

The complaint

Miss P complained to Mercedes-Benz Financial Services UK Limited (MBFS) that it didn't treat her fairly when she didn't meet her final payment under a hire purchase agreement and it issued charges on collection of the car.

What happened

MBFS entered into a hire purchase agreement for a new car with Miss P in June 2016. The cash price of the car was £30,674 and the total amount owing under the agreement (including interest and fees) came to £35,374. Miss P paid a deposit of £4,000 and the remainder was to be paid in 48 monthly instalments of £304 with an optional final payment (balloon payment) of £16,750 and a £10 fee for exercising this option (all figures rounded).

Miss P met all her repayments up to and including May 2020. Her final monthly payment was due to be taken on the 24 June 2020. The direct debit for this was rejected along with the optional final payment request. Miss P says that the payments were rejected as she didn't have enough money in her account to cover this amount.

Miss P says she wanted to discuss her end of agreement options but had been unable to get through to MBFS either by phone or email. She says she emailed to request a payment holiday and told MBFS that she wished to refinance her agreement or return the car and take out a new lease. However, when it was possible to visit a garage she was told that it was too late to qualify for a refinance agreement and that the rejected payments had had a negative impact on her credit file. She was advised to pay a settlement fee of £300 and to return the car in good condition. Miss P says she paid for repairs and MBFS collected the car in January 2021.

MBFS has provided inspection reports dated the 4 and 6 January 2021 which list various items which needed repair or replacement. These included a cracked windscreen, damage to the bumpers and a scratched seat back. It estimated that the cost of repairing or replacing these items amounted to £737.88 and said it required Miss P to pay this as set out in the Vehicle Returns Standards information which accompanied the agreement.

MBFS also charged Miss P for the use of the car from 24 June 2020 to 4 January 2021 at a rate of £10.14 per day plus VAT for 192 days, amounting to £2,360.59. It levied a charge for the miles driven above the limit of 40,000 set out in the agreement at a rate of £0.07 per mile, amounting to £363.55. It confirmed in its final response letter to Miss P that she owes a total of £3,462.02.

Miss P complained to MBFS in February 2021 because she disputed these charges. MBFS didn't uphold her complaint and said in its final response to her in March 2021 that the charges had been correctly applied.

Miss P brought her complaint to us in July 2021 and one of our investigators looked into it. They found that MBFS had correctly applied the damages and additional car hire charges, but not the mileage charge. They recommended that MBFS waive the mileage

charge but not that it amend Miss P's credit file.

MBFS agreed with this recommendation but Miss P didn't and asked for her complaint to come to an ombudsman to resolve. I sent out a provisional decision on 21 September 2021 explaining why I thought Miss P's complaint should be upheld in part and setting out my proposals for what MBFS needed to do to put things right for her. This is my final decision and will be legally binding if Miss P accepts it.

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.

Having reviewed the matter again and having no new information to consider, I see no need to depart from my provisional conclusions. I'll set out my reasons for upholding Miss P's complaint in part again in this final decision.

As I'd said in my provisional decision, when considering this matter I've taken into account the law and relevant regulatory rules. These include, for example, the Financial Conduct Authority's (FCA) Consumer Credit Handbook (CONC) which sets out its regulations and guidance for lenders such as MBFS about what should happen before and during credit agreements.

All guidance is available on the FCA's website so I won't set it out in detail here. In summary, MBFS's overarching obligations were, and are, to:

- Pay due regard to their customers' interests and treat them fairly.
- Pay due regard to their customers' information needs and communicate information in a way that is clear, fair, and not mis-leading.

I've also borne in mind more recent guidance issued by the FCA from April 2020 which set out how it expected businesses to provide *"exceptional and immediate support"* to customers in motor finance agreements facing temporary payment difficulties because of coronavirus.

I've quoted some sections of this below as I think these are particularly relevant to this case.

"Firms should make it as easy as possible for their customers to contact them both online and by phone... Where customers have been unable to reach timely agreement with firms for a payment deferral because of firms' operational difficulties and subsequently miss a payment which is reported to their credit file, or where they have entered into a similar temporary payment deferral arrangement with their lender as a result of the coronavirus situation which has resulted in a worsening arrears status being reported, we would expect firms to work with customers and Credit Reference Agencies to ensure that any necessary rectifications are made to credit files to ensure no worsening arrears status is recorded during the payment deferral period. Firms should also ensure no default or arrears charges are levied in relation to payments missed in these circumstances."

"There is no expectation under this guidance that the firm makes enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, or whether this is not in the customer's interests. Firms can, however, choose to make the enquiries they consider necessary in order to satisfy themselves that the customer is eligible for support and to identify whether the customer would benefit from any additional support, provided that this does not delay the provision of timely support."

“Where the customer has the right to use the vehicle, firms should not take steps to terminate the agreement or seek to repossess the vehicle (whether by way of any requisite legal proceedings or otherwise) where the customer is experiencing temporary payment difficulties as a result of circumstances relating to coronavirus and needs use of the vehicle. We consider that seeking to terminate the agreement or commencing or continuing repossession action as described above is very likely to contravene Principle 6 - absent exceptional circumstances (such as a customer requesting that repossession continues).”

Bearing all this in mind, I think the main questions I need to consider are did MBFS treat Miss P fairly in its dealings with her, for example when she told it she was having payment problems due to the pandemic and asked for help? Did MBFS provide Miss P with clear, fair and not misleading information and, ultimately, did it pay due regard to her interests and treat her fairly?

What happened

Our investigator set out in detail what happened after Miss P took out the agreement in their view to both parties. Neither party has disagreed with this account so I don't think the events themselves are in dispute. MBFS has provided further information since then, including a statement of account and a record of contact with Miss P. I'll begin with a summary of events as I understand them based on information both parties have provided so it's clear what I've relied on.

Miss P told us that she had made attempts to get in touch with MBFS prior to the end of her contract in June 2020 to discuss what to do next however she'd spent nearly four hours collectively trying to get through to its customer services to no avail. She says her intention at this time was to refinance the balloon payment and keep the car.

Miss P provided a record of text messages sent to the selling dealership in response to a letter from MBFS about the impending end of her contract. These were dated 11, 16 and 19 June and the last exchange shows the dealership provided a telephone number for Miss P in response to her request for advice regarding refinancing her agreement.

Miss P also provided copies of email exchanges between her and MBFS around that time. She emailed MBFS on 23 June 2020 to say:

“My contract is due to end tomorrow, I did email previously after struggling to get through via telephone, I'm contacting you urgently today for your assistance.

I do not currently have the funds to cover the balloon payment. I work in a [-] which was one of the first establishments to close due to the virus. And while I have managed to make the last few months payments on my agreement I am asking for a further few months payment holiday and extension to my contract in order to let me recuperate from the financial difficulties I've experienced over the last few months. Hopefully this will also give me to opportunity to evaluate how to proceed with my current financial agreement with Mercedes, whether I can refinance the balloon payment or start a new lease and return the car to the dealership once they are back up to speed with business.

Please do not attempt to make the balloon payment as it will not go through, please contact me as soon as possible to let me know how to proceed.”

23/06/2020 Miss P's email was acknowledged, and she was given an expected timescale for a response.

29/06/2020 MBFS emailed Miss P to say that it needed some information from her to consider her request [for a payment holiday and extension] and it would take 10 working days to respond.

24/07/2020 MBFS responded to Miss P to say that it couldn't grant an extension to her contract as she was in arrears because her payment due on 24 June hadn't been made.

27/07/2020 Miss P responded to say that she'd asked for help and explained that the payments had been declined as MBFS had tried to take the balloon payment. Miss P asked for a call back to discuss her options. She said *"I will need to take some time to assess my credit prior to any new finance agreement as it's probable that your attempted collection of the balloon payment will have affected my status negatively, which I am extremely unsettled about. I ask you kindly to move my account out of arrears and please have someone contact me personally to discuss how to proceed."*

06/08/2020 MBFS emailed to say that it couldn't grant a payment holiday as there were no payments remaining. It said *"I have reviewed your file and as your agreement has ended we would not be able to provide a payment holiday as there are no payments remaining. If you are unable to keep the vehicle at this time then we would need to arrange collection. Please let us know how you wish to continue?"*

17/08/2020 Miss P explained that she didn't want to extend her contract but refinance. *"Many thanks for getting in touch, yes I am able to keep the car for now. I would like to know my options with regards to either refinancing my current car or returning it and taking out a new lease."*

09/09/2020 MBFS told Miss P that she could extend her contract for 1, 2 or 3 months. It said *"You are able to extend your agreement for 1,2 or a 3 month period. If you are interested in extending your agreement please email [-] with how long you would like to extend for."*

09/09/2020 Miss P said again that she didn't want to extend but refinance: *"Thank you for your email, I do not wish to extend my current agreement, I would like to either refinance my car for a lower monthly outgoing or look into a new car/lease agreement. Can you please let me know how to proceed."*

15/09/2020 MBFS explained that it couldn't give a refinance quote outside of 30 days of the agreement end and in order to do so it would need to extend agreement by 4 months. It said *"We can provide you with a refinancing quote as requested, this would turn your current PCP agreement into a Hire Purchase contract. We would divide your balloon payment over a term of 24 or 36 months, at the end of this new contract you would then own the vehicle outright. There will be interest added on to the monthly costs when the refinancing quote is generated. Unfortunately we do require at least 30 days remaining on a contract to be able to raise a refinancing quote, so if you would like to explore this potential option we would need to extend your agreement by 4 months. As you agreement ended on the 24/06/2020. Once processed we can pass you on to our refinancing team who will carry out the necessary checks to make sure your product is eligible."*

- 15/09/2020 MBFS reactivated Miss P's account to generate an extension quote, which was a new monthly rental of £319.37.
- 16/09/2020 MBFS sent Miss P the above quote. The customer notes record that she had no bounced or late payments showing on her account.
- 28/09/2020 MBFS sent Miss P a follow-up reminder to the above. It said *"If you are still looking to extend the agreement with us please sign and send back your extension quote so we can get this processed for you. If you are no longer looking to extend your agreement with us please contact our collection agents [-] on [-]. [-] will then be able to book you in for your vehicle to be inspection & collected."*
- 29/09/2020 Miss P replied with questions. She said *"... with an extension to my agreement would the monthly payments reduce? Also what are the options regarding refinancing the balloon payment so I own the car at the end of the payment schedule. I'm just trying to weigh up my options on what would best financially. Would I be better off getting a new lease? Would somebody call me to explain my options as I don't want to continue to pay the previous rate for a car that is now 4 years old. But I don't want to give the car back without securing a new lease."*
- 09/10/2020 MBFS called Miss P to discuss her options. The customer note records that Miss P was unlikely to extend her current agreement and was thinking of maybe getting a second-hand car. It advised her that there were good deals available on new cars with higher retail values. It noted that Miss P didn't have equity in the car so she would probably return it, and that she would notify it the following week about what she would like to do.

Miss P told us *"When I eventually managed to speak to someone they advised me to visit a [-] garage to discuss my options. I had received letters from [-] asking to arrange collection/return of the vehicle however garages weren't open. I finally visited a garage once restrictions eased and they told me that I was too late to qualify for a refinance agreement, and that the attempted balloon payment had a negative impact on my credit."*

- 03/12/2020 Miss P called to request refinance or look at other options. MBFS noted that she was put on hold while her call was transferred to the collections department but the call was disconnected.
- 16/12/2020 Miss P called to arrange collection of the car.

Let me say at this point that I don't have complete information about what happened. For example, I am not clear exactly what happened regarding Miss P's request to refinance her outstanding debt. Miss P says that she was told by MBFS that it was too late to refinance her debt and that her creditworthiness had been impacted negatively by its attempt to collect the balloon payment. MBFS hasn't confirmed to us that Miss P's refinance request was declined, or why, and I don't know if it has been made clear to her.

I also don't know whether Miss P missed her final monthly payment, or just the balloon payment. MBFS sent us a statement of account and I can see from this that two payment requests were made on the 24 June, one for £10 and the other for £17,054.43. These are followed by two reversals, one for £10 and the other for £16,750, the difference being £304.43. This seems to support what Miss P said about making the final monthly payment but not the balloon payment, however the statement also shows that two payments were

made (£100 in December 2020 and £204.43 in January 2021) which brought the account up to date.

By the end of September 2020 MBFS had given Miss P the option of extending her agreement or returning the car. My understanding is that MBFS called Miss P on 10 October to discuss her options with her and it was agreed that she would get in touch the following week to let MBFS know what she had decided to do. I'm not clear why it took Miss P until the beginning of December 2020 to decide how she wished to proceed. It may be that Miss P was waiting to make up her mind about what to do with her agreement until she could bring the car to a garage. I don't know when Miss P visited a dealership – it seems likely to me that this happened in early December 2020.

My considerations

I've started by considering what happened when Miss P's agreement drew to an end. I am satisfied that she attempted to get in touch with MBFS to discuss her options prior to the end of the agreement and that she told it she'd been impacted by the pandemic and needed help to decide what was best to do under the circumstances.

It seems to me that MBFS's operational difficulties prevented Miss P from receiving a timely response to this request for help or clear information about her refinancing options. I appreciate that the email I've set out above was sent by Miss P the day before the balloon payment was due to be taken and it might not have been possible to cancel the direct debit request in time. However, I don't think MBFS acted quickly after that - as shown by the email trail, it seems Miss P didn't have an answer to her request for a refinance until the 15 September, some 12 weeks later, which was then discussed with her over the phone on 10 October 2020. I can understand why that delay might have happened, given how businesses were impacted by the pandemic. However I don't think MBFS mitigated the impact of this lack of immediate response by providing exceptional or flexible support to Miss P.

I think MBFS could have acted in line with the regulator's guidance here and deferred the final balloon payment (or indeed the final monthly payment) until Miss P's request for a refinance or new agreement could be fully considered. As per the guidance, where a timely agreement hasn't been reached and a customer subsequently misses a payment, the business should ensure no default or arrears charges are levied in relation to payments missed in these circumstances. I am unclear as to when Miss P made her final monthly payment but irrespective of this, if MBFS reported adverse information about Miss P's account to the credit reference agencies about missed payments after 24 June 2020 then it needs to amend this.

It follows that, if MBFS did base its decision to refuse Miss P a refinance solely because any negative information it reported or the length of time it took to consider this option following the end of the agreement, then it should not have done so. As I've explained, I don't have clear information about what happened here. Assuming everything had gone as it should have, Miss P might not have been offered a refinance. A business's lending decisions are based on a number of factors and there may have been other considerations involved in any refinance decision which would have resulted in a decline. It's also not clear to me whether Miss P would have taken up such an offer. Altogether, I haven't found that MBFS treated Miss P unfairly when it declined to refinance her outstanding balloon payment at this time.

MBFS told Miss P in its final response to her complaint that she incurred charges for additional days car hire as she'd used the car beyond the maturation date of her agreement. Miss P told us that she didn't want to hire the car for any longer than her initial

agreement – she wanted to refinance it or return it.

I understand that Miss P wasn't given an answer to her refinance request until 15 September 2020. Miss P was informed then that her agreement had ended on 24 June 2020 and that an extension to the existing agreement was a necessary step in providing her with a refinance option. MBFS then contacted Miss P on 10 October to discuss her situation. From the available information, it seems to me that Miss P wasn't responsible for the delay between her asking for help and MBFS's call on 10 October to discuss her options.

Miss P didn't tell MBFS how she wished to proceed until 3 December. The car wasn't collected until early January 2021. I don't think that the delay between being given these options and the return of the car in early January was entirely down to Miss P but was made worse by the impact of the pandemic on car dealerships. There was a national lockdown in place from 5 November 2020 and the government had been reimposing restrictions from 14 September, so it's understandable that it might have been more difficult than usual to visit a garage during this time. Nevertheless, by 10 October Miss P had been fully informed about her options and it was over to her then to decide whether to accept an extension to her agreement or not.

Miss P had the use of the car for six months after the end of her agreement so I think she should incur some cost for this. However, I don't think it's fair that she pays a full six months car rentals (July to December 2020) and it would be more appropriate in this case for Miss P to make three months payments. And, while I appreciate Miss P drove the car a further 4,382 miles after 24 June, this doesn't seem to me to be excessive use, given that the allowed mileage under the agreement had been 10,000 a year. So I don't think Miss P should be charged for additional mileage.

Miss P has disputed the damage charges of £737.88. As set out in MBFS's final response letter, these charges are:

- Back seat cover rear centre - Scratched - Replace - £36.82
- Bumper rear - Scratched - Refinish - £210.00
- Bumper front - Scratched - Refinish - £210.00
- Screen front - Cracked - Replace - £281.06

The Vehicle Returns Standards guidance supplied with the agreement states that acceptable wear and tear includes bumper scuff marks up to 50mm which don't adversely affect the overall appearance of the car and normal wear and tear to the interior, including carpets, trim, upholstery etc. Chips on the windscreen are acceptable as long as they are less than 5mm, no more than two, and not obscuring the driver's vision. Notwithstanding a degree of subjectivity around these items, the photos MBFS has provided along with the inspection reports do seem to show that this damage is outside of the acceptable wear and tear as defined by the guidance.

I've found that MBFS didn't treat Miss P fairly when it didn't offer her a payment deferral, reported adverse information on her credit file (if it did so) and didn't give her clear information about her options in a timely manner. I think that Miss P suffered distress and inconvenience when this happened. Miss P told us that she feels she was left with bad credit at a time when she was already financially struggling. She says she is now being chased by debt collectors attempting to recover this debt from her on behalf of MBFS, and that the matter is continuing to cause her severe anxiety.

As set out on our website, an award of over £300 and up to £750 might be fair where the impact of a mistake has caused considerable upset and worry and significant

inconvenience that needed extra effort to sort out, typically over weeks or months. I think that an award in this range would be appropriate here.

Putting things right

In order to put things right for Miss P, MBFS needs to:

- Waive the additional days and the additional mileage charges; and
- Remove any adverse information about the agreement from 24 June 2020 from Miss P's credit file; and
- Pay Miss P an amount of £300 to reflect the distress and inconvenience this matter has caused to her.

MBFS can consider that Miss P owes:

- three months' additional rental charges at £319.17 a month; and
- damages charges at the level set out in the report, in other words £737.88.

I would remind MBFS of its continuing obligation to treat Miss P fairly and with due consideration. This might involve agreeing an affordable repayment plan with her for the above charges.

My final decision

For the reasons set out above, I'm upholding Miss P's complaint about Mercedes-Benz Financial Services UK Limited in part and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 18 November 2022.

Michelle Boundy
Ombudsman