

## Complaint

Mr W complains that Mercedes-Benz Financial Services UK Limited (Mercedes Benz Financial Services “MBFS”) unfairly entered into a hire-purchase agreement with him. He’s said that proportionate checks would have shown that the finance was unaffordable for him and this resulted in ongoing financial difficulties.

## Background

In February 2017, MBFS provided Mr W with finance for a brand-new car. The cash price of the vehicle was £32,337.00. Mr W paid a deposit of £5,548.00 and applied for finance to cover the remaining £26,789.00 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 W.

The hire-purchase agreement had total interest, fees and charges of £4,216.00 (made up of £4,206.00 in interest and an option to purchase fee of £10). The balance to be repaid of £31,500.00 (which does not include Mr W’s deposit) was due to be repaid in 48 monthly payments of £333.75 followed by an optional final payment of £14,975.00 which Mr W had to pay if he wanted to keep the car.

In January 2021, settled the agreement early by paying £15,986.25 and took ownership of the car. In October 2023, Mr W complained to MBFS saying that it shouldn’t have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this resulted in ongoing financial difficulties.

MBFS did not uphold Mr W’s complaint. It firstly believed that Mr W had complained too late. Secondly, it was, in any event, satisfied that it had carried out proportionate checks at the time of Mr W’s application and the results showed that it was reasonable to lend.

Mr W’s complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown MBFS that it shouldn’t have entered into the hire-purchase agreement with Mr W. So he didn’t think that Mr W’s complaint should be upheld.

Mr W 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.

### *Basis for my consideration of this complaint*

There are time limits for referring a complaint to the Financial Ombudsman Service. MBFS has argued that Mr W’s complaint was made too late because he complained more than six

years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr W's complaint as being one alleging that the relationship between him and MBFS was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr W's complaint. Given the reasons for this, I'm satisfied that whether Mr W's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr W's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr W has not only complained not about the decision to lend but has also alleged that the failure to carry out proportionate checks unfairly impacted him going forward and he alleges that this resulted in ongoing financial difficulties.

I'm therefore satisfied that Mr W's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and MBFS. I acknowledge MBFS may still disagree that we can look Mr W's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr W's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr W's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and MBFS, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (MBFS) and the debtor (Mr W), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr W's complaint, I therefore need to think about whether MBFS' decision to lend to Mr W, or its later actions resulted in the lending relationship between Mr W and MBFS being unfair to Mr W, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr W's relationship with MBFS is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr W's ability to repay in circumstances where doing so would have revealed payments to the agreements to have been unaffordable, or that it was

irresponsible to lend. And if this was the case, MBFS didn't then somehow remove the unfairness this created.

I'll now turn to whether MBFS acted fairly and reasonably when entering into the hire-purchase agreement with Mr W.

*What we consider when looking at complaints about irresponsible or unaffordable lending*

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 W's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable 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 a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, 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 meant that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances were we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

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

*Application to Mr W's complaint - Was MBFS' decision to enter into a hire-purchase agreement with Mr W fair and reasonable?*

MBFS says it agreed to Mr W's application after he provided details of his employer, how long he'd been employed for and who he banked with. It says it also carried out credit searches on Mr W which suggested that Mr W had no significant adverse information – such as defaulted accounts or County Court Judgments (“CCJ”) - recorded against him. Furthermore, the credit checks showed that Mr W's active credit was being managed well.

In its view, when reasonable repayments to the total amount Mr W owed plus a reasonable amount for Mr W's living expenses were deducted from what it believed to be Mr W's monthly income, the monthly payments were affordable.

I've thought about what MBFS has said.

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

Furthermore, MBFS didn't just rely on what it was told as it carried out a credit search too. And although Mr W did have some existing debts, it's fair to say that these weren't excessive. MBFS will also have seen the reasonably large advance payment that Mr W had made and the credit checks didn't show that Mr W 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 I can't see that MBFS had the information on Mr W's actual income, I can also see the argument that it might have been prudent for MBFS to have found out more about his circumstances before lending to him.

So I've, in any event, considered the information Mr W has provided with a view to understanding what further checks are more likely than not to have shown MBFS. As I've set out, I think that MBFS needed to take further steps to ascertain Mr W's income and maybe a bit more about his actual living expenses, in order for its checks to have been proportionate.

Having carefully considered the information Mr W 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 W 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 note that Mr W has carried out his own income and expenditure assessment using his bank statements. I've thought about what Mr W has said. The first thing for me to say is that MBFS wasn't required to review Mr W's bank statements. So while Mr W has chosen to do this, it doesn't mean that MBFS needed to do this. Secondly, Mr W has also included a significant amount of non-essential expenditure which I wouldn't necessarily have expected MBFS to have included in its assessment of Mr W's circumstances.

I'm mindful that Mr W has included monthly payments of a similar amount to the payments on this agreement for an existing hire-purchase agreement. However, the available information indicates Mr W's previous agreement was settled around the time of this one. Equally, I also think that Mr W replacing a previous agreement with this one, which had similar repayments, is a further indication that this agreement was affordable.

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

With this in mind, I've noted that Mr W had significant funds in his account as a result of cashing in a pension. I realise that the rules state that a borrower shouldn't have to realise security or assets in order to be able to make their payments. However, Mr W had already cashed in his pension in advance of this application.

So I think that MBFS was entitled to take these funds in to account. And, in these circumstances, it is simply not reasonable for me to conclude that Mr W 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.

Bearing all of this in mind, while I'm satisfied that MBFS' checks before entering into this hire purchase agreement with Mr W may not have gone far enough, I've not been persuaded that further checks would, in any event, have shown MBFS that Mr W could not have afforded the monthly payments, or that it shouldn't have entered into the agreement with him.

Having considered all of this and weighed it up in the round, I don't think that MBFS accepted an application that was obviously unaffordable at the outset bearing in mind all the circumstances, or that it ought reasonably to have realised would cause significant harm to Mr W. As this is the case, I don't think that it was unfair for MBFS to have entered into hire-purchase agreement with Mr W, or that it doing so created unfairness.

Overall, and based on the available evidence I don't find that the lending relationship between Mr W and MBFS was unfair to Mr W. I've not been persuaded that MBFS created unfairness in its relationship with Mr W by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find MBFS treated Mr W unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr W's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr W. 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 W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 April 2025.

Jeshen Narayanan  
**Ombudsman**