

The complaint

Miss S complains that a car she acquired via a hire purchase agreement with Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance ("MBFS") wasn't of satisfactory quality.

What happened

In October 2021 Miss S entered into a four-year hire purchase agreement for a new car with MBFS.

In November 2021 the driver's screen went blank meaning the speed and gear of the car wasn't showing. Miss S called out a roadside assistance company who advised that the car should not be driven in that condition. They also suggested that Miss S should move away from the car with the fob for a period of time and then retry. Miss S followed this advice and after 45 minutes the fault cleared, and she was able to drive the car.

Miss S says this was an intermittent fault that would reoccur, meaning there were times she would have to move away from the car and wait. This was stressful and inconvenient. Miss S says she was worried the car wasn't safe to use.

As the car was covered by a warranty, Miss S took it into a local dealership for investigation. She says she was told on collecting the car that the fault was fixed but wasn't then given any report or paperwork as to what repair had been carried out.

Following this repair, Miss S says the fault continued to occur intermittently. She raised a complaint with MBFS and asked to reject the car and end the agreement. Miss S said the car wasn't safe and so wasn't of satisfactory quality. Miss S also made a number of calls to MBFS about her complaint but says she didn't receive a response. Miss S says she told MBFS that she had a number of photos and a video which were all time stamped showing the problem.

MBFS didn't ask to see Miss S's evidence but contacted the dealership who confirmed a repair had been undertaken at the end of March 2022 which they said had been successful and that no further issues had been raised with them by Miss S about the car.

In November 2022, MBFS issued its final response letter to Miss S. It said the evidence was the car had suffered a display failure in November 2021 and March 2022, following which a warranty repaired had been undertaken. MBFS said there was no evidence that the fault hadn't been fixed but if Miss S took the car for diagnostics. it would review any evidence produced.

Miss S was unhappy at MBFS's decision and decided to sell the car and settle the outstanding finance in December 2022. She said this had caused her a financial loss and she also made a complaint to this service.

Our investigator didn't recommend that Miss S's complaint should be upheld. She said on the evidence that had been provided she thought there was a fault with the car that occurred

intermittently. Our investigator said that although a repair had been carried out, this hadn't been successful as shown by the time-stamped evidence provided by Miss S and so, the car wasn't of satisfactory quality. However, our investigator said that although MBFS hadn't asked for evidence of the fault during its investigation, it had been clear in its final response letter that it wasn't upholding her complaint due to a lack of evidence the fault was still present. Our investigator said that as Miss S hadn't then uploaded her photos and video to show the fault, MBFS hadn't been allowed to fully review its decision. She said that instead Miss S had sold the car. And that by doing this Miss S hadn't mitigated her losses as selling the car at a loss hadn't been necessary.

Our investigator said she accepted MBFS's service to Miss S hadn't been what would have reasonably been expected and because of that she thought the £250 compensation offered by it to Miss S would be fair.

Our investigator also said that she wasn't entirely satisfied that the fault with the car had persisted to the point when Miss S had sold it, since she'd achieved a sales price in line with what would be expected for a car of that age that did not experience a fault. In light of that, our investigator said, she didn't think compensation for any loss of value or being out of pocket was fair and reasonable.

Miss S disagreed with the view of our investigator. She said £250 compensation was insufficient for the distress and inconvenience caused to her dealing with the faulty car. Miss S said that she would have kept the car had it not been faulty, but she was forced to sell it as it was unreliable, and this had led her to suffer a financial loss since MBFS had said she could not reject it. She said she had only two choices to continue to pay for a car that was faulty and she did not wish to use or to sell it. Miss S said she had raised her complaint with this service because she felt MBFS hadn't had the right to refuse her request to reject the vehicle.

Miss S also said that MBFS had declined her offers to provide evidence and this failure to properly investigate had caused her to believe that it had no intention of upholding her complaint and her request to reject.

As the parties were unable to reach an agreement the complaint was passed to me and I issued a provisional decision along the following lines.

When looking at this complaint I needed to have regard to the relevant law and regulations, but I was not bound by them when I considered what was fair and reasonable.

As the hire purchase agreement entered into by Miss S was a regulated consumer credit agreement this service was able to consider complaints relating to it. MBFS was also the supplier of the goods under this type of agreement and was responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that 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 the goods.

Here, the car was brand new and therefore it was reasonable to have expected it to be fault free. Miss S had explained how she had experienced a fault with the vehicle's inboard display only a few weeks after acquiring it. She said that this fault meant she was unable to drive it at times because it didn't show the speed or gear the car was in which would have been dangerous and illegal. Miss S had provided a number of date stamped photos and a video to show the problem the car was experiencing. She also said that this fault was intermittent in nature. Looking at the evidence that had been provided, I thought there was sufficient information to say that the car had developed a fault within a short time of Miss S acquiring it.

I also didn't think it was disputed that Miss S had taken the car to be repaired by the garage in March 2022 which Miss S said hadn't been successful as the same fault arose again within a short time. She also said she wasn't sure what work this garage had carried out since it never provided her with the details despite her requesting that it did. I'd seen that the garage informed MBFS that it had performed a software update.

I'd also seen that Miss S had complained to MBFS and informed it that the fault had reoccurred on a number of occasions both before and after the repair. I couldn't see that MBFS had asked for evidence from Miss S to support what she had been saying, and I didn't know why it hadn't but I thought this was more likely due to not providing Miss S with a satisfactory service rather than a predetermination that it wouldn't uphold any request to reject the vehicle.

Looking at the evidence that had been supplied by Miss S, I'd seen she had shown the car suffered the same fault at least seven times after the repair in March so I was satisfied that the repair hadn't been successful. I thought I could therefore fairly say that the car hadn't been of satisfactory quality at the point of supply and that the retailer had been provided with an opportunity to repair but had been unable to cure the fault. In these circumstances, and in line with the Consumer Rights Act, I thought Miss S was entitled to reject the car and end the agreement.

However, I'd seen that Miss S had already sold the car and settled the agreement. She said she had no choice but to take this action due to the decision of MBF not to allow her to reject the car. But I thought she had had another option. Looking at the final response letter from MBFS it had said clearly that it hadn't any evidence the fault hadn't been fixed during the repairs in March 2022 but that it would review that decision if evidence was produced. I hadn't seen that Miss S had responded to that letter and sent it the evidence she had provided to this service. I thought this would have been reasonable action to take and would have allowed MBFS to have properly reviewed her complaint.

So, although MBFS hadn't provided Miss S with an adequate service in respect of this matter I didn't think her actions had been entirely reasonable either and I needed to take this into account when considering a fair settlement for this complaint. I didn't think Miss S had mitigated the losses she had experienced by selling the car when she had.

I didn't know the number of miles Miss S had driven the car for and while I accepted her use of it would have been spoiled, I assumed that as the evidence of the fault showed it had been intermittent and had occurred in November and December 2021, February, March, June, July, August and August of 2022 that she had made some use of it while in her possession. It would be usual for any use to be paid for by the consumer, but, as I didn't have enough evidence to say how much use Miss S had made of it I wasn't going to ask MBFS to reimburse any payments she had made under the agreement.

However, I did think it would be fair for Miss S to be reimbursed the deposit she had paid under the agreement as this would have been returned to her had she rejected the car and

ended the agreement. The agreement showed that the deposit was £3,500 though it had also stated this may consist of a contribution from the dealer or manufacturer. If there had been such a contribution, then I wouldn't ask for that part to be reimbursed to Miss S, only the amount she had actually contributed.

Miss S said that the price fetched for selling the car wasn't relevant because she had the right to reject it, but I disagreed with that view. I'd seen that the car had fetched a price that would be expected had it been fault free and this could support the view that the problem with the onboard display was no longer present. But I also thought it had been Miss S's choice to sell the car and I didn't think it would be fair to require MBFS to cover any loss she may have suffered in doing so. I couldn't reasonably say that had MBFS seen Miss S's evidence it wouldn't have agreed that the repair had failed. In all these circumstances, I wasn't going to ask MBFS to make any reimbursement to Miss S for losses arising from selling the car.

But I thought it would be fair for Miss S to receive some compensation from MBFS in respect of its handling of her complaint about the car. I agreed it hadn't properly investigated, leaving her to deal with the faulty car and that this would have caused her distress and inconvenience. I thought £300 (in place of the £250 offered) would be fair in the circumstances.

For the reasons given I intended to uphold Miss S's complaint, but I wasn't asking MBFS to reimburse all the costs Miss S said she had faced as I thought she could have reduced her losses by not choosing to sell the car when she had.

Neither party has asked me to reconsider any part of my provisional 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.

Although neither party has asked me to look again at the conclusions I reached on the evidence provided, I have still reviewed everything including the outcome I reached in Miss S's complaint. I haven't changed my view and I am upholding her complaint.

I still think that it was more likely than not that the car wasn't of a satisfactory quality at its point of supply but that by not providing further evidence to MBFS and selling the car on, Miss S had neither allowed MBFS to fully investigate nor mitigated her own losses. I couldn't reasonably say that had MBFS seen the evidence Miss sent to this service that it wouldn't have agreed that the repair had failed and allowed her to reject it. By choosing to sell the car at the time she did then, I thought it was fair that any financial loss that resulted from that should be for Miss S to bear.

For the reasons given above, I don't think Miss S should be reimbursed any payments she had made under the agreement. However, the repayment of the deposit would be fair as Miss S would have received that back had she rejected the car and had the contract cancelled. And as the amount she had sold the car on for had been less than the amount borrowed under the credit agreement, this reimbursement wouldn't place her in a more advantageous position than had she rejected the car and handed it back to MBFS.

Putting things right

I'm asking Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance to do the following:

- Reimburse any deposit amount paid by Miss S together with interest at the annual rate of 8% simple from the date of payment until the date of settlement.
- Pay Miss S a total amount of compensation of £300 for the distress and inconvenience dealing with the faulty car.

My final decision

For the reasons set out above I'm upholding Miss S's complaint and I'm asking Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance to do the following:

- Reimburse any deposit amount paid by Miss S together with interest at the annual rate of 8% simple from the date of payment until the date of settlement.
- Pay Miss S a total amount of compensation of £300 for the distress and inconvenience dealing with the faulty car.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 26 September 2023.

Jocelyn Griffith
Ombudsman