

The complaint

Mr C complains about a debt owed under a hire purchase agreement, which Mercedes-Benz Financial Services UK Limited are holding him responsible for.

What happened

In November 2017, Mr C took out a hire purchase agreement with Mercedes to get a brand new car, which I'll call 'car one'. As part of the agreement, Mr C paid a deposit to Mercedes of around £21,500. Just under two years later, Mr C's son became the keeper of the car. However, the agreement remained in Mr C's name and the repayments continued to be taken from Mr C's account.

In late 2020, Mr C says his son ended the hire purchase agreement for car one and began a hire purchase agreement with Mercedes for a different, brand new car, which I'll call 'car two'. The agreement for car two was also in Mr C's name. But, Mr C says he didn't give his son authority to do that. Similar to what happened with car one, Mr C's son became car two's keeper after the agreement was taken out.

Car two was taken back by Mercedes in the summer of 2021 and the proceeds of the sale was used to reduce the outstanding balance owed under the agreement. Consequently, Mercedes then made contact with Mr C about the repayment of that balance.

But, Mr C didn't think that was fair. He said he didn't know about the finance taken out in his name for car two. So, he raised a complaint with Mercedes and said they shouldn't hold him responsible for the outstanding debt.

In their final response to Mr C, Mercedes said the dealership had told them that Mr C had been present when car one was returned. They also said Mr C needed to answer security questions when the agreement for car two was sent to his email address. And Mercedes told Mr C that he could still report the matter to the police.

Mr C didn't accept Mercedes' response and brought his complaint to us. One of our investigators looked into Mr C's case and concluded that Mercedes had treated Mr C fairly. He found that Mr C had received a welcome email containing the agreement for car two and was persuaded that Mr C had given his son authority to act on his behalf. So, the investigator said it was fair for Mercedes to hold Mr C responsible for the outstanding balance.

Mr C didn't agree with the investigator's findings and provided proof that the repayments made towards the agreement for car two, didn't come from a bank account in his name. Mr C also said it's likely he deleted the welcome email without looking at it. And that his son was able to answer any security questions Mercedes asked, to access and sign the hire purchase agreement. Mr C also explained that that the relationship with his son had broken down.

The investigator didn't change his conclusions and Mr C's complaint has now been passed to me to make a final decision.

I sent Mr C and Mercedes my provisional decision on this case, on 25 July 2023. I explained why I think Mercedes have treated Mr C fairly. A copy of my provisional findings is included below:

Firstly, I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No courtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here. Namely, did Mercedes treat Mr C fairly when the hire purchase agreement for car two was put into place?

If there's something I've not mentioned, then I haven't ignored it. I've not commented on every individual detail. I've focussed on those that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

The hire purchase agreement for car one

This case is about a hire purchase agreement with Mercedes for car two, which is in Mr C's name. This is a regulated financial product. As such, we are able to consider complaints about it.

During my review, I've also thought about the agreement Mr C took out for car one. I've done this because I think what happened to car one and the end of that agreement is relevant, when trying to decide if Mercedes have treated Mr C fairly.

Mr C has told us that when he took out the hire purchase agreement for car one, he paid a deposit to Mercedes. I've looked at the loan agreement forms for car one and I can see a deposit of £20,000 was paid by Mr C. I can also see that the keeper of the car was changed with the DVLA, to Mr C's son, shortly after the agreement was signed. And Mr C has told us his son made monthly payments to him, equal to the repayments required under the hire purchase agreement.

I accept that Mr C intended for car one to be used by his son. I say this in light of the change of keeper of the car and the payments made to Mr C's account. However, I think Mr C still had a responsibility to Mercedes, as the contract for car one remained in his name. So, I think Mr C was still responsible for the monthly repayments and the other terms related to the car's use and condition.

The repayments towards the agreement for car one stopped when the agreement for car two started in October 2020. I can see from the records Mercedes has sent to us that Mr C was paying £290.76 a month for car one and those repayments were scheduled to end in September 2022. I can also see that Mr C didn't make contact with Mercedes when the repayments for car one stopped, nearly two years before he could have expected them to.

Mr C says he didn't make contact with Mercedes, as he thought the agreement for car one had come to its natural end. But, given what I've found about the length of the agreement for car one and the monthly cost to Mr C, I think there was an onus on Mr C to have made enquiries with Mercedes, when the payments stopped being taken from his bank account.

Additionally, I've said that Mr C paid a deposit of £20,000 towards the agreement for car one in September 2019. The cash price of car one was around £53,000. So, I think Mr C paid a significant deposit towards that vehicle.

Car one was given back to Mercedes around a year later. We don't have a record of the settlement figure used by Mercedes when that agreement was ended. Also, neither party has been able to tell us if Mr C received any money when car one was returned. But, I can

see from the loan agreement forms for car two, that a subsequent deposit or part exchange deal wasn't used.

Considering the scale of the deposit paid by Mr C, I think it would have been reasonable for him to have maintained an interest in car one. Overall, I cannot see from what Mr C, or Mercedes have told us, that any contact was made with them regarding the fate of car one.

On balance, I think the evidence supports that Mr C was comfortable with the ending of the agreement for car one. So, I'm persuaded Mr C was aware that the car he allowed his son to use, was to be returned to Mercedes.

The hire purchase agreement for car two

I recognise that it isn't uncommon for an arrangement to exist whereby one party may use a car, but the finance to be in the name of someone else, like a partner or a family member. So, to support what Mr C says, I must be able to say that he didn't give his authority, or apparent authority for the agreement to have been taken out in his name.

In order to consider this further, I've looked at the start of the agreement for car two and what was sent to Mr C.

During our investigation, we spoke to the dealership accredited by Mercedes, that provided car two. The dealer explained that Mr C has taken several cars over the last ten years, exchanging them every three years. This is supported by what Mr C has told us about his relationship with that dealership.

The dealer says the agreement for car two was organised remotely and to sign the application, the applicant would need to answer several security questions. Mercedes have told us that these questions relate to the applicant's existing external borrowing, their address and date of birth.

Mr C has explained that his son was able to answer any of the security questions Mercedes had in place. I accept that it's possible for Mr C's son to have completed and signed the application in Mr C's name, provided he knew the answers to Mercedes' security questions. But, I've said that I need to decide if I'm persuaded whether or not Mr C had given his authority for his son to do so.

Shortly after the agreement for car two was signed, I can see from Mercedes' records that they sent a welcome letter to Mr C's email address. The email address used is the same as the address Mr C uses to communicate with us. So, I think Mercedes sent the welcome letter to the correct address. However, Mr C says that it's possible he deleted Mercedes' welcome email, as he wasn't expecting news of a new car or agreement.

While I acknowledge that Mr C may have deleted the welcome email, I think the title of the email suggested it required action. I also think that had the information within the email taken Mr C by surprise, it's reasonable that he would have made contact with Mercedes when the email was sent in November 2020. And I've not seen that Mr C raised his concerns about fraudulent activity with Mercedes, until the debt was pursued the summer of 2021.

Mr C has shown us where the repayments for car two came from an account held in his son's name. I accept what Mr C says here. But, I think this supports my findings that Mr C was aware that his agreement for car one came to an end, by way of a different amount, being taken from another person's account.

I've also thought about Mr C's actions, when he says he became aware his son had

acquired car two. Given all the circumstances, I think it was unusual for Mr C not to have raised questions with Mercedes, or his son about the ending of the agreement for car one. Or how his son was able to get car two.

Without any evidence to support what he says here, I'm not persuaded that Mr C didn't give his authority for the agreement to start.

I'm aware of Mr C comments about his current relationship with his son. I haven't seen anything to suggest that Mr C has reported his son to the police about the agreement he says was taken out without his consent. I empathise with Mr C here, as it may not be an option he's prepared to take.

But, I do consider that reporting a crime to the police is a reasonable step to take. I think by not doing so, it adds weight to Mercedes' argument that he gave his authority for the agreement to start.

Summary

Overall, I've thought about the start and the ending of the agreement for car one, the information available to Mr C at the start of the agreement for car two and what happened when Mr C became aware of car two.

On balance, I'm persuaded that Mr C was aware of the hire purchase agreement for car two and that he gave his authority, or apparent authority for Mercedes to start that agreement.

It then follows that I think it's fair and reasonable for Mercedes to hold Mr C responsible for the repayment of the remaining balance due under the hire purchase agreement.

I realise that my conclusions mean there will still be an outstanding balance owed by Mr C to Mercedes. I'm also very sorry to hear of the very difficult circumstances of a close family member, which Mr C is dealing with. It must be a very troubling time and I hope things improve for everyone concerned.

So, I remind Mercedes of their responsibility to treat Mr C's financial circumstances with due consideration and forbearance. This will mean looking at Mr C's income and expenditure details to talk about the options they are able to offer to him.

Mercedes responded to the provisional decision and accepted it. Mr C responded to the provisional decision and in summary he said:

- The car I had referred to as car one was taken out using a hire purchase agreement in November 2017 and not September 2019.
- The car he got in September 2019 is unrelated to this complaint.
- Mercedes should provide CCTV footage of him at the dealership when the agreement for car two was signed.
- He reported what had happened to the police in September 2021.

To get clarity about when the contract for car one was signed, I asked both Mr C and Mercedes for further evidence. Mercedes provided a copy of the contract from November 2017, for the car where Mr C's son was made the keeper. They also provided a statement showing all the payments made under that agreement and confirmed that the dealership purchased the car, when it was returned in October 2020.

I thought further about the car one, but while I acknowledged it was different to the car acquired by Mr C in 2019, I still came to the same conclusion. I said:

- Despite Mr C's son being made the keeper of car one, I still thought Mr C was responsible for the hire purchase agreement with Mercedes. So, Mr C was responsible for car one's return at the end of the term.
- It remains that Mercedes contacted Mr C with the details of the hire purchase agreement for car two and it was signed by someone successfully passing Mercedes' security checks.

Mr C responded to my further provisional findings and in summary, he said:

- Car one was transferred to his son in September 2019 and in doing so, his son assumed responsibility for it.
- He didn't receive any information about the return of car one from the dealership.
- The dealer should have sought his permission before going ahead with the agreement for car two. And a contract of that size should not have been completed remotely.
- He already had a car, so didn't need another.

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.

In doing so, I acknowledge what Mr C has said about the time, effort and expense he has gone to support his side of the dispute. However, even after considering the additional information provided both parties, I still think Mercedes have treated Mr C fairly.

Mr C says that he transferred the ownership of car one to his son in September 2019. I can see from the DVLA paperwork Mr C has sent to us that his son was made the keeper of car one, around two years after the hire purchase agreement was taken out. But, I don't think this changed things with his agreement with Mercedes.

I say this because the hire purchase agreement continued in Mr C's name, up until car one was returned to the dealership in 2020. And this is supported further because the payments due under the agreement, were maintained by Mr C.

It then follows that Mr C remained responsible for car one and retained an interest in it. So, I'm persuaded Mr C was aware of the ending of the contract for car one and the responsibilities surrounding the car's return.

Mercedes have shown us that welcome correspondence was sent to Mr C, which contained details about car two, in November 2020. Furthermore, Mercedes have told us that the agreement for car two was signed electronically, using a system where a customer needs to provide specific information to confirm their identity.

I've also considered that Mr C didn't raise his concerns with Mercedes, until the summer of 2021, around six months after the agreement for car two was taken out. This was despite knowing that car one had been returned and that at the same time, his son acquired another brand new car. Had Mr C been the victim of a fraud here, I think he would have noticed and

asked questions of his son, or Mercedes straight away.

On balance, I still think the evidence shows that Mr C was made aware by Mercedes that an application for the finance for car two had been made and they sought his authorisation for it to proceed. I also still think that Mr C was made aware of the agreement, when the finance was put into place.

I've thought carefully about Mr C's comments that Mercedes should not have completed the agreement for car two remotely. It's common for lenders to offer finance contracts electronically, for consumers to complete away from a dealership. I've not found in Mr C's case that Mercedes have breached any duty owed to him, by completing the hire purchase agreement in this way.

During our investigation, Mr C has said that CCTV from the dealership will prove he wasn't there when the agreement was signed. I've explained that the agreement was signed remotely, so I don't think any CCTV footage will change my findings, if it was available.

Mr C says that he already had a car, so didn't need another. But, I've seen that he has previously had two hire purchase agreements running at the same time. And that during this period, he allowed his son to use one of those cars. So, I don't think this adds weight to his argument here.

I also acknowledge that Mr C contacted the police a few months after he raised his concerns with Mercedes. But, I cannot see that the police have taken any action against his son, or a third party. Consequently, this doesn't lead me to conclude that someone else took out the agreement for car two without Mr C's knowledge or authority.

In all the circumstances, on balance, I'm still persuaded that Mr C gave his authority or apparent authority for the hire purchase agreement for car two to start. So, I think Mercedes have treated Mr C fairly, by holding him responsible for the remaining balance due under the agreement.

My final decision

My final decision is that I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 October 2023.

Sam Wedderburn
Ombudsman