

Complaint

Mr M complains that Mercedes-Benz Financial Services UK Limited (“MBFS”) unfairly entered into a hire-purchase agreement with him.

He says it was irresponsible to lend to him as proportionate checks would have shown that he wasn’t in a position to be able to make the monthly payments.

Background

In July 2019, MBFS provided Mr M with finance for a brand-new car. The cash price of the vehicle was £28,500.00. Mr M paid a deposit of £1,500.00 and applied for finance to cover the remaining £27,000.00 he needed to complete his purchase. MBFS agreed to provide this finance and entered into a hire-purchase agreement which had a 48-month term with Mr M.

The hire-purchase agreement had total interest, fees and charges of £5,099.56 (made up of £5,089.56 in interest and an option to purchase fee of £10). The balance to be repaid of £32,099.56 (which does not include Mr M’s deposit) was due to be repaid in a 48 monthly payments of £398.22 followed by a final payment of £12,975.00 which Mr M had to pay if he wanted to keep the car.

Mr M’s complaint was considered by one of our investigators. She didn’t think that MBFS had done anything wrong or treated Mr M unfairly. So she didn’t recommend that Mr M’s complaint should be upheld.

Mr M disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr M’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr M’s complaint. I’ll explain why in a little more detail.

Given Mr M’s response to our investigator, I do think that it would be helpful for me to set out what we consider when looking at a complaint about irresponsible lending. Firstly, we consider what a firm did to check to understand whether the loan payments were affordable (asking it to evidence what it did) for the borrower and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

When thinking about these matters, generally, we don’t think it is unreasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship. But we might think it

needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what it did was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. It's also important for me to say that if we don't think that the lender did enough to establish whether the repayments to an agreement was affordable, this doesn't on its own mean that a lender provided finance irresponsibly.

Indeed we would usually only go on to uphold a complaint in circumstances where we were able to recreate (or at the very least understand) what reasonable and proportionate checks are likely to have shown – typically using information from the consumer. And this clearly shows that the customer was unlikely to have been able to make their payments because they were unaffordable, or it was clear that providing credit in such circumstances was likely to result in the borrower experiencing harm or suffering adverse consequences.

I've kept this in mind when deciding Mr M's complaint.

MBFS says it agreed to Mr M's application after it obtained some information from Mr M on his circumstances. MBFS says it also carried out credit searches on Mr M which showed up some existing credit which it factored into its assessment. Furthermore, MBFS says that Mr M would have enough left over to meet his regular living costs once his payments to his existing creditors was deducted from his income. On the other hand, Mr M says that it was irresponsible to lend to him.

I've thought about what Mr M and MBFS have said.

The first thing for me to say is that available evidence does suggest that Mr M was asked to provide quite a few details about his circumstances at the time of this application. Indeed, from what I can see Mr M was asked about his occupation and his employer as well as what his living arrangements were. Mr M said that he was an accountant and that he was single and living at home with parents.

MBFS didn't just rely on what it was told as it carried out a credit search too. And although Mr M did have some existing debts, it's fair to say that these were low. Furthermore, the credit checks didn't show that Mr M had any significant adverse information such as defaulted accounts or county court judgments ("CCJ") recorded against him either.

Bearing in mind the amount of information MBFS gathered here, there is a reasonable argument for saying that the checks carried out were reasonable and proportionate. Nonetheless, as our investigator explained, given there was a possibility that Mr M earned as little as £16,000.00, I do think that it might have been prudent for MBFS to have found out more about his circumstances before lending to him.

So I've considered the information Mr M has provided with a view to understanding what further checks are more likely than not to have shown. As I've set out, I think that MBFS needed to take further steps to ascertain Mr M's income in order for its checks to have been proportionate.

Having carefully considered the information Mr M has provided, I'm satisfied that MBFS carrying out further checks is unlikely to have seen it reach a different decision on whether to lend in this instance. I say this because the information Mr M has provided does appear to show that when his discernible committed regular living expenses are combined with his payments to his existing credit commitments and then deducted from what he received each month, he does appear to have had the funds to make these monthly payments.

I accept that Mr M's actual circumstances may not have been fully reflected either in the information he's provided. I've seen that Mr M has said that MBFS didn't consider the fact that he would move out from his parents and he didn't have sufficient funds to meet other expenses.

But MBFS was assessing Mr M's ability to make the payments on this agreement, it wasn't providing Mr M with financial advice. So I don't think that MBFS could reasonably be expected to know what Mr M's future plans were and it wasn't advising him on these. On the contrary, I would have expected Mr M to know whether his living arrangements would change and notify MBFS of this if any changes were imminent.

I do accept that the monthly repayments did take up a significant proportion of Mr M's income. However, I also have to consider that his other committed expenditure was low and when this is taken into account the payments here appear affordable.

I also think that it is worth keeping in mind that Mr M's most recent submissions are being made in support of a claim for compensation. And, at the time at least, Mr M wanted the car and MBFS to lend to him. This is likely to have played a significant part in how Mr M responded to any further questioning from MBFS.

In these circumstances, it is simply not reasonable for me to conclude that Mr M would proactively have looked to have shown the monthly payments for the agreement to be unaffordable, in circumstances where the information I've seen suggests proportionate checks would have shown that they were.

So overall and having carefully considered everything, while I'm satisfied that MBFS' checks before entering into this hire purchase agreement with Mr M may not have gone far enough, in any event, I've not been persuaded that further checks would have shown MBFS that Mr M could not have afforded the monthly payments, or that it shouldn't have entered into the agreement with him.

In reaching my conclusions, I've also considered whether the lending relationship between MBFS and Mr M might have been unfair to Mr M under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think MBFS irresponsibly lent to Mr M or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So I'm not upholding this complaint. I appreciate that this will be very disappointing for Mr M. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 March 2025.

Jeshen Narayanan
Ombudsman