

The complaint

Ms F complains Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance (MBFS) irresponsibly entered into a hire purchase agreement because it didn't do reasonable and proportionate checks to ensure the agreement was affordable.

What happened

Ms F entered into the hire purchase agreement in February 2023 for a used car. The cash price of the car was £23,499 and Ms F paid a deposit of £1,600. The total amount payable under the agreement was £29,099.40 and Ms F was to pay 48 monthly instalments of £444.05. There was also an optional purchase payment of £6,175.

Ms F is represented in her complaint but for ease of reading I'll only refer to Ms F throughout this decision. Ms F complained to MBFS in April 2023. She said MBFS shouldn't have agreed the lending because she had a low income, and she was continually overdrawn. She explained her decision to enter into the hire purchase agreement was an impulsive one and it has affected her mental health. This prevented her from dealing with the situation sooner.

MBFS responded to the complaint in June 2023. It set out the context in which it understood Ms F selected the car and felt it was neither rushed nor impulsive. It said it was required to carry out checks. It said there was no evidence Ms F was using her bank overdraft facility or had any live credit cards. It also said Ms F had declared her earnings and as there was no evidence of financial difficulty, no further checks were carried out. It also said Ms F had a 14 day right to withdraw.

Ms F remained unhappy so asked our service to investigate. Our Investigator issued a view explaining why she felt MBFS didn't complete reasonable and proportionate checks. She went on to say that had MBFS completed such checks, it's likely they would have seen the agreement wasn't affordable. Therefore, they explained how MBFS should put things right by ending the agreement with nothing further to pay, returning the deposit plus interest and removing adverse information from Ms F's credit file relating to the agreement. Ms F accepted the view.

However, MBFS did not. In summary, MBFS said the following about the checks it undertook:

- It made its creditworthiness assessment based on both information provided by Ms F and information from an independent third party. The information showed Ms F could afford the repayments and as there were no signs of financial difficulties – no further information was required.
- The credit check showed no use of overdraft facilities and no live credit. Ms F was a strong applicant, and no further checks were warranted.
- Our Investigator referenced MBFS's obligation under CONC 5.2A.15R to assess Mr F's income and the guidance to obtain independent data rather than rely solely on the statement of income. MBFS confirmed it did so by obtaining the credit

information.

- Our Investigator referenced MBFS's obligations under CONC 5.2A.17R to make a reasonable estimate of Ms F's non-discretionary expenditure. MBFS said there was no factors indicating Ms F's expenditure fell outside that of its usual customers.

Also in summary, MBFS said the following about the affordability of the agreement:

- The information about Ms F's income wasn't shared with it at the time and it may have prompted further checks. Information only available from reviewing the bank statements isn't relevant to the assessment of MBFS's knowledge at the time.
- It said Ms F signed a customer declaration on page five of the agreement which confirmed the information provided during the application may impact its decision to lend. It appears Ms F provided incorrect information, but MBFS had no reason to question it.

MBFS also raised some points about Ms F's deposit:

- Our Investigator concluded Ms F took out a loan to pay the deposit. It wasn't disclosed and it didn't appear on the credit check (due to the proximity of the two agreements). It wasn't required to obtain bank statements, so there is no basis on which MBFS should have been aware of the loan.
- Ms F's inability to pay the full deposit wasn't necessarily an indicator the agreement wasn't affordable because the deposit was nearly four times the value of a single monthly payment. So, consumers may need some flexibility or time to raise a deposit. A customer negotiating a lower deposit is not necessarily a red flag as it relates to how much a customer wishes to pay up front and how much credit will be repaid monthly. Ms F provided a reasonable explanation at the time and showed no signs of financial difficulty.

Our Investigator confirmed MBFS's response didn't change their view. Therefore, the complaint has 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.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did MBFS complete reasonable and proportionate checks to satisfy itself that Ms F would be able to repay the agreement in a sustainable way?

MBFS said it understood Ms F was living with parents at the time of the application. It has provided a screenshot of the information which stated Ms F's income range was £22,000 to £27,999 and she was listed as a company director.

MBFS said it carried out a credit search with a credit reference agency. It showed two settled accounts one of which was a loan and the other a credit card. Also, two active current accounts with no overdraft balance reported. There were no arrears and only one missed payment reported for a credit card which had been closed in November 2020. MBFS said Ms F was deemed to have good credit. Based on this and other information Ms F provided MBFS said the application was auto approved.

Having considered everything which has been said, I don't agree the checks were reasonable and proportionate here. Although I agree the credit search was an independent check of Ms F's credit commitments, I think MBFS needed to do more to assess Ms F's income and expenditure. I appreciate what has been said about Ms F signing the declaration within the agreement. But this doesn't discharge MBFS's obligations to complete reasonable and proportionate checks under CONC.

I note that guidance in CONC 5.2A.16(3)G states: *"For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely on a statement of current income made by the customer without independent evidence..."* MBFS said it did obtain independent information via the credit search. Whilst the credit search showed Ms F's overall credit commitments and history, I've reviewed the information and I can't say it sufficiently substantiated Ms F's declared income.

Moreover, CONC 5.2A.17R requires that a firm *"must make reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure..."* I've noted the credit search shows what Ms F's monthly credit commitments were. MBFS have said there was nothing to suggest Ms F's expenditure was outside of that of its normal customer. However, I've seen no further checks which would enable me to conclude MBFS took reasonable steps to determine or estimate Ms F's expenditure.

