is not a science and ultimately I think it evens itself out and this is a broadly fair way to put things right. Importantly Mr R agrees with this and MBFS has not made persuasive arguments as to why these are not fair amounts.

Mr R says he had to pay £80 to transfer his private licence plate to Car 3 and he never got this back. If Mr R provides evidence of this cost to MBFS he should get this back too as the additional transfer is a result of the ongoing quality issues with the cars.

Putting things right

MBFS should put things right as I have explained below.

My final decision

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

- Take back the car at no cost to Mr R and end the agreement with nothing further to

pay. It should ensure there is no adverse footprint from the agreement on Mr R's credit file.

- Refund Mr R's deposit and part exchange contribution of £8,349.
- Refund 5% of each monthly payment Mr R has made for impaired use.
- Refund the £80 licence transfer on production of a receipt for this.
- Pay 8% simple yearly interest on all refunded amounts calculated from the date of payment until the date of settlement.
- Pay £750 for any distress and inconvenience caused to Mr R by the issues with faulty goods as described above.

If MBFS considers that it needs to deduct tax from my interest award it should provide him with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 September 2024.

Mark Lancod
Ombudsman