

The complaint

Mr B complains that Mercedes-Benz Financial Services UK Limited (“MBFS”) should stop pursuing him for outstanding arrears after giving him incorrect information.

What happened

Mr B referred a complaint to us along with his representative. As the complainant is Mr B, for ease, I have addressed my decision to him.

Mr B took out a hire purchase agreement with MBFS in July 2019 to acquire a new car. The agreement was intended to run for 48 months and Mr B was to make monthly repayments of £542.61 towards it, in addition to paying a deposit and an optional final purchase payment.

Mr B said that he experienced some financial difficulty during the term of the agreement and MBFS said that Mr B missed some monthly payments. So, he reached out to MBFS to request a settlement quote for the outstanding amount owed. Mr B said he did so with the aim to sell the car to a third-party and settle his account with MBFS and then he intended to purchase a smaller car.

In April 2022, MBFS sent Mr B a settlement quote explaining that £29,513.02 was owed, and said the quote was valid until 26 May 2022. Mr B said he paid £300 to MBFS and believed this was a holding fee which would be refunded once the car was sold.

MBFS said Mr B paid the amount quoted on 11 May 2022. Mr B said he continued to contact MBFS to enquire about the £300 refund, but was eventually told by MBFS that he still had an outstanding amount to pay due to arrears accrued on his account.

Mr B later complained to MBFS as he didn’t believe he should have to pay the arrears on his account and believed the £300 payment he made was an overpayment.

MBFS responded to Mr B with their final response. Within it, they explained that they implemented a new payment system in April 2022 and as a result of the system change, the settlement quote generated didn’t include arrears. They also acknowledged that a £300 card payment was made on 28 April 2022 and they said this was a small gesture paid towards the outstanding arrears to stop Mr B’s account escalating any further.

MBFS apologised for their error, but said they would not refund the £300 payment made and that Mr B still owed £1,271.26. For their mistake, they offered £400.

Mr B, unhappy with MBFS’s response, referred his complaint to our service. He said he sold the car at the price he did, believing it would be enough to settle his account, based on the figure on the settlement letter.

Our investigator found that MBFS didn’t need to do anything further. She said that MBFS acknowledged their mistake and she thought their offer of £400 compensation was fair and reasonable in the circumstances. She explained that she didn’t think a fair remedy in this

instance would be for MBFS to be deprived of the entire arrears owed as she didn't think their mistake nullified the agreement that existed between both Mr B and MBFS.

Mr B disagreed with our investigator's view. He said MBFS provided a signed statement of what was outstanding on the car and the car was sold for the settlement amount that covered the debt. He said that had he known the settlement figure was incorrect, he would not have had the car sold for the amount he did. As Mr B disagreed, the case has now been passed to me to decide.

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 done so, I'm upholding this complaint and I think the compensation MBFS has offered Mr B is a fair way to settle this complaint. I'll explain why below.

In this instance, it isn't in dispute MBFS had made a mistake. They acknowledged their error and explained it was due to a recent system change which resulted in arrears not being considered when calculating a settlement figure. This resulted in incorrect information being given to Mr B when he was given his settlement quote.

So, ultimately, what I need to consider here is whether MBFS's actions to put things right is fair and reasonable, given the circumstances.

MBFS offered £400 as compensation for their mistake but also explained that the arrears on Mr B's account are still due and that they would not refund the £300 payment Mr B made as they believe it was made towards the arrears and to stop it from escalating any further.

Mr B believes a fair way to resolve this complaint is for MBFS to clear the arrears and to also refund the £300 payment made.

It was no doubt frustrating for Mr B to have been given incorrect information in April 2022. But I don't think a fair way to resolve things here is for MBFS to waive any arrears that are due to them. Mr B had missed payments which led to arrears accruing. And he is contractually obligated to pay them. While MBFS made a mistake in the figure communicated to Mr B, it doesn't mean that Mr B doesn't still owe the outstanding balance on his account. However, I do think Mr B should be compensated for the error MBFS had made in communicating the wrong information to him.

Mr B says he sold the car to a third-party on the basis that the value of it would settle the account he held with MBFS. He says he would have sold it for more had he known the settlement figure would have been higher.

I can't be sure what Mr B would have done. I also can't be sure whether Mr B would have been able to obtain a higher amount for the car when selling it to a third-party. But I think it is likely Mr B would have already tried to obtain the highest amount he could when selling the car, as it would have meant he could spend more on the next car he was intending to purchase.

I do appreciate the impact on Mr B of hearing from MBFS sometime later that he still owed money to them. Given MBFS's apology and that the outstanding amount was communicated to Mr B within a few weeks of being told the wrong information, I think the £400 they have offered is fair in the circumstances.

Mr B also complains that a £300 card payment he made to MBFS has not been refunded to him. MBFS has explained this was paid towards the outstanding arrears to stop his account from escalating further. It seems Mr B was under the impression this was a holding fee.

I have seen a copy of the settlement quote that was sent to Mr B and I can't see any reference to a holding fee needing to be paid. Given both Mr B and MBFS has told our service of missed monthly payments which had led to Mr B requesting a settlement figure to end his agreement early, I think it is likely the £300 payment was made to help reduce arrears that may have accrued. So, thinking about things here, I think it is fair and reasonable for MBFS to not refund the £300 and use it to offset against the remaining outstanding balance on Mr B's account.

Mr B has expressed his worry about the large amount due. So I expect MBFS to treat Mr B with forbearance and due consideration when requesting payment to be made here. This might involve a suitable repayment plan, if appropriate.

My final decision

Mercedes-Benz Financial Services UK Limited has already made an offer to pay £400 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Mercedes-Benz Financial Services UK Limited should pay Mr B £400. To be clear, this is a payment for distress and inconvenience, so it should be paid directly to Mr B and not used against the arrears on the account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 April 2023.

Ronesh Amin
Ombudsman