

The complaint

Mr M is complaining about Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance (MBFS). He says they shouldn't have lent to him because the repayments weren't affordable for him.

What happened

In September 2016, Mr M took out a hire purchase agreement with MBFS to finance the purchase of a car. He paid a deposit of £578 and borrowed £21,871.92 – the cash price of the vehicle was £22,449.92. The agreement required Mr M to make 48 monthly repayments of £296.91. Mr M could then choose to buy the car at the end of the term for a one-off payment of £11,075 (plus a £10 fee). Mr M didn't pay the one-off payment and returned the car in February 2021.

In September 2022, Mr M complained to MBFS, saying that if they'd completed adequate affordability checks at the time they'd have realised the agreement wasn't affordable for him. He said he was self-employed at the time with a fluctuating and uncertain income and added that he was the sole earner in his household. Mr M said his expenditure on credit commitments, utility bills, food and fuel averaged over £1,800 per month and he had little disposable income, and a dependent. He said he had to borrow further to make the repayments on this agreement.

MBFS didn't uphold Mr M's complaint. They said they'd checked Mr M's credit file and he had an existing finance agreement with no credit issues. They'd seen nothing that would suggest he'd struggle to keep up with making repayments. Mr M wasn't happy with MBFS's response so brought his complaint to our service.

One of our investigators looked into things but also didn't uphold Mr M's complaint. She said she hadn't seen evidence that MBFS had done proportionate checks, but she also hadn't seen enough evidence of Mr M's financial circumstances at the time to say that the loan was unaffordable for him.

Mr M asked for an ombudsman's decision. In doing so, he sent in some further information for our service to consider. I reviewed this and issued a provisional decision on 12 September 2023. My provisional decision said I was inclined to uphold Mr M's complaint because I didn't think MBFS had carried out proportionate checks, and if they had I don't think they could have fairly decided to lend to Mr M. Here is an extract explaining my thoughts:

"Did MBFS carry out proportionate checks?"

MBFS say they checked Mr M's credit file and were happy with what they found. And they said Mr M had an existing agreement which Mr M was consistently making repayments on. They haven't told us about any assessment of Mr M's income or expenditure or about anything else they did to consider whether Mr M would be able sustainably make repayments under the agreement. MBFS also haven't been able to provide a copy of the credit file they looked at or any other evidence of the checks they carried out. It follows that I can't conclude they carried out proportionate checks.

What would MBFS have found if they had done proportionate checks?

A proportionate check would have involved MBFS finding out more about Mr M's credit history, income and expenditure to determine whether he'd be able to make repayments in a sustainable way.

Credit history

Mr M's sent us a credit report from one of the Credit Reference Agencies from July 2016 – just a couple of months before the lending decision. This shows:

- *One default on a mail order account from November 2011 which was subsequently satisfied in February 2016.*
- *Defaults on two further mail order accounts - one defaulted in April 2014 with a balance of over £1,800, and another in December 2015 with a balance of around £672.*
- *One credit card with occasional late payments over the preceding 12 months – balance around £1,000.*
- *Occasional late payments on his mortgage – balance around £150,000.*
- *Occasional late payments on a vehicle hire purchase – balance around £5,000*
- *Three accounts (two loans and a credit card) which look to have been assigned to a debt management company in early 2015 – the balance on this was nearly £6,000 and had occasional late payments in the preceding 12 months.*
- *A loan with a balance of around £4,000 and no missed payments.*
- *Retail finance with a balance of £2,300 and one missed payment.*
- *Mr M was consistently overdrawn on his current account, with a balance of around £600 at the time.*

In summary, Mr M had debts of around £20,000 on top of his mortgage and was struggling to meet his financial commitments just a few months before MBFS's lending decision.

Income

Mr M's told us he was self-employed at the time and that his business income and expenditure went through his current account. He spent some time analysing his account for the period from June 2016 to August 2016 and told us he was receiving around £3,250 per month for his work but spending more than this (around £3,500) on business expenses – so effectively making a loss.

However, Mr M's also sent us his tax calculation from HMRC for the 2016-17 tax year. This says he was paid £26,107 from employment and made a profit of £7,033 on the business, as well as receiving £704 in benefits. It says the tax and national insurance contributions on his income came to £5,741, leaving him with total net income for the year of £28,103. When I asked for more information, Mr M said he'd been working on housing developments up until April or May 2016 so had a steady stream of work and was able to make a profit – but after that was having to find work and that's when the business struggled. He took employment in October 2016 to get his family into a better financial position.

So when MBFS decided to lend to Mr M, his business had made profits of £7,033 over a period of six months. On average, therefore, his income was around £1,175 per month over that period even though he'd made losses in the later months. Clearly the financial success of a business can vary significantly from month to month. So I'm inclined to say when considering Mr M's income it's more reasonable to take the longer term view and assess affordability using his monthly average over the six month period, rather than just the three months from June to August 2016.

Expenditure

Mr M's told us that his partner was on maternity leave at the time of the lending decision so he had sole responsibility for all of the household expenditure.

I've looked at Mr M's analysis and the underlying bank statements. I'm not saying MBFS needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of his financial circumstances at the time the lending decision was made.

The bank statements and analysis together show that in the months preceding the loan (June to August 2016), Mr M's average monthly expenditure included £624 for his mortgage, £375 for council tax and utilities, £380 for supermarket spending, £72 on mobile phone bills and £56 for his gym membership. He was making repayments against his loans and credit card totalling around £220 per month, as well as £297 per month against a car finance agreement. And of the £190 per month spend on petrol, he's said £50 of this each month was for personal use rather than business use.

In total, this suggests Mr M's non-discretionary and committed expenditure was around £2,075 per month on average - significantly higher than his average income at the time. This explains why he was borrowing money from family and friends and demonstrates that the agreement wasn't affordable.

Conclusion

Taking everything together, I can't see that MBFS did proportionate checks when decided to lend to Mr M. If they had, I don't think they could have reasonably concluded that Mr M would be able to make the repayments in a sustainable way."

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 M accepted my provisional decision, and MBFS provided no further comments or evidence. So my opinion is unchanged and I'm upholding the complaint.

Putting things right

I set out my proposed redress in my provisional decision. As neither party has disputed this, I've made no changes and MBFS need to put things right as follows:

As I don't think MBFS should have approved the lending, it's not fair for them to charge any interest or other charges under the agreement. But Mr M had use of the car for the whole term of the agreement, so it's fair he pays for that use. The cash price of the vehicle when he bought it was £22,450, and the optional purchase payment at the end of the term was £11,075. I think it's fair for Mr M to pay the difference – being £11,375. This is roughly what it would have cost him to have the car interest-free. So it would be fair and reasonable for MBFS to retain this amount.

To settle Mr M's complaint, MBFS need to do the following:

- End the agreement with nothing further to pay unless this has already been done.
- Refund all the payments Mr M has made (including the deposit), less £11,375 for fair usage.
 - If Mr M has paid more than the fair usage figure, MBFS should refund any overpayments, adding 8% simple interest per year from the date of each overpayment to the date of settlement. Or;
 - If Mr M has paid less than the fair usage figure, MBFS should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once MBFS has received the fair usage amount, they should remove any adverse information recorded on Mr M's credit file regarding the agreement.

If MBFS consider tax should be deducted from the interest element of my award they should provide Mr M a certificate showing how much they've taken off so that Mr M can reclaim that amount, assuming he is eligible to do so.

My final decision

I'm upholding Mr M's complaint and directing Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance to take the steps outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 November 2023.

Clare King
Ombudsman