For the reasons outlined, I don't think MBFS did enough checks to satisfy itself the agreement was affordable. Under the agreement, Ms F would need to pay £29,099.40 in order to retain the vehicle. The duration of the agreement was also four years which is fairly lengthy. In the circumstances of this complaint, I don't think it was sufficient to rely on the credit search and information Ms F disclosed. MBFS should have done more to verify Ms F's income and expenditure. Whilst MBFS say there were no indicators to suggest Ms F's expenditure fell outside of its usual consumer, it doesn't appear to have gathered any information about Ms F's likely expenditure at the time. Overall, the checks carried out and the information obtained wasn't sufficient to reasonably assess the affordability of the agreement.

Would reasonable and proportionate checks have shown that Ms F would have been able to repay the agreement in a sustainable way?

As I don't think reasonable or proportionate checks were carried out, I need to consider what MBFS were likely to have seen had it carried out such checks. In order to do this, I've reviewed the bank statements from the period leading up to the lending decision. I've noted MBFS's comments about the bank statements and I do want to reiterate that I'm not saying MBFS needed to obtain bank statements in order to complete reasonable and proportionate checks. But the statements show the information MBFS would most likely have received had it obtained further information.

Ms F has confirmed she received a weekly allowance from her parents of £150. So, she could expect to receive £600 a month from them. It appears from her bank statements she received on average £700 per month in the three months leading up to the agreement. In respect of her other income, she started a company in January 2023 which I understand was abandoned. I understand she only received £200 from this business venture. There was no evidence of any other regular income apart from the allowance Ms F received from her parents.

In respect of her expenditure, Ms F has confirmed she didn't make any contributions towards the household bills. She does have some expenses which are shown on her bank statements including food and petrol. So, Ms F's expenditure seemed to amount to around £160 a month. This left her with disposable income of around £540.

Taking this into consideration, she would have only been left with around £96 each month after the repayments of £444.05 under the agreement. From this she would need to cover tax, insurance and other running costs. So, it's likely reasonable and proportionate checks would have shown this agreement was unaffordable.

Notwithstanding this, Ms F also took out further credit for £2,000 in February 2023 and I understand this was in order to pay the deposit. I note MBFS's response to our Investigator's finding on this and I can see the loan wasn't reported in the credit search it completed. I agree this was likely to have been because of the proximity of the agreement. Nevertheless, I have concluded MBFS should have done more to understand Ms F's committed expenditure. Had it sought to obtain further information, I see no reason why this commitment wouldn't have come to light.

So, from February 2023, Ms F would also have needed to be able to sustainably make the repayments for this loan. These payments have not been factored into the calculations above. Therefore, this further speaks to the unaffordability of the hire purchase agreement as Ms F wouldn't have been able to sustainably repay her credit commitments.

I also appreciate MBFS's comments that Ms F signed the declaration agreeing the information she provided might impact the lending decision. However, as previously mentioned, this in itself didn't discharge MBFS's obligations to complete reasonable and proportionate checks under CONC. MBFS said it didn't have this information about Ms F's income at the time of the agreement so it's not fair to rely on it now. However, I'm satisfied it was likely to have come to light had MBFS reasonably sought to verify or obtain further information about Ms F's income and expenditure.

Therefore, I'm not satisfied MBFS completed reasonable and proportionate checks. Had it done so, such checks were likely to have shown the agreement was unaffordable because Ms F didn't have sufficient disposable income to meet her commitments. I've set out how MBFS should put things right below.

Putting things right

Where a business has made an error, our service would usually aim to put the consumer in the position they would have been had the error not occurred. However, in cases where a business has lent irresponsibly this isn't entirely possible, as the lending provided cannot be undone.

Where I find a business should not have entered into a hire purchase agreement, I need to consider whether it's appropriate for the consumer to pay for the fair usage of the vehicle. There isn't an exact formula for this but I've thought about the amount of interest charged on

the agreement, Ms F's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have this car.

Ms F says she made a statutory off-road notification (SORN) in June 2023 when the vehicle tax ran out. She has provided evidence of the SORN status. Ms F was unable to provide an exact figure for the mileage but explained the car had only been used for around two weeks and she didn't make many trips in it. She's also described the adverse effects of the agreement on her mental health, and I understand her transport needs were not high due to her personal circumstances. With all this in mind, it seems to me that Ms F has had no real benefit from this vehicle. So, I don't think it's right to ask her to pay a sum for fair usage.

Moreover, I understand from the parties Ms F made no payments towards the agreement except for the deposit. On this basis and to put things right, Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance should:

- End the agreement and collect the car with nothing further to pay.
- Refund the deposit of £1,600, adding 8% simple interest per year* from the date of the payment to the date of settlement.
- Remove any adverse information recorded on Ms F's credit file regarding the agreement.

I have not been informed of any payments Ms F might have made more recently on the agreement. But, for the avoidance of doubt, if any payments have been made towards the agreement these should also be refunded to Ms F, adding 8% simple interest per year* from the date of the payment to the date of the settlement.

*If MBFS consider that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms F how much it's taken off. It should also give Ms F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons set out above, I'm upholding this complaint and Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 5 February 2024.

Laura Dean
Ombudsman