

## **The complaint**

Ms H complains that Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance (MBF) was irresponsible in its lending to her. She says the hire purchase agreement MBF provided was unaffordable for her and she wants all interest and fees refunded along with interest.

Ms H is represented by a third party but for ease of reference I have referred to Ms H throughout this decision.

## **What happened**

Ms H was provided with a hire purchase agreement by MBF in April 2019 to finance the acquisition of a car. The cash price of the car was £17,890 and a deposit of £3,000 was provided resulting in £14,890 of credit being provided. The agreement required 48 monthly repayments of around £248 followed by a final payment of £6,700 if Ms H wished to keep the car.

Ms H says that adequate affordability checks weren't carried out and that her job was based on commission and that during Covid she was only paid her basic salary. She has explained that she experienced extremely difficult personal circumstances and had to leave her job and move towns which meant she couldn't afford the repayments or her other bills and was reliant on her overdraft. Ms H also said that she suffers with depression and anxiety and a medical condition of which symptoms include impulsiveness and overspending. She said that she felt pressured into acquiring the car and that had adequate checks been carried out the finance wouldn't have been agreed.

MBF issued a final response letter dated 3 January 2024. It said that appropriate checks were carried out before the finance was provided including a credit check. It said its checks showed that Ms H had a low level of borrowing and no accounts in arrears. It said her reported income was enough to meet her repayment.

Ms H referred her complaint to this service.

Our investigator thought that further checks should have been carried out before the finance was provided including gathering further details of Ms H's income and her expenditure to ensure the lending was affordable for Ms H. Our investigator reviewed Ms H's bank statements for the three months leading up to the finance being provided to understand what further checks would likely have identified. Based on her review she thought that proportionate checks would have shown the agreement to be affordable for Ms H. Therefore, she didn't uphold this complaint.

Ms H didn't agree with our investigator's view. She said she was consistently in her overdraft at the time and that MBF should have carried out more detailed checks which would have shown the agreement to be unaffordable.

## **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.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

I am sorry to hear of the extremely difficult experience Ms H has had and I understand that her circumstances changed after she was provided with the finance. But for me to uphold this complaint I would need to be satisfied that the checks carried out by MBF weren't reasonable and, if that was the case, that had proportionate checks been undertaken at the time the finance was provided, these would have shown the agreement to be unaffordable.

In this case, MBF has recorded Ms H at the time of her application as being employed with an annual income of between £34,000 and £39,999. She is also recorded as being single and a tenant. A credit check was undertaken, and this showed Ms H had one credit card account with a £1,475 balance (£1,950 credit limit) and four other accounts. Ms H's credit check showed no accounts to be in arrears and I agree that the credit check didn't raise concerns about how Ms H was managing her existing commitments.

While the credit check didn't raise concerns, noting the size of the lending, the agreement term and the repayments required, I think it would have been reasonable to have carried out further checks to confirm Ms H's declared income and also to understand more about her expenses, to ensure the repayments would be affordable.

While I do not think that MBF was required to request copies of Ms H's bank statements, as I think that further checks should have taken place, I have used the information in Ms H's statements to understand what further checks would likely have shown. Ms H's bank statements for the three months leading up to her finance application show her receiving a monthly average income from the employer recorded on her application of around £1,360. Ms H also received around £260 from another company in January and February 2019 but this isn't recorded in her March statement. Therefore, I have used the £1,360 income figure in my calculation.

Ms H had household expenses such as utilities, insurance, council tax as well as memberships and payments towards her existing credit commitments. These averaged around £420 a month. Ms H was also paying around £400 a month for food and transport. Taking these expenses into account and noting the repayments due under the new MBF agreement, I do not find I can say that further checks would have shown the agreement to be unaffordable.

I note Ms H's comment about her making use of her overdraft and I can see this from her statements. Making use of an overdraft can be a sign of financial difficulty but I cannot say that because Ms H used an overdraft this alone meant that further finance shouldn't have been provided. MBF wasn't required to request copies of Ms H's bank statements and the credit check didn't raise concerns about how she was running her bank account. I also note that Ms H was clearing her overdraft with her salary and spending time in credit. Therefore, in this case, I do not find that the use of the overdraft changes my view that further checks

would have suggested the agreement was affordable.

Ms H has also said that she felt pressured into the agreement. I cannot say what was discussed at the time, but I can see that the pre-contract information and the agreement provided the information about the agreement term, cost of finance and the repayments due. Therefore, I think Ms H was provided with the information she needed to make an informed decision. Had she felt after entering the agreement that it wasn't suitable for her then she could have exercised her right to withdraw within the first 14 days.

I've also considered whether Mercedes-Benz acted unfairly or unreasonably in some other way given what Ms H has complained about, including whether its relationship with Ms H have been unfair under s.140A Consumer Credit Act 1974. However, for the reasons I've already given, I don't think MBF lent irresponsibly to Ms H or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 27 January 2025.

Jane Archer  
**Ombudsman**