

## **The complaint**

Mr H complains that he incurred additional costs because Mercedes-Benz Financial Services UK Limited ("MBFS") didn't settle a previous finance agreement promptly

## **What happened**

I issued my provisional decision on this complaint in September 2022. An extract from that provisional decision is set out below.

### ***What happened***

*Mr H took receipt of a new car in March 2019. He financed the deal through a Hire Purchase agreement with MBFS. The dealership agreed to accept his old car in part exchange, they said they'd settle the balance on the finance agreement Mr H had for his trade in vehicle (I'll call that "agreement B"). The new agreement listed a deposit contribution towards the cash value of the car of £1,261.*

*Mr H took receipt of his new car on or around 6 March 2019 and he expected the dealership would pay off agreement B at that time, based on the settlement quote he'd received for agreement B which expired on 18 March 2019.*

*Unfortunately, whilst MBFS have explained they sent the funds to the dealership and that the dealership would have been in receipt of them by 11 March 2019 in time to make the settlement; the agreement wasn't settled in time and Mr H had to pay part of an additional finance instalment and says he lost out on a £100 credit that would have been due from agreement B if it was paid on time.*

*Mr H says that MBFS are responsible for the failure to settle his old agreement promptly but MBFS dispute that. They say the part exchange transaction was separate from the transaction to finance the new car and that they therefore have nothing to do with it.*

*Our investigator agreed with MBFS, but Mr H didn't. So, the complaint has been referred to me, an ombudsman, for a decision.*

### ***What I've provisionally 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 know it will disappoint MBFS, but I don't currently agree with the investigator's view and I'm expecting to uphold this complaint.*

*Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on*

*board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*Mr H acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*Section 56 of the Consumer Credit Act 1974 (CCA) explains that finance providers are liable for what they say and for what is said by a credit broker, or a dealership in this case, before the consumer takes out the credit agreement ("antecedent negotiations").*

*MBFS may say that here there were two quite separate transactions taking place. The part exchange of Mr H's old car and the establishment of the new agreement to finance the new car.*

*The Court of Appeal considered that issue in Forthright Finance Ltd v Ingate (1997). The judge decided there that the negotiations for the part exchange and the new agreement were interlinked and could not fairly be considered to be two separate transactions, and here I think that's the case too and that MBFS are therefore liable for what the dealer said.*

*I say that because I think it is unlikely Mr H would have proceeded with the deal had it not been for the part exchange and that it was therefore an important part of the antecedent negotiations. I think it's likely that Mr H received a better part exchange value than he could have obtained if he'd sold his old car and settled the deal himself. I think that would have been likely to have induced Mr H to proceed with the transaction where he wouldn't otherwise have done so. And, as I think that's the case, I think the part exchange negotiation can't fairly be separated from the overall transaction for the new car.*

*I think agreement B should have been settled more promptly and that by virtue of section 56 of the CCA MBFS are liable for that failure.*

### **Putting things right**

*Mr H has explained that as a result of the settlement not being made in time he missed out on a £100 credit he would have received for settling his old agreement early and that he had to pay at least part of the next instalment. Given the passage of time he's not been able, as yet, to quantify that loss but it seems there was one and that given some time Mr H will be able to quantify it perhaps through bank statements and correspondence with the credit supplier. I've asked him to do so ahead of my final decision on this complaint. I think MBFS should refund this money to Mr H. And, as Mr H has been deprived of the money they should add 8% simple interest to that refund from the date Mr H paid it until the date this complaint is settled by them.*

*I think Mr H has clearly been inconvenienced by this issue as a result of MBFS refusing to take responsibility for it. It would also have been distressing to have been faced with an unexpected bill, but I've also taken into account that the financial consequences were relatively small. In the circumstances I think MBFS should pay Mr H £50 compensation in respect of the distress and inconvenience he's been caused.*

### **My provisional decision**

*For the reasons I've given above I'm expecting to uphold this complaint and to tell Mercedes-Benz Financial Services UK Limited to:*

- *Refund the extra money Mr H paid towards his old credit agreement as a result of the old agreement not having been settled promptly. Mr H will need to evidence that*

*expense. Add 8% simple interest per year from the date Mr H paid the money to the date this complaint is settled.*

- *Pay Mr H £50 to compensate him for the distress and inconvenience caused.*

### **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.

Mr H was frustrated by the delays and said that given the passage of time he wouldn't be able to locate the documents.

I explained to MBFS that it was understandably difficult for Mr H to provide evidence of the extra money paid but that I was persuaded it was likely to have been £100 (+8%). I therefore asked MBFS to consider that and the £50 payment for distress and inconvenience in resolution of the complaint and they agreed.

### **Putting things right**

As MBFS agreed to the redress I suggested in my provisional decision that provisional decision now becomes my final decision on this matter.

### **My final decision**

For the reasons I've given above I uphold this complaint and tell Mercedes-Benz Financial Services UK Limited to:

- Refund the extra money Mr H paid towards his old credit agreement as a result of the old agreement not having been settled promptly. Add 8% simple interest per year from the date Mr H paid the money to the date this complaint is settled.
- Pay Mr H £50 to compensate him for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 December 2022.

Phillip McMahon  
**Ombudsman